



Vivekananda International Foundation

# Counterproductive Effects of Sanctions

## The Myanmar Case Study

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## **Abstract**

This paper attempts to analyse the trend of certain Western countries and the United Nations (UN) to impose or recommend imposition of sanctions<sup>1</sup> on other countries, using Myanmar as a case study. Presently, certain bans have already been imposed or recommended to be imposed by Israel, United States and the UN on officials of Myanmar in the aftermath of the Rohingya Crisis. But this paper is not about Rohingyas and human rights violations. As such, the paper neither concurs nor dispels the allegations made against the Myanmar Government. It argues for the need to ensure that the democratic discourse in Myanmar does not get subsumed by the Rohingya rhetoric and that sanctions in effect subvert the larger democratic process that is currently underway there. Sanctions are counter-productive to the overall scheme of development and democratisation of Myanmar and therefore ethnic minorities themselves. Finally it looks at the way ahead and India's role in supporting Myanmar.

# Counterproductive Effects of Sanctions

## The Myanmar Case Study

*There's a myth that sanctions led to the political opening in 2011. At a personal level, many in the army establishment and their friends in business did far better under sanctions than after 2011. For the generals, a Burma more integrated into the rest of the world is the risky proposition, not a return to more isolation.*

Thant Myint-U<sup>2</sup>

### **Build Up**

The current discourse on sanctions has been triggered by the Israeli and US bans on Myanmar military personnel post the Rohingya Crisis, hence that is where this paper takes off from.

The present state of affairs germinated from a British Second World War strategy to arm pro-British Muslims in Arakan to create a rear-guard cum intelligence gathering guerrilla force called the 'V Force' to slow down the Japanese during the retreat from Burma in 1942<sup>3</sup>. In return, they were apparently promised a 'Muslim National Area' <sup>4</sup> in northwest Arakan but the British eventually reneged on their promise. This strategy effectively pitched the Arakan Muslim Rohingyas against their Buddhist brethren who had sided with the Japanese against the colonial British<sup>5 6</sup>. These Arakanese were armed by Aung San's Burma Independence Army and ended up clashing with this same V Force. It was under these circumstances in 1942 that the first large scale massacre of Rohingyas by Arakan Buddhists took place claiming over one lakh lives<sup>7</sup>.

In continuation of the pursuit for the promised Muslim National Area, in May 1946, a leading Rohingya-led Muslim organisation, *Jami-atul Ulema-e Islam* apparently even approached Jinnah to consider amalgamation of two Muslim-majority townships of Northwest Arakan, viz. Buthidaung and Maungdaw, with the new state of East Pakistan, but failed. The aggregate of these actions forged a sense of betrayal in the Bamar people's psyche which has acquired its own momentum over time. Out of the eight main groups of Muslims in Myanmar, none face the extreme Buddhist animosity that is exclusively reserved for Rohingyas<sup>8</sup>.

Expectedly, over time and driven to the wall, the Rohingyas have tried to fight back for recognition and self-determination which has resulted in a series of violent clashes and bloodletting in Northern Rakhine State. In sum, successive regimes in Myanmar had carried out major armed operations against the Rohingyas in 1975, 1978 (Operation Naga Amin), 1989, 1991-92, 2002 and 2012. Each of these operations has led to mass exodus of Rohingyas into neighbouring Bangladesh. Currently the broad figures stand at 7.5 lakhs Rohingyas in camps in Bangladesh with a balance of 6 lakh Rohingyas remaining in Arakan.

### **The Current Crisis and Pakistan's Involvement**

The current crisis was precipitated by the actions publicly claimed by the Rohingya militant group *Harakah al-Yaqin*<sup>9</sup> {subsequently renamed as the Arakan Rohingya Solidarity Army (ARSA)} which launched four attacks since 2012. The attacks on 9 October 2016 and on 25 Aug 2017 were the ones which triggered the Myanmar military's response. The International Crisis Group investigated the attack and reported that the Harakah al-Yaqin was funded by Rohingyas émigrés in Saudi Arabia and commanded on the ground by Rohingyas with international training and experience in modern guerrilla war tactics.

The 9 October 2016 attack was launched by 250 militants armed with knives and hand-made guns and killed nine police officers and injured five in Maungday and Rathedaung Townships. The attackers stole 50 guns and 10,000 bullets but lost eight members while two were captured alive by the Myanmar forces. They disclosed that they were members of the terrorist group called *Aqa Mul Mujahid* (AMM) led by Ataulah Abu Ammar Junjuni@ Hafiz Tohar<sup>10</sup> which subsequently merged with ARSA.

The 25 Aug 2017 attack broke new ground in scale, coordination, brutality and symbolism. The attack took place near *simultaneously* on 30 police posts and one army base in the townships of Maungdaw, Buthidaung and Rathedaung in North Rakhine, killing ten police officers, one soldier and an immigration official against 77 insurgents killed and one captured as per reports of the International Crisis Group<sup>11</sup>. It is also coordinated because *on the same date* the ARSA conducted a brutal massacre of 99 Hindu children, women and men of Ah Nauk Kha Maung Seik and Ye Bauk Kyar villages in north Maungdaw Township as reported by Amnesty International<sup>12</sup>. This was followed up the next day on 26 August 2017 when ARSA members killed another six Hindus – two women, a man, and three children near Myo Thu Gyi village outside Maungdaw town.

The symbolism of the timing of the attack was significant since the previous evening i.e. on 24 Aug 2019<sup>13</sup>, former UN Secretary-General Kofi Annan had released the final report of the Advisory Commission on Rakhine State<sup>14</sup> at Ballroom II of the glitzy Hotel Sule Shangrila in Yangon. This Commission had been tasked with identifying solutions for peace and development for all stakeholders in Rakhine State. The Commission had been established based on a request from Daw Aung San Suu Kyi, the State Counsellor of Myanmar to the Kofi Annan Foundation and the timing of the attacks by ARSA symbolised their disdain and contempt for the process and the person who initiated it<sup>15</sup>.

It was subsequently reported that the 25 Aug 2017 attacks had been in effect coordinated by the Pakistan's notorious Inter-Services Intelligence (ISI). Investigations revealed that Hafiz Tohar, commander of the ARSA Military Wing was recruited by Abdul Qadoos Burmi, the chief of *Harkat-ul Jihad al Islami-Arakan* (HUJI-A) from Kyauk Pyin Siek village of Maungdaw in 2014. He was, along with a few others, trained in Pakistan with the terrorist group *Lashkar-e Tayyaba* (LeT) after which he set up the AMM which he eventually merged with the ARSA after it was formed in the summer of 2016. Interrogation of top *Jamaat-ul-Mujahideen Bangladesh* (JMB) leader Abul Kashem by Bangladesh intelligence officials revealed that new Rohingya recruits from Rakhine and the refugee camps in Bangladesh were trained in camps astride the Bangladesh-Myanmar border at Naikhongcherri in the Chittagong Hill Tracts under a Major Salamat of Pakistan ISI on under cover deputation with the LeT during Apr–May 2016. He further disclosed that totally 88 ARSA recruits and 63 JMB cadres had trained here during this period.

During raids by Bangladesh security forces on this camp, contact number of one Brigadier Ashfaq was also found and he was later identified as the head of the ISI's Eastern Operations Wing who had then recently interacted with Bangladesh Nationalist Party (BNP) leader and former Bangladesh PM Khaleda Zia and Vice Chairman Tarique Rahman in London to plot the downfall of the ruling Awami League and Sheikh Hasina government.

In this connection, three calls intercepted simultaneously by intelligence agencies in two countries are revealing. On 23 August 2017 at 11.32 a.m. Bangladesh time, a 37 minute call from Brig Ashfaq's number was made to a Bangladesh Grameenphone mobile used by Hafiz Tohar whereby Ashfaq told Hafiz that ARSA had to hit multiple targets within the next 48 hours. Tohar replied that though his squads were already in a position to strike, suggesting long planning and mobilisation, it would not be possible to strike the multiple targets before midnight of 24th August. "*Kala Admi report detehi hamla ho,*" said Ashfaq and Tohar replied in chaste Urdu, "*Ji Janaab, jo hukum, par 24 rat se pahle nahi hoga.*" The 'Kala Admi' or 'Black Man' was assessed to be Kofi Annan and the ISI officer was asking for the attacks to be timed immediately after Annan submitted his report the evening itself. Tohar said it would not be possible before midnight of 24th Aug.

The second 28 minute call was intercepted on 24th Aug at 2.13 p.m. Bangladesh time where Brig Ashfaq enquired when the 'Kala Admi' (Annan) was making his report public to which Hafiz Tohar informed him that this was scheduled shortly at 3 p.m. that day itself. Ashfaq pleaded for launching the attacks as quickly as possible, soon after dark. Tohar said 'runners' have been sent to all the ARSA squads with instructions to launch the attacks at midnight. "*Der kyon kar rahe ho,*" (Why are you taking so much time?) enquired Ashfaq to which Tohar replied that "*Message paunchaneme time lagta hai Sir,*" (Sir it takes time to deliver the message). Evidently, ARSA was communicating through physical runners and maintaining complete radio silence to avoid detection. The last 14 minute call to Tohar was intercepted at 6.02 p.m. from an Iraqi number of purportedly the *Al-Amin of Daesh*. He on behalf of the ISIS wished ARSA the best in its jihad against the Burmese colonialists, Buddhist and Hindu fanatics.

ISI's Great Game, it was assessed, was to create a new theatre of jihad to adversely affect Bangladesh, India and Myanmar, all of which had governments in power



which were not conducive to Islamic radicalism<sup>16</sup> the leitmotif of the ISI and Pakistan. And geographically, there was no better common ground than a place closest to the Bangladesh-India-Myanmar tri-junction to execute this Great Game.

### **Myanmar Response**

The Myanmar response to the ARSA attacks of Aug 2017 have, as always, been violent, brutal and disproportionate to the scale of the violence perpetrated by ARSA. However on this occasion, the Tatmadaw acted to a plan to evict the Rohingya for good under the euphemism of ‘clearance operations’, duly funded by Tatmadaw-solicited donations. Effectively what has been alleged by the UN delegated International Independent Fact-Finding Mission on Myanmar (IIFMM) on clearance operations<sup>17</sup> falls into a typical pattern Tatmadaw troops attacking villages, indiscriminate firing leading up to deaths, looting, targeted killing of civilians, arson, murder and rape.

The IIFMM concluded on reasonable grounds that gross human rights violations and serious violations of international humanitarian law had been committed in Myanmar and that many of these violations undoubtedly amount to the gravest crimes under international law. The human rights violations and abuses stemmed from deep fractures in society and structural problems that have been apparent and unaddressed for decades. These were shocking for the level of denial, normalcy and impunity that is attached to them.

The actions of the Tatmadaw in the context of the clearance operations in northern Rakhine State in 2016 and 2017, had so seriously violated international law that any engagement in any form with the Tatmadaw, its current leadership, and its businesses, would be indefensible. Engagement could only be considered when a complete restructuring of the Tatmadaw is commenced, its current leadership is replaced and extensive reform is undertaken to place the Tatmadaw under full elected civilian control and oversight, and to remove the Tatmadaw from Myanmar’s political and economic life. This was in effect a utopian wish list.

### **United Nations Initiatives**

In addressing the human rights situation in Myanmar, the UN took three steps. In the first instance the United Nations Human Rights Council (UNHRC), vide Para No 11 of Resolution No A/HRC/RES/34/22 passed during the 34<sup>th</sup> Session of the Human Rights Council on 24 Mar 2017, decided to establish above mentioned

IIFMM. The IIFMM submitted a number of reports which have been tabulated and summarised at Table 1.

**Table 1: Summary of Reports of the IIFMM**

Document No (Date)	Name	Gist of Contents
A/HRC/39/64 (12 Sep 2018)	Report of the IIFMM	A 21 pg document which gives out the gist of the detailed report submitted subsequently.
A/HRC/39/CRP.2 (17 Sep 2018)	Report of the detailed findings of the IIFMM	A 441 pg document which should be read in conjunction with the report of the Independent International Fact-Finding Mission on Myanmar (A/HRC/39/64) above.
A/HRC/42/50 (8 Aug 2019)	Report of the IIFMM	A 20 pg document which contains the findings of the Independent International Fact-Finding Mission on Myanmar since its previous report (A/HRC/39/64).
A/HRC/42/CRP.3 (5 Aug 2019)	The economic interests of the Myanmar military	A 111 pg thematic supplementary report of the IIFMM
A/HRC/42/CRP.4 (22 Aug 2019)	Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts	A 61 pg thematic supplementary report of the IIFMM.
A/HRC/42/CRP.5 (16 Sep 2019)	Detailed findings of the IIFMM	A 190 pg document which contains information complementary to that contained in the official report (A/HRC/42/50), submitted to the Human Rights Council pursuant to resolution 39/2.
A/HRC/42/CRP.6 (16 Sep 2019)	Compilation of all recommendations made by the IIFMM	A 20 pg summary of recommendations that have appeared in most of the above mentioned documents.

Source: Compiled by the author from [www.ohchr.org](http://www.ohchr.org)

After analysing the findings of the IIFMM, it was felt that there was enough substance and gravity of offence for the matter to be taken to its logical legal conclusion. Thus in the second instance another UNHRC Resolution No 39/2 was adopted on 27 Sep 2018 which essentially expressed “grave concern at the findings of the independent international fact finding mission that there is sufficient information to warrant the investigation and prosecution of senior officials in

the Tatmadaw chain of command so that a competent court may determine their liability for genocide in relation to the situation in Rakhine State, and that crimes against humanity and war crimes have been committed in Kachin, Rakhine and Shan States”.

Based on this, the Resolution 39/2 called for a full and independent investigation of the reports of systematic and widespread human rights violations and decided to establish an independent mechanism to “collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011”, to prepare files in order to “facilitate and expedite fair and independent criminal proceedings”. This resulted in the formation of the Independent Investigative Mechanism in Myanmar (IIMM). Resolution 39/2 also extended the mandate of the IIFMM, until the new mechanism became operational to ensure that the large amount of evidence of human rights violations and abuses was fully documented, verified, consolidated and preserved in order for the material to be transferred to the new mechanism for further legal processing.

The Resolution 39/2 was adopted by a recorded vote of 35 to 3, with 7 abstentions. Expectedly, the three who voted against the resolution included China apart from Burundi and Philippines. Angola, Ethiopia, Japan, Kenya, Mongolia, Nepal, South Africa abstained from voting. India was not a member of the Human Rights Council at that time<sup>18</sup>.

The third and astutely introspective step taken by the UN was to call for an independent inquiry into the involvement of the United Nations in Myanmar from 2010 to 2018. This was based on a recommendation in the Report of the Independent International Fact-Finding Mission on Myanmar (A/HRC/39/64) of 12 Sep 2018 and supported by Resolution 39/2 (Para 32) which stated, “As a matter of urgency, a comprehensive, independent inquiry should be conducted into the involvement of the United Nations in Myanmar since 2011, with a view to establishing whether everything possible to prevent or mitigate the unfolding crises was done, identifying lessons learned and good practices, making recommendations as appropriate, including on accountability, and enabling more effective work in future”.

The report titled “A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018” was conducted by former Guatemalan Foreign Affairs Minister, Gert Rosenthal, who was also a former UN Ambassador and top executive at the UN’s Economic Commission for Latin America and the Caribbean<sup>19</sup>. To assess the efficacy of the UN in respect of the Myanmar case, it behoves that we delve a little more into the outcomes and reports of these three initiatives and the thematic report on the Economic Interests of the Myanmar Military.

### **The IIFFMM Reports – Exhaustive but Exhausted**

The outcome of the first initiative was the establishment of IIFFMM. The President of the UNHRC appointed Marzuki Darusman (lawyer, human rights campaigner and former Attorney-General of Indonesia) as chair, Radhika Coomaraswamy (lawyer and former UN Special Rapporteur on Violence against Women and UN Special Representative for Children and Armed Conflict Sri Lanka) and Christopher Sidoti (international human rights lawyer and former Human Rights Commissioner, Australia) as members of the IIFFMM.

The Mission was created to “establish facts and circumstances of the alleged recent human rights violations by military and security forces and abuses in Myanmar in particular in Rakhine State” as also to “ensure full accountability for perpetrators and justice for victims”. The Mission submitted its 441 page primary report titled ‘Report of the detailed findings of the IIFFMoM’ (A/HRC/39/CRP.2) in the 39<sup>th</sup> Session (hereafter referred to as the Sep 18 Detailed Report). It subsequently compiled 20 pages of exhaustive recommendations for stakeholders including the Government of Myanmar, the United Nations itself and the international community, non-State armed groups in Myanmar, Myanmar civil society including religious leaders and organizations, business enterprises operating in Myanmar and Facebook and other social media platforms operating in Myanmar and the multiple reports that it generated. The Mission also delivered thematic reports which supplemented the recommendations of the Sep 18 Detailed Report and covered the “Economic Interests of the Myanmar Military” and “Sexual and gender-based violence in Myanmar” and the gendered impact of its ethnic conflicts. Essentials of the former are covered in a subsequent portion of this paper since it has reference of Indian companies.

The IIFFMM reports were thorough, detailed and accurately highlighted the scale and spread of the human rights violations that the Tatmadaw had indulged in. It essentially met the requirements of the charter that it mandated. However, where it fell grossly short was in the quality of recommendations. The criticisms on the same are covered in a subsequent section of this paper.

### **The First IIMM Report – Work in Progress**

While the IIFFMM can be criticised on the nature of recommendations, however it would be premature to pass verdict on the functioning of the IIMM. The IIMM has been established in 27 Sep 2018 but effectively started functioning from 1 Jul 2019 when the Head of the Mechanism was appointed. The Head of the Mechanism is US international criminal justice lawyer Nicholas Koumjian who has 35 years of experience as a prosecutor, including almost 20 years of experience in the field of international criminal justice. However his appointment is not without controversy. Min Lwin Oo, a legal advisor at Asian Human Rights Commission, Norway, opined that a non-US prosecutor would have been better for an investigation without bias. He recommended the names of Brazilian legal scholar Paulo Sérgio Pinheiro or human rights attorney Tomás Ojae Quintana, currently the UN's special rapporteur on human rights in North Korea.<sup>20</sup> The first report of the IIM has concluded realistically that without the support of the States in the region and the international community, investigations such as this one, are complex, and that it can take time for such information, documentation and evidence to be shaped into strong case files ready for prosecution<sup>21</sup>.

### **Nailing It – Independent Inquiry on UN Role in Myanmar**

Out of the three initiatives of the UN mentioned above, the “Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018” by Gert Rosenthal is the least known and possibly the most nuanced and best grounded in the environmental realities. The paper has identified systemic and structural obstacles in the UN which has affected the performance in Myanmar. It touches upon the core contradictory trend in Myanmar wherein the fledgling imperfect democracy totters along the path to a full democracy while negotiating through minefields of human rights violations of the most extreme kind. The paper argues that “In fact, although the Rohingya crisis affected a relatively small percentage of Myanmar’s population (estimated at approximately 1.4 million people in 2014) and a limited geographical area (Rakhine State), the

sheer scale and brutality of human rights violations inflicted on this minority immediately mobilized international attention, monopolizing media coverage of the events taking place in Rakhine State in the over-all reporting concerning Myanmar, especially in Western societies. This, even though events in Rakhine state were not limited to the plight of the Rohingya: the communal dimension was further complicated by long-standing grievances of the 'Arakan' or Rakhine Buddhists towards the Bamar majority and the central government, while conflicts also persisted in other states such as Shan and Kachin." Rosenthal further writes that "It is noteworthy that these events were occurring simultaneously with the political process, and increasingly undermining it – actually, taking it as hostage – at least as perceived by Western observers."

The paper lists three aspects which have adversely affected the functioning of the UN:-

- *Firstly*, the criticism of the perceived leadership deficit on part of Aung San Suu Kyi which was driven by her concerns of not wanting to derail the whole process by alienating the military. We will return to this subsequently.
- *Secondly*, the upcoming elections of 2020 would be high on the minds of both the civilian and the military populations.
- *Thirdly*, the fact that the UN is *not* the most important external agency and it has come into the region after Norway, the IMF and the World Bank for economic priority, since the borders opened up. Hence the first port of call for Myanmar Government for guidance were these entities and therefore the UN does not feature as high on the list of the international entities as it (the UN), would perhaps like to be, in the Myanmar consciousness, both in Tatmadaw as well as the civilian side.

The other major conflict that Rosenthal has documented, and possibly the one which has prevented the UN from achieving the efficacy it should have, was within the UN. This was the one between the *quiet diplomacy* proponents and the advocates of *outspoken advocacy*. The former focusses on applying major effort in the available political space so as to remain relevant with the Myanmar Government, while attempting to address human rights issues through gradual, non-intrusive methods for the overall long-term good of the nation and its people. It requires active engagement with the host nation while driving home the

need for addressing human rights and international humanitarian law, in private, discreet and informal interactions.

The latter attempts to coerce host nations into action by firm and hard advocacy and implementing international obligations using methods which may seem intrusive and abrasive. These include public denunciations, bilateral punitive sanctions, touting the negative impacts of the country's actions on access to international finance, aid, investments, tourism and economic assistance. Rosenthal deigns from preferring one strategy over the other, but describes the former as a more pragmatic approach. He goes on to acknowledge that in practice the strategies are not watertight compartments but must necessarily have overlapping areas and are in no way mutually exclusive.

When seen through the prism of the three pillars of UN activities, viz, peace and security; human rights and development, Rosenthal identifies that UN staff working in the 'development pillar' tend to favour quiet diplomacy, and leave out human rights for other pillars to handle. The staff working in the 'human rights pillar' naturally align better with 'robust advocacy' whilst the 'peace and security pillar' staff follow a middle path. Finally, he recommends the need to have a central arbitrator to promote a common over-all strategy between these two approaches to ensure they mutually support each other rather than subvert the process, an organisational structure to converge the divergent perspectives onto a common achievable platform, ensure decisions are communicated to the field operators and monitored, and feedback and analysis of the ground inputs to ensure the Headquarters have an accurate assessment of ground realities.

Specific to the Myanmar experience, Rosenthal dwells upon problems of interaction with the host government as another reason of UN inefficacy. Specifically the dual system of governance within Myanmar where both the civilian and military jostle for space, causes confusion with their often conflicting mind sets. Thus engagement with both sides of the same government is the order of the day with attendant complexities. Similarly, the Myanmar sense of ardent nationalism and consequently a colonial era deep rooted distrust towards external entities persists and permeates interactions with the UN staff. This trust deficit manifested in scrutiny and harassment of the staff, often transcending to intimidation. These assumed forms such as denial of authorisation for internal movement within the country or delay and even denial of visas.

The Myanmar Government officials were apparently even perceptive to the differences within the UN staff and played it to suit their interest. Under this situational environment, many officials of the UN apparently preferred quiet diplomacy over robust advocacy. However the sheer scale of human rights violations against the Rohingya community became the center of attention of member states, human rights advocates and international media and thereby it unwittingly hijacked the discourse and overran those practicing quiet diplomacy. The initial euphoria amongst the international community on the opening up of Myanmar has been partly attributed to the status of Aung San Suu Kyi. However, the criticism of the State Counsellor in desisting from commenting on the Rohingyas is seen as having fallen from grace and thus to be shunned. In the long run, the hype of the robust advocates have effectively weakened the relative position of the State Counsellor within the Government vis-à-vis the military and has eventually jeopardised the fragile political and democratic process.

Insufficient inter-governmental support is also cited as a reason for the limited success of the UN initiatives in Myanmar. Specifically the Chinese interest in Myanmar was crucial. Geo-politically China has no choice but to engage Myanmar since the two share a 2194 km boundary which translates to 34 percent of Myanmar's boundaries and over 9 percent of China's land borders. Further, even at the UN Headquarters the Security Council's sluggish reaction<sup>22</sup> to the Secretary General's letter of 2 September 2017 is symptomatic of the UN and the member states failures to address the situation.

### **Thematic Report - Economic Interests of the Myanmar Military**

The 111 page report mapping the economic interests of the Myanmar military is innovative and successfully documents the economic interests of the Myanmar military. It concludes that the 'ability of the Tatmadaw to draw upon alternate sources of revenue, outside the official military budget, contributes towards it operating without civilian oversight'. In essence, the Myanmar military has an effective parallel military budget from illegal and unaccounted sources and being used in an unauthorised manner without any civilian checks and balances. It has therefore recommended economic isolation of the Tatmadaw:-

- To encourage transformation of the Tatmadaw as a prerequisite for human rights compliance.



- To deter continued and future violations of the human rights laws and international humanitarian laws.
- To promote accountability for violations committed in the past.

The recommended *modus operandi* for achieving this isolation is to ensure that “no business enterprise active in Myanmar or trading with or investing in businesses in Myanmar should enter into an economic or financial relationship with the security forces of Myanmar, in particular the Tatmadaw, or any enterprise owned or controlled by them or their individual members, until and unless they are re-structured and transformed as recommended by the Mission”<sup>23</sup>. The report identifies two approaches to this task. The *negative approach* is which has been highlighted above, while the *positive approach* works on encouraging economic ties and engagement with non-Tatmadaw companies and businesses in Myanmar as a means of building and strengthening the non-Tatmadaw sector of the economy. At the functional level it involves targeting individual sanctions, asset freezes and travel bans amongst other things.

The report has identified the two conglomerates in Myanmar which are essentially holding companies i.e. Myanmar Economic Holdings Limited (MEHL) and Myanmar Economic Corporation (MEC) as being owned and influenced by senior Tatmadaw leaders who have also been identified as responsible for gross human rights violations and family members. These two organisations exercise control over 147 other companies which straddle diverse sectors of the economy. Further it has also identified 45 companies which have donated \$10.2 million to Tatmadaw as solicited by them, for the infamous clearance operations against the Rohingyas.

On the other side, the paper has identified and named 59 foreign firms which either have joint ventures or other commercial ties with businesses involved with the Tatmadaw. Further it has listed 14 foreign companies, 12 of which are state owned enterprises, which have supplied provided arms and related equipment to Tatmadaw since 2016 i.e. after Tatmadaw’s dismal human rights record was widely and publicly known. Indian companies feature in both the lists. These are tabulated below:-

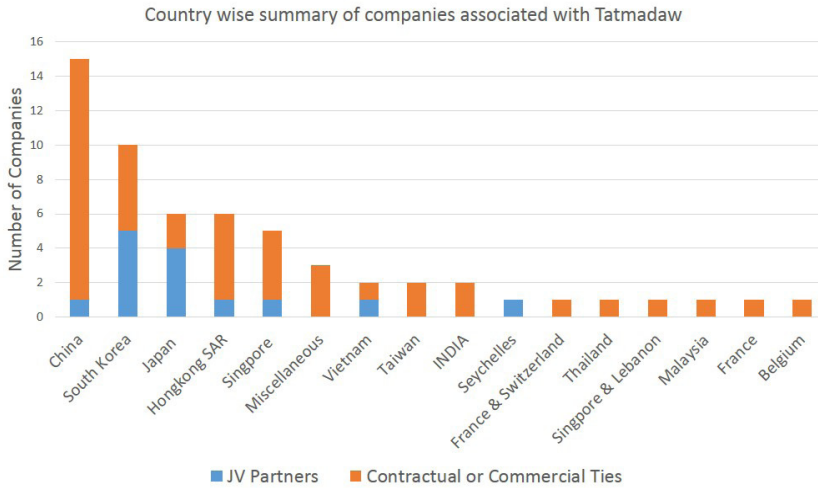
**Table 2: Indian Companies operating in Myanmar as mentioned in IIFFMM Report “Economic Interests of the Myanmar Military”**

Company	Nature of Engagement	Remarks
Adani Yangon International Terminal Company owned by Adani Ports and Special Economic Zone Ltd	Leasing Ahlone International Port Terminal 2 for 50 years in association with MEC.	
Bharat Dynamics Ltd	Supply of 10 Advanced Light Torpedos 'Shyena' worth USD 38 million	State Owned Enterprises
Hindustan Aeronautics Ltd	1 x HJT-16 Kiran-1 trainer aircraft as aid	
Infosys India	Contractor to Myawaddy Bank, a MEHL subsidiary and the 2 <sup>nd</sup> largest tax payer in Myanmar	According to the German development agency Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, in May 2018, Infosys, partnered with Myawaddy Bank to provide it digital banking software

Source: Compiled by author from the IIFFMM Report “Economic Interests of the Myanmar Military”

The actual number of Indian companies operating in Myanmar and mentioned in the report pales in comparison to the number of companies from China, Hongkong, Japan, Singapore and South Korea. The actual participation of Indian companies in Myanmar is not significant to merit concern. However, the fact that these reputed companies now find mention in a UN endorsed document and that the document expects the companies to ensure that they should not enter into or remain in a business relationship of any kind with the Tatmadaw or any enterprise owned or controlled by them, puts potential Indian investors in Myanmar on the caution. The details are as indicated below:-

**Figure 1: Analysis of Country Wise spread of Companies Operating in Myanmar as mentioned in the IIFFMM Report “Economic Interests of the Myanmar Military”**



Source: Compiled by author from the UN IIFFMM Report “Economic Interests of the Myanmar Military”

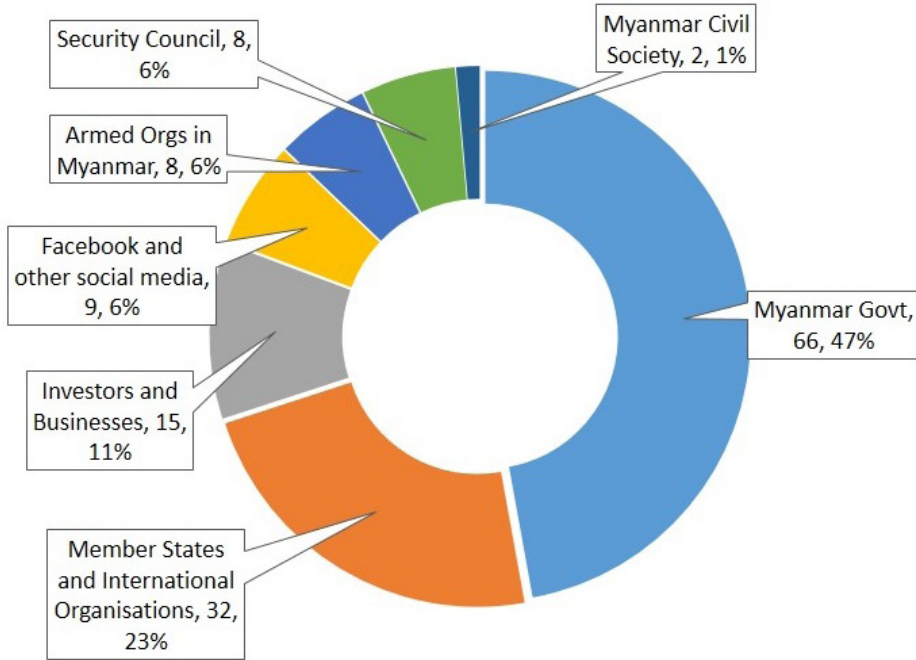
Theoretically the paper is sound and breaks new ground. However, contextual applicability and implementation remains a grey area which brings us to the criticism of the recommendations.

**Criticisms on the Quality of Recommendations by IIFFMM**

Herein lies the crux of this paper which argues that the recommendations<sup>24</sup> put forth by the IIFFMM are counterproductive and will not solve the problems but only aggravate them.

A basic empirical analysis of the quantum of recommendations vis-à-vis the implementing agencies shows an understandable tilt towards the Government of Myanmar having the maximum deliverables. Figure 2 below highlights the same.

**Figure 2: Segment Wise Analysis of Recommendations made by the IIFFMM**



Distribution of Recommendations: The IIFFMM cumulatively made 140 recommendations with 66 (47%) directed at the Myanmar Government and 32 (23%) directed at the Member States and International Organisations. The least recommendations, two, were reserved for the Myanmar Civil Society amounting to just one per cent.

Source: Compiled by author from “Compilation of all recommendations made by the IIFFMM” A/HRC/42/CRP.6 (16 Sep 2019)

The recommendations per se were run-of-the-mill, narrow and focussed only on the task at hand and was unable to contextualise it in the overall political environment in Myanmar. It stated the obvious and gave no credence to the functional realities at hand. Consider the first recommendation, “The Government of Myanmar, including the civilian authorities and the Tatmadaw as relevant, should act without delay to re-structure the Tatmadaw and transform its role. That should begin with replacing the current leadership of the Tatmadaw. Through a constitutional amendment process, the Government should further pursue the

removal of the Tatmadaw from Myanmar's political life". The Myanmar military has been in power since 1962 and the above mentioned recommendation is an oft repeated one for all ills that ail Myanmar. However the report is silent on how to proceed to achieve this recommendation and this is the case with other recommendations.

Under the head 'Security sector reform', the document lists out seven major recommendations which directly and adversely affect the Tatmadaw and includes abolishing the quotas for military seats in the legislature, appointment of vice-presidents and ministers, control of ministries including abolishing the Commander-in-Chief's role in relation to military justice, amongst others. These templated recommendations devoid of contextual applicability robs the otherwise exhaustive document of its value.

Currently, political need of the hour in Myanmar is constitutional reform; and to give credit to the civilian law-makers there, the process for the same to reduce the role of the military in the parliamentary process has been underway for the past year. It will be unlikely to succeed given the resistance by the Tatmadaw, however it will build up the necessary momentum within Myanmar for eventual constitutional reform, possibly years later. The IIFFMM report ignores this aspect and approaches the situation with a blinkered vision.

Certain aspects of the recommendations were found to be subjective, e.g., "*halt all current military and security operations that are unlawful, unnecessary or disproportionate...*" (Para 6). The concept of an unnecessary military or security operation takes the debate into a totally nebulous sphere of discussion. Other facets of the recommendations were not implementable under the present ground realities and not enforceable, e.g., "Issue clear, public and unequivocal instructions to all branches of the Tatmadaw and other security forces that torture, rape...and other human rights violations are prohibited absolutely" (Para 7). Similarly the recommendation to "permit and facilitate free and unfettered access to all parts of Myanmar, especially Kachin, Rakhine and Shan States and all other conflict or crisis areas, for national and international humanitarian actors...journalists and national and international human rights monitors to investigate and report on human rights compliance" (Para 9) can at best be described as a pipedream.

Some recommendations such as suspending the citizenship verification process based on the 1982 Citizenship Law (Para 12) are unrealistic and goes against the will of the majority. The recommendation that is totally divorced from the ground realities are the ones related to welfare of Rohingyas (Para 13). Turning a blind eye to the Buddhist majoritarian view while addressing the issue is a legalistic approach to a problem that is essentially political.

### Myanmar on the ‘Banned Wagon’ – A Legacy of Sanctions

Having mapped the UN initiatives, it is imperative to logically analyse the impact of sanctions in general, and on Myanmar in specific. Myanmar is no stranger to bans. Since 1990, the USA, EU, Japan, Canada and Australia have imposed sanctions of various kinds on Myanmar. A consolidated list of sanctions imposed on Myanmar over the ages is summarised at Table 3. This should be evidence enough that sanctions do not work, especially in the context of Myanmar.

**Table 3: Summary of Sanctions Imposed on Myanmar**

Imposed By	Sanctions	Start Date	Waiver	Remark
Australia	Restrictions on the export of supply of goods	26-05-2011	-	Australia continues to maintain an arms embargo and restrictions on the export or provision of services to Myanmar, due to ongoing concerns about armed conflict, weapons proliferation and human rights.
	Restrictions on the Export or Provision of Services	26-05-2011	-	
	Targeted Financial Sanctions	26-05-2011	01-07-2012	In October 2018, the Minister for Foreign Affairs imposed new targeted financial sanctions and travel bans on members of the Myanmar military (Tatmadaw), in response to the release of the full report of the UN Fact-Finding Mission on Myanmar, which documented human rights abuses committed primarily by Myanmar’s military against ethnic minorities.
	Travel Bans	26-11-2011	01-07-2012	

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Canada	Exports Restrictions	13-12-2007	24-04-2012	Following seemingly positive developments in Myanmar in 2010, including progress towards democracy and improvements to the human rights situation, Canada eased its economic sanctions against Myanmar on April 24, 2012. Most prohibitions under the Special Economic Measures Act were suspended, including most of those pertaining to exports, imports, financial services and investment.
	Restrictions on Aid and Assistance	13-12-2007	24-04-2012	
	Frozen Assets	13-12-2007	-	Canada maintained sanctions against certain listed individuals and entities, which are still in place today. A trade embargo on arms and related material, as well as on related technical and financial assistance, also remains in place.
	Restrictions on Financial Services	13-12-2007	-	
	Restrictions on Technical Assistance	13-12-2007	-	

EU	Arms Trade Restriction	28-10-2002	30-04-2020	Sanctions were extended in 2007. It is prohibited to export arms and related materiel to Myanmar (Burma). Related technical or financial assistance and services are also prohibited.
	Visa Restrictions	28-10-1996	22-04-2013	Member States shall enforce travel restrictions on persons listed in the Annex of Council Decision 2013/184/CFSP
	Frozen Assets	28-10-1996	22-04-2013	All assets of the persons and entities listed in Annexes IV of Council Regulation (EU) 401/2013 should be frozen. It is also prohibited to make any funds or assets directly or indirectly available to them.
	Dual-use goods exports restrictions	28-10-1996	22-04-2013	The export of dual-use goods and technology to Myanmar (Burma) is prohibited if those items are or may be intended for military use, military end-user or the Border Guard Police. Any provision of related technical assistance, financing or financial assistance, brokering services or other services are also prohibited.

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EU	Restriction on equipment used for internal repression	28-10-1996	30-04-2020	It is prohibited to export equipment which might be used for internal repression to Myanmar/Burma. Related technical or financial assistance and services are also prohibited.
	Telecommunication equipment restriction	28-10-1996	30-04-2020	It is prohibited to export telecommunications monitoring and interception equipment, technology or software as listed in Annex III of Council Regulation (EU) No 401/2013 to Myanmar (Burma). Related technical assistance or brokering services are also prohibited, unless the competent authority of the relevant Member State has given prior authorisation.
	Restrictions on Military Training and Cooperation	28-10-1996	30-04-2020	The provision of military training to or military cooperation with the Myanmar Armed Forces (Tatmadaw) and the Border Guard Police shall be prohibited. The prohibition shall not apply to training or cooperation aimed at strengthening democratic principles, the rule of law or respect for international law.

Israel	Bans on attending military exhibitions in Israel	01-07-19	-	Israel has banned military officials from Myanmar from attending its weapons fairs as long as the Southeast Asian state remains under international sanctions and arms embargoes. Israel's foreign ministry announced the decision that requests for visas to attend arms expositions by nationals of countries to which it refuses to sell arms will be rejected.
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Japan	Restricted Aid and Assistance	1996	2008	In the absence of progress toward democratization and human rights improvements, however, in fiscal 1996 no grant aid or yen loans for new projects were provided other than small-scale, grass-roots assistance through nongovernmental organizations. Outlined below is Japan's economic cooperation with Myanmar in fiscal 1995 when Suu Kyi was released from house arrest, and in fiscal 1996. Resumed aid and assistance, following cyclone Nargis in May 2008.
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USA	Visa Restrictions	03-10-1996	19-09-2012	Sanctions prohibited the issuing of visas to selected Burmese officials. Waiver lifted the visa ban for President Thein Sein and Speaker Shwe Mann
	Restrictions on Financial Services	28-07-2003	11-07-2012	Sanctions limited the export or re-export of financial services to Burma. Waiver, allowed the provision of financial services to Burma.
	Frozen Assets	18-10-2007		Prohibition on the transfer or utilization of assets of selected Burmese officials held by U.S. financial institutions.
	Import Restrictions			Ban on the import of products of Burmese origin.
	Investment Restrictions	20-05-1997	11-07-2012	Sanctions banned the new U.S. investments in Burma. Waiver, allowed new U.S. investments in Burma.
	Assistance Ban	28-02-1990	14-09-2012	Sanctions added limitations on the provision for certain types of assistance to Burma by the U.S. government and international financial institutions. Waiver, allowed U.S. assistance, which were previously prohibited due to Burma's poor performance on illegal drug trafficking and production.
	Ban on travel to USA	15-07-2019	-	Bans the travel of Myanmar Army Senior General Ming Aung, Vice Senior General Soe Win, Brigadier Generals Than Oo and Aung Aung including their families.

Source: Compiled by Anjali Gupta, Young Professional, VIF, from the UN Website.

The most recent instances of sanctions in Myanmar are those by the US on the Myanmar senior military hierarchy<sup>25</sup> followed by the Israeli ban<sup>26</sup> on Myanmar officials from attending military exhibitions. The ban on the generals was responded to by Myanmar with a suitably contrite statement stating that the ban had affected the dignity of the leaders<sup>27</sup>. There was no response to the Israeli action. Yanghee Lee, UN Special Rapporteur to Myanmar said that it was not enough and more was needed to be done<sup>28</sup>. The US bans visits to USA by Myanmar's army chief Senior General Min Aung Hlaing, Deputy Commander-in-Chief Soe Win, Brigadier General Than Oo and Brigadier General Aung Aung and their families due to their role in the human rights violations of the Rohingyas. It hopes that this will strengthen the hand of the civilian government to further delegitimize the current military leadership.

The Israeli action too seems to be directed to meet the requirements of the US and EU domestic politics. An EU arms embargo is currently in force until 30 April 2020<sup>29</sup>. It seems unlikely that Israeli realpolitik policies would jeopardise the military business opportunities that either the EU or Myanmar offers and hence would have to balance the need to be seen as going along with the rest of the world while continuing business<sup>30</sup> on the quiet<sup>31</sup>.

On the US sanctions, Erin Murphy, a former State Department official and founder principal of the Inle Advisory Group, which specializes on Myanmar, said the ban would not affect the generals too much directly, but their children or grandchildren who want to come to the United States as tourists or students. While saying the travel ban provided a tool to encourage change, she doubted it would change attitudes toward the Rohingya, who are “*almost a universally despised population*”<sup>32</sup>. Similarly, the Economist Intelligence Unit<sup>33</sup> does not expect the UN recommendations to have any sizeable financial impact on the Tatmadaw. As per them, formal sanctions will not be adopted by the UN body, owing to likely vetoes by key Security Council members.

### **So Do Sanctions Work?**

At this stage it is imperative to see how sanctions have worked globally over the past. Enormous literature on this topic is available in open sources and by and large there is an understanding that sanctions, while being the preferred foreign policy tool as an alternative to military action, has limited success. The success varies depending upon a number of factors, some of which are discussed in this section. Maarten Smeets, Institute for Training and Technical Co-operation (ITTC), WTO, Geneva, in his paper “*Can Economic Sanctions be Effective?*” argues, Economic sanctions generally inflict economic costs to all countries involved in the sanction episodes, including those taking the sanctions, thus shooting themselves in the foot. The country facing the sanctions is likely to develop trade relations with third parties that are not part of the sanction coalition. It is observed that sanctions are mostly taken in complement of diplomatic and other forms of pressure. The type of sanctions is also evolving, with countries increasingly using ‘smart’ sanctions, targeting financial transactions, business activities and individuals there were it hurts most and limiting their freedom of movement. It is the combination of various interventions that could eventually make the sanction episodes effective, if at all and not the economic sanctions per se. Despite such

shortcomings and lack of evidence of their effectiveness, it can safely be said that they are the preferred option compared to military intervention. At the same time, and regrettably, sanctions do not necessarily prevent armed conflict adding to the economic cost the tragic cost of human life<sup>34</sup>.

Smeets goes on to state that sanctions are generally recognized to be a more powerful expression of disagreement than pure political declarations and are meant to give teeth to these declarations especially where leaders want to show the domestic electorate that they are responsible and not just watching 'evil' taking place without acting. He concludes that generally third parties take advantage of the situation and break the sanctions and this may lead to a change in trade partners and the creation of new alliances.

The UN Security Council has imposed sanctions more than 20 times since the end of the Cold War whereas the EU has levied sanctions more than 30 times, in addition to those mandated by the UN, as per the *Council on Foreign Relations*, a New York think tank<sup>35</sup>. In a comprehensive study entitled "Economic Sanctions Reconsidered", four scholars reviewed 174 instances of sanctions commencing from World War I till 2000 and concluded that sanctions were only partially successful in 34 percent of cases. However this success rate was found to be heavily influenced by the nature of policy change being sought. In modest cases, e.g., the release of political prisoners the success rate was about 50 percent whereas where the aim was regime change or efforts to prevent a military misadventure, the success rate was far lower. Notable examples where sanctions failed to bring about the desired changes include North Korea, India (for the 1998 nuclear tests), Cuba and Russia (for the 2014 accession of Crimea).

Let us take Cuba in slightly greater detail. When the Soviet Union collapsed in 1991 ending subsidies for the Castro regime, many believed that Cuban communism was doomed. In 1994 John Sweeney of the Heritage Foundation stated that "embargo remains the only effective instrument available to the U.S. government in trying to force the economic and democratic concessions it has been demanding of Castro for over three decades. Maintaining the embargo will help end the Castro regime more quickly"<sup>36</sup>. However the communist regime espoused by Castro lives on till date. Similarly the North Korean regime has clung to power despite being subject to severe economic sanctions due to Chinese support which possibly fears a united Korea on its border.

Successful sanction based interventions which are touted are of South Africa, Iran and Iraq. South Africa was sanctioned to end its apartheid regime which discriminated the black majority at the hands of the white minority. While sanctions were imposed, what really played on the sentiments of the stakeholders, apart from a strong international consensus, was the cultural impact of the sanctions, rather than economic. Sports is a major cultural event in South Africa, especially rugby. Hence not being able to participate in rugby, cricket and similar world events was considered more impactful on psyche of the people rather than the economic consequence. Myanmar relies primarily on its regional neighbours to maintain its identity, with the vast majority of its sporting and cultural exchanges occurring with other ASEAN countries and hence is not affected similarly.

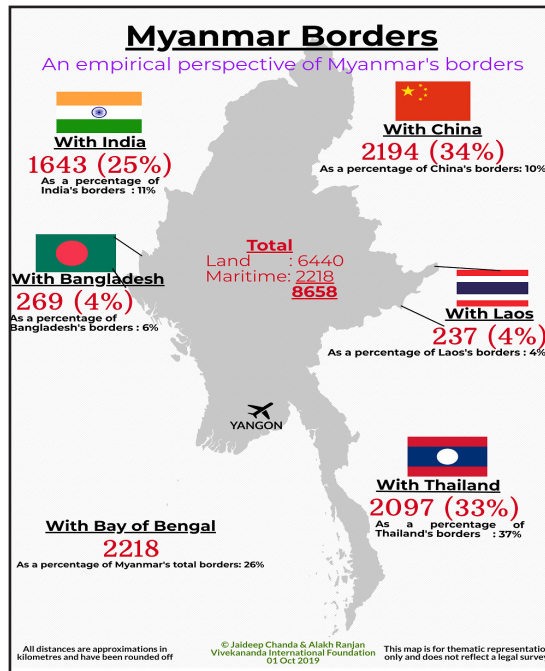
Often sanctions serve to strengthen the resolve of those very stakeholders who are being targeted, thereby defeating the very cause of the sanctions. David Cohen, who worked in the Treasury Department during the Obama presidency, writes, “By their nature, sanctions impose costs on innocent third parties, and the more complex the sanctions, the greater the cost and the more likely they are to result in unintended harm. U.S. sanctions on Venezuela and Iran are extraordinarily complex: primary sanctions prohibit parties within the United States from engaging in a range of business and financial activities with entities in both countries. Secondary sanctions, meanwhile, prevent American individuals, banks, and other businesses from transacting with foreign entities that do business with Iran. Such sanctions impose significant compliance costs and legal risks on both U.S. and foreign businesses.”<sup>37</sup>

He goes on to opine that the logic of coercive sanctions does not hold, however, when the objective of sanctions is regime change. Put simply, because the cost of relinquishing power will always exceed the benefit of sanctions relief, a targeted state cannot conceivably accede to a demand for regime change. And this takes us on to analyse the effects that sanctions are likely to have on Myanmar.

### **Counter-productive Effects of Sanctions on Myanmar**

Fundamentally, sanctions on Myanmar have not worked in the past and will not work even now for reasons unique to Myanmar. This section brings out that sanctions will actually be counterproductive to the democratic process in Myanmar.

A study by Manmeet Ajmani, P. K. Joshi, Avinash Kishore and Devesh Roy of the International Food Policy Research Institute<sup>38</sup> reveals that historically, sanctions by the US have been enforced asymmetrically thus while Myanmar's exports to the United States dropped to zero, but the U.S. continued to export its products to Myanmar. Further, even though sanctions were broad based, the study shows that at the aggregate level, the impact of sanctions on Myanmar's trade was insignificant. In pre-sanction 2001 Myanmar's total trade stood at \$6.28 billion, which increased to \$6.54 billion in 2003. The total trade of Myanmar increased without interruption even after the sanctions. In 2004, its overall trade rose to \$7.1 billion and further increased to \$8.57 billion in 2006. Myanmar diversified both its products and its trading partners to tide over the sanctions. Though the textile industry of Myanmar, one of its principal exports, took a hit from sanctions, the ASEAN+6 became a significant shock absorber for this industry. This leads us onto the importance of regional geo-political and economic dynamics as a prism through which to view sanctions. The infographic below highlights the importance of sharing a substantial border with a P5 nation (China) favourably disposed towards Myanmar, in negating sanctions.



Source: Compiled by Alakh Ranjan, Young Professional, Vivekananda International Foundation, from official sites of the respective countries. In the Indo-Myanmar border, the length as given in the Myanmar site and the Indian sites varied and hence the Indian figure was used.

Myanmar imported an estimated total US\$ 24.2 billion worth of goods in 2018, a 48.9% increase since 2014 and a 25.5% gain from 2017 to 2018. Top suppliers accounting for 88.1% of Myanmar's international purchases were: China (31.8%), Singapore (15.2%), Thailand (11.3%), Japan (5.5%), Malaysia (5.2%), India (5.1%), Indonesia (4.8%), United States (3.6%), Vietnam (3%) then South Korea (2.7%). Thus what emerges is that 87.9% of Myanmar's imports in 2017 were purchased from Asian countries. European countries supplied 5.1% of imports by Myanmar while 4% worth goods were purchased from North America<sup>39</sup>.

Andrew Thomson<sup>40</sup>, an Australian researcher has identified pertinent reasons for the inefficacy of sanctions. To begin with, there is a total lack of consensus within the country and even in the neighbourhood on the sanctions. While earlier sanctions for democracy may have been acceptable to the people of Myanmar, the sanctions for human rights violations against Rohingyas will not be welcomed. And herein lies the fact that in the Bamar majoritarian psyche, the Rohingyas are unwelcome and hated. Hence sanctioning the Myanmar generals may actually help them to play the victim card and get far greater support than they would have had in normal course of time. In regional terms Myanmar shares five borders with Bangladesh, China, India, Laos and Thailand. China shares 2194 km of Myanmar's borders and a large diaspora astride this area which comprises 36 percent of Myanmar's total borders. The language spoken and the currency generally used in this area is Chinese. With such stakes, there is likely to be no support to or compliance with any UN or regional level sanctions. Similarly India, Laos and Thailand have too much at stake to overtly or covertly back such sanctions. Unfortunately Bangladesh, which has just 269 km boundary with Myanmar, has had to bear the brunt of the Rohingya crisis and has effectively been left in the lurch.

Secondly, the Myanmar economy, notwithstanding the opening up of the country, is yet to be sufficiently globalised to feel the pinch of sanctions. Hence this largely agrarian population will never fall below subsistence levels despite cash crunches. Thomson states that "in cases where sanctions have been successful, the countries have mostly been those deeply integrated into the global economy, with their elites reliant on such integration to maintain their standard of living. Foreign investment and trade in these countries were crucial for their governments to maintain the wealth and prosperity of their main supporters."

Thirdly, Tatmadaw has no electoral compulsions since they are not elected but self-appointed. By contrast say, in the South African example, the ruling elites were elected and hence accountable. Thus their actions were to a large degree influenced by public opinion.

Fourthly, with elections around the corner in 2020, the NLD will not like to antagonise the Tatmadaw over the Rohingya issue given the national sentiment against the Rohingyas. In this backdrop, sanctions will only serve to insulate the Tatmadaw against international opinion, despite their overall unpopularity.

Fifthly, Thomson also brings out that in cases where sanctions have been successful, it was because they supplemented and reinforced strong internal pressure for political change. In South Africa, the pressure brought about by Western sanctions was a factor in the South African government's decision to begin negotiations with the African National Congress and other related groups. Currently, there is no group in Myanmar that is both willing and capable of exerting enough internal pressure on the military to change its current policy on the Rohingya.

Finally, decades of self-imposed international isolation has shaped the national security ideology of the military in Myanmar. This ideology influences the military's actions in Rakhine state, as their primary objective is to maintain national sovereignty and unity. Sanctions will push the country back to isolation and end up damaging the democratic processes underway.

As if in vindication Michael F. Martin, author of a 2012 US Congressional Research Service Report prepared for members and committees of Congress entitled, *U. S. Sanctions on Burma*, writes that it is unclear if the imposition of sanctions has had a demonstrable effect on the Burmese government in power or its predecessors and it is equally unclear if the absence of US Sanctions on Burma would have led to an improvement in the political situation in Burma<sup>41</sup>.

### **Recommendations on India's Role**

Hunter Marston, a PhD scholar at the Australian National University researching on great power competition in Southeast Asia, has been astute in his observations that it will take generations of educated Burmese to resolve the ethnic strife and come to a solution to co-exist<sup>42</sup>. Prima facie, Myanmar is a case of trying to achieve too much too soon. The triple transition from war to peace, from autocracy to

democracy, and from a still relatively closed to a more open economy has given rise to unrealistic expectations especially amongst Western observers. Hence when the course has deviated from the desired script, knee-jerk reactions such as sanctions and vilification of Aung San Suu Kyi have erupted.

Disastrous while the Rohingya crisis is, it should not be allowed to disrupt the core requirement, that of firming in the democratic process. Attempting to create accountability for human rights without a sound democratic structure in place is like placing the cart before the horse. Further, notwithstanding the scale of the tragedy, the Rohingya Crisis should not be allowed to become the proverbial tail that wags the dog. It is for the long term benefit of the Rohingyas, amongst others, that the democratic discourse cannot be allowed to get hijacked by the Rohingya rhetoric.

Tagaung Institute of Political Studies analyst Soe Myint Aung<sup>43</sup> brings out the difficulties sanctions will create for the National League for Democracy (NLD) government where three key Cabinet ministers are military officers. Further Among other things, Ms Suu Kyi's government needs the military's cooperation if it wants to hammer out the terms of lasting peace with ethnic armed groups across the country. Sanctions, even if targeted at the military, may end up crimping the civilian administration wedded to it.

On the other end of the scale, Kensuke Yamaguchi<sup>44</sup>, assistant professor at Policy Alternatives Research Institute, University of Tokyo has recommended economic support instead of sanctions to help the Myanmar government deal with the issue: "Infrastructure development needs resources that the Myanmar government cannot finance on its own. If the international community does not support local development, China will. In either case, the hope is that the Myanmar government, with accountability toward multiple ethnicities, will properly deal with the brutal violations of human and labor rights. This positive outcome is more likely if Myanmar does not rely primarily on China. Economic support, rather than economic sanctions, is needed to increase accountability".

India's stature in Myanmar is unique. It is a trusted ally, a friend which has come a long way, and sanctions notwithstanding, engages Myanmar in all spheres. In contrast, China is not trusted, but engaged purely for economic benefits. The renegotiation of a Chinese-led port project in Rakhine from the initial price of \$7.2 billion to \$1.3 billion over concerns about excessive debt, is symptomatic



of this<sup>45</sup>. The xenophobic Tatmadaw are very conscious of the perils of engaging China and hence exercise caution in all deals.

What then is India doing to alleviate the situation for Myanmar and also Bangladesh? What are its options? Five major facets need to guide India's engagement of Myanmar in the backdrop of international sanctions.

First, if India aspires to be the regional leader, it has to be seen to be more proactive and engage Myanmar on the Rohingya issue. Since the Rohingya issue has effectively hyphenated the diplomatic relationship between Bangladesh and Myanmar, India's engagements with these nations could be bilateral with each, trilateral or even multilateral, as shown below.

Currently this role is being fulfilled by China which is engaging both Bangladesh and Myanmar diligently and has even taken the case to be discussed in the UN. This despite China having no land border with Bangladesh or any ethnic linkages with the Rohingyas, unlike other ethnic groups on the Sino-Myanmar border. The Chinese endeavour is unlikely to succeed, but the leverage it would have gained with both the countries would be at the expense of India which seems to have ceded diplomatic space to China. India should be seen to be more energetic in the approach to the problem. Over nine lakh Rohingyas in Bangladesh with whom we have a porous 4000 plus km border is a security issue with potential to create major law and order problems in addition to problems of Islamic fundamentalism. A constant trickle of illegal Rohingya migrants into the country and the surprise discovery of an illegal Rohingya camp on the Gurram Cheruvu lake bed at Hyderabad are cases in point<sup>46</sup>.

A second option would be to address the problem through a regional approach. It could do so under the ASEAN+ or the BIMSTEC umbrellas. This has benefits of being more regionally democratic and therefore in line with India's portrayal as a soft power. K Yhome, Senior Fellow with the Observer Research Foundation, a New Delhi based think tank opines<sup>47</sup>, "Both (ASEAN and India) believe that constructive engagement is more practical in finding a solution rather than megaphone diplomacy. The constructive approach of India and ASEAN is based on the belief that isolating Myanmar will not solve the problem. Nudging the Myanmar government through engagement has produced positive results in the past and it remains the most pragmatic option in dealing with the current crisis. Beyond their similar approaches, the stakes are high for both India and ASEAN

...the reputation and global standing of India has come under inspection.” The efficacy of ASEAN as a regional body is also under question. Both India and ASEAN are aware that they will be the first to face the consequences of any terror activities emanating from radicalisation among the Rohingyas.

Yhome proposes an alternative to the traditional regional groupings by recommending a dedicated regional grouping to address the issue. He identifies two ASEAN members (Singapore<sup>48</sup> and Indonesia) and two BIMSTEC members (Bangladesh and Thailand) as critical to this effort. Bangladesh as a victim of the crisis will need to be party to finding solutions. Thailand shares a long land boundary with Myanmar and as a Buddhist majority nation, has its own concerns and experiences in dealing with conflicts for years and has taken the lead in finding a solution to the migration crisis involving the Rohingyas in the past. Indonesia has been actively involved, extending humanitarian and socio-economic development assistance in Rakhine State. As the largest Muslim nation in ASEAN, Indonesia's role is significant. Singapore was mentioned for its role as the Chair in 2018.

The ASEAN experience in handling this crisis has been dismal. Ilmi Dwaistuti of Centre for Strategic and International Studies, Jakarta<sup>49</sup> takes it further to say that Myanmar's violence against 'an ethnic minority' in Rakhine State might have been due to ASEAN's negligence of its role as a regional power. This negligence, she surmises, could have resulted in its member state's poor response to the crisis. Only Indonesia and Malaysia, out of the ten member alliance have actively attempted to resolve the issue probably since non-interference has been an important principle guiding relationships in these states and groupings. Ironically though, this is probably the reason why Yhome writes that “it is one of the very few organisations that enjoys the confidence of Myanmar”. Nattapat Limsiritong, a law student from Assumption University, concludes that ASEAN is designed to protect the principle of non-interference more than the human rights protection and the decision-making mode of ASEAN under Article 20(1) of the ASEAN Charter cannot apply into the Rohingya situation in practice because there is a lock of law making ASEAN to respect and rely on principle of non-interference which plays the key role to keep ASEAN together<sup>50</sup>.

Secondly, India's engagement with Bangladesh has effectively got hyphenated with Myanmar. Bangladesh is rightly miffed with Indian inaction to the Rohingya

issue. This needs deliberate engagement and India needs to dispel the notion that it favours Myanmar over Bangladesh. This needs diplomacy and tact. Today Myanmar is as critical to the security calculus of India as Bangladesh. Operation Sunrise coordinated operations with the Myanmar Army targeted Indian Insurgent Groups in Myanmar and were very successful in decimating groups like United Liberation Front of Assam (I) (ULFA) by destroying their headquarters in Sagaing Division. This is a culmination of years of defence diplomacy. Whatever India does with Myanmar, cannot be seen to be at the cost of Bangladesh - and vice versa.

Thirdly, India's support to Myanmar should be unequivocal and despite sanctions as and when they come. Certain Indian scholars<sup>51</sup> are of the view that India needs to shed *moral ambiguity* and use its geo-economic leverage with Myanmar to book the perpetrators of human rights violations against the Rohingya. This perspective is premature and likely to be rejected by one and all given the ground realities on Rohingyas. To its credit, India has by and large stood by its neighbour. Resolutions as and when they come up in the UN General Assembly and the UN HRC against Myanmar are generally diplomatically sidestepped by abstaining from voting.

In the latest case, India's permanent representative to the UN in Geneva, Rajiv Chander announced that, "Supporting extensive recommendations regarding legislative and policy actions and threatening Myanmar with punitive action, including at the International Criminal Court, to which that State is not a signatory, will only be counter-productive". India's argument that an investigation by the International Criminal Court (ICC) could backfire was not just made at the passage of the resolution, but also during an informal interaction with the special rapporteur on Myanmar earlier during the Council's 40th session<sup>52</sup>.

Fourth, India's soft power quotient needs to be metamorphosed into a *soft and efficient* power. India's diplomatic deliverables fall woefully short of the needs of Myanmar and thus lose relevance in contrast to the shock and awe diplomatic and commercial manoeuvres of other players in the region. India remains the first port of call for most regional countries seeking aid, infrastructure development or economic assistance. However, invariably our delivery inefficiencies grudgingly drive them away to China and make them vulnerable to debt trap diplomacy. A case in point is bureaucratic delays leading to delays in implementation of projects as in the case of the Kaladan Multi Modal Transit Transportation Project

which was conceived in the 1990s and is yet to be completed. These delays are symptomatic of most Indian diplomatic ventures. Identification of these hurdles and structural solutions are the need of the hour. Hence a soft and efficient India will have more relevant clout with Myanmar and thus be able to better influence it to migrate towards a more globally acceptable nature of conduct in dealing with the ethnic crises and a significantly improved democratic process.

Finally, defence diplomacy remains, in the geo-political context in Myanmar, the most effective diplomatic tool for engaging the military and thus must be scaled up to reach out to the Tatmadaw and the Myanmar Government. As mentioned earlier, the conduct of coordinated operations along the Indo-Myanmar border since early 2019 signifies a high in Indo-Myanmar relations. This has now got to be taken forward. Unfortunately, the defence industry in India is not in a position to take the lead in defence diplomacy and hence the engagement is bound by the limits of training, cooperation and people-to-people contact within the military. The rumours of Senior General Aung Ming Hlaing planning to run for Presidency in the 2020 elections add significance to the need to engage.

## **Conclusion**

India needs to proactively counter the damaging discourse emerging from the West using engagement at Track 1, Track 1.5 and Track 2 levels. It is sometimes suggested that the discourse be ignored in favour of quiet diplomacy. However, often such discourse snowballs into major media hype and the resultant momentum triggers unexpected consequences which can backfire on Indian interests in Myanmar. Thus it happens that despite being the world's third best regarded company<sup>53</sup>, India's Infosys now finds mention as a defaulter in a UN document.

The Tatmadaw finds itself painted into the corner by human rights violations. However it controls the parliament. The NLD is keen to address the need for constitutional reform...the core need for democratic reform. Assistance if any, should only come from the ASEAN+ or the BIMSTEC nations which have cultural affinity and sensitivities.

At the end, away from analysts, international experts, NGOs, scholars and peace pundits, the people of Myanmar will have to find and workout their own peace processes. The solutions lie within the community and the neighbourhood.

Western templates, perspectives and systems have been tried and have had limited enduring success. The long and arduous path to peace and democracy will need ideas which come from within.

For the long term benefit of Myanmar and its people including the ethnic minorities, the need of the hour is to support and not sanction Myanmar.

### Endnotes:

1. The term 'sanction' has a broader connotation while a 'ban' is one of the methods of imposing sanctions. For a better understanding of the terms, the Council of the European Union website may be referred to <https://www.consilium.europa.eu/en/policies/sanctions/different-types/>. Gary Clyde Hufbauer and Barbara Oegg of the Peterson Institute for International Economics (PIIE), in their February 2000 article entitled *Targeted Sanctions: A Policy Alternative?* <https://www.piie.com/commentary/speeches-papers/targeted-sanctions-policy-alternative> have brought out nuances of types of bans.
2. As quoted by Aung Zaw, founding Editor-in-Chief of *The Irrawaddy* in the web article "US Visa Ban Unlikely to See Military Change Course", 23 July 2019: <https://www.irrawaddy.com/opinion/commentary/us-visa-ban-unlikely-see-military-change-course.html> (Accessed on 15 August 2019). Thant Myint-U is a Burmese historian, writer, a past fellow of Trinity College, Cambridge, a former Adviser to the President of Myanmar, and the founder and chairman of the Yangon Heritage Trust. He is the author of four books, including the bestselling and critically acclaimed *The River of Lost Footsteps: A Personal History of Burma* and *Where China Meets India: Burma and the New Crossroads of Asia*. He is also the grandson of U Thant, the third Secretary-General of the United Nations who served from 1961 - 1971.
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*father of Aung San Suu Kyi, decided to switch loyalty to the British, leading to the 1945 Kandy Conference at the Allied headquarters of the South East Asia Command in present-day Sri Lanka.* <https://thediplomat.com/2018/01/rohingyas-and-the-unfinished-business-of-partition/>. (Accessed on 11 September 2019)

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14. In September 2016, following a request from Daw Aung San Suu Kyi, the State Counsellor of Myanmar, the Kofi Annan Foundation and the Office of the State Counsellor established an Advisory Commission on Rakhine State. The Rakhine Commission is a national entity and the majority of its members are from Myanmar. It was mandated to examine the complex challenges facing Rakhine State and to propose answers to those challenges. Its final report was an outcome of over 150 consultations and meetings held since its launch in September 2016 and was presented on 24 August 2017. Commission members travelled extensively throughout Rakhine State, and held meetings in Yangon and Naypyitaw, Indonesia, Thailand, Bangladesh, and Geneva.

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18. The Human Rights Council comprises 47 elected Member States. On the basis of equitable geographical distribution, Council seats are allocated to the five regional groups as follows: African States, 13 seats; Asia-Pacific States, 13 seats; Eastern European States, 6 seats; Latin American and Caribbean States, 8 seats; and Western European and other States, 7 seats. All elected members serve three year terms. India was elected on 1 January 2019.
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## **About the VIVEKANANDA INTERNATIONAL FOUNDATION**

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