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# **A TRIANGULAR APPROACH: DISSECTING THE BURMESE SPRING REVOLUTION WITH INTERNATIONAL LEGAL THEORIES**

**-DRAVIN MAHAJAN<sup>1</sup>**

## **ABSTRACT**

*This research paper delves into Myanmar's (erstwhile Burma) civil war, through the complicated and elaborate perspective of International Legal Theory. As such, the paper contends that the interaction and collaboration of Rational Choice and Game Theory, Third World Approaches to International Law (TWAIL), and Natural Law not only explain but further enlighten us about what could be the roots of the conflict, hence further determining its progress. This paper posits that long-standing systemic inequality, as brought to the fore by TWAIL, when linked with the calculated strategic interaction of Rational Choice and Game Theory, along with the disorderly conduct of the citizenry bred by Natural Law, provides for a potent triad that exacerbates and hastens the country's discord. Through dissecting these theoretical nuances, this research transcends its mere analytic position to provide a comprehensive underpinning of the forces—though silent, yet crucial—in the conflict. It further attempts to close the gap that largely exists between theoretical discourses and practical resolution in conflict-prone societies through the suggestion of actionable solutions aimed at righting the core issues fueling the unrest. This study hence attempts to do justice to the Myanmar civil war by contributing information on international legal theory.*

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## INTRODUCTION

Myanmar is a nation with a troubled history and is burdened with a complex and protracted civil war. The Burmese Spring Revolution<sup>2</sup>, a civil war in Myanmar, cannot be isolated from the country's hard-fought independence in 1948<sup>3</sup>, and a long war of attrition has been spawned by ethnic tensions, military dominance, and stubborn striving for freedom. It originates from the 2021 military coup d'etat by the Burmese military (Tatmadaw), which for long has exercised power in the country through its mode of seizing power during confrontations with the minority ethnic groups who struggle for the right to self-determination<sup>4</sup>.

Ethnic minority groups such as the Rohingyas are suffering from deeply founded state-sponsored discrimination, and their citizenship remains unrecognized by the government of Myanmar<sup>5</sup>. Nationalist Buddhist elements have added to this fire by calling to boycott Muslim businesses, attacking Muslim communities<sup>6</sup>, which led Muslims to flee from the country.

This in turn was a ripple across the health of the Myanmar state, thus leading to catastrophic consequences that have witnessed the uprooting of more than two million civilians<sup>7</sup> as the conflict continued to spread to more regions. Further, to understand more, the study of the different international legal theories comes in as they provide a critical lens within which the issues emanating from civil strife are dissected and addressed. It gives a way to explain the many variables involving conflicts at home, like the civil war in Myanmar. The importance of international legal theory is such that it can be used to provide a normative basis against which state behaviour can be judged, and it remains still possible to establish the same for the legitimacy of governance, and the rights of people and different groups, inside a state.

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<sup>2</sup> Saw Kapi, *Understanding Myanmar's Spring Revolution*, THE DIPLOMAT, (Jul. 14, 2022), <https://thediplomat.com/2022/07/understanding-myanmars-spring-revolution/>.

<sup>3</sup> Bertil Linter, *Why Burma's Peace Efforts Have Failed: End Its Internal Wars*, UNITED STATES INSTITUTE OF PEACE, (Oct. 2, 2020), <https://www.usip.org/publications/2020/10/why-burmas-peace-efforts-have-failed-end-its-internal-wars>.

<sup>4</sup> Amara Thiha, *The Tatmadaw's Role in Myanmar's New Politics*, THE DIPLOMAT, (Dec. 30, 2022), <https://thediplomat.com/2020/12/the-tatmadaw-roles-in-myanmars-new-politics/>.

<sup>5</sup> *Myanmar's apartheid against the Rohingya*, AMNESTY INTERNATIONAL UK, <https://www.amnesty.org.uk/myanmar-apartheid-against-rohingya>.

<sup>6</sup> Thomas Fuller, *Extremism Rises Among Myanmar Buddhists*, THE NEW YORK TIMES, (Jun. 20, 2013), <https://www.nytimes.com/2013/06/21/world/asia/extremism-rises-among-myanmar-buddhists-wary-of-muslim-minority.html>.

<sup>7</sup> *Secretary-General Deeply Concerned by Expansion of Conflict in Myanmar*, THE UNITED NATIONS, (Nov. 15, 2023), <https://press.un.org/en/2023/sgsm22034.doc.htm>.

Sovereignty is the core of the international legal theory<sup>8</sup>. It is a state's right of self-government<sup>9</sup>. This characteristic is of utmost significance as it creates an essential groundwork to balance the tensions that arise between a state's right to self-govern and the moral and legal obligations the international community may have towards intervening in cases of gross human rights violation or humanitarian crisis. Besides this aspect, there are several dimensions through which international legal theories can shed light on the perspective of civil conflicts, such as Rational Choice and Game Theory, Third World Approaches to International Law (TWAIL), and Natural Law.

Rational Choice and Game Theory are basically the application of mathematical techniques<sup>10</sup> to strategic interactions and provide insight as to the decisions that the conflicting groups may make and the predicted outcome relative to each, given the course of action taken by either party. Further application of this model can reveal the incentives and constraints created by war, thus explaining the parties' actions and reactions.

TWAIL, on the other hand, is an international law critique<sup>11</sup>. It is based on the perspective of third-world countries. It tries to address issues of inequality and subjugation as much as it tries to highlight the status quo and how the law of nations may further it and marginalize some people in a state. In this paper, TWAIL is going to explain the historical and systematic aspects of the marginalization of the ethnic minority and why the civil war occurred.

Certain rights are intrinsic to human nature and are universally understood through human reason, this being the core tenet of the Natural Law Theory<sup>12</sup>. This theory gives a basis from which the state's actions and the conditions that precipitate civil strife may be criticized, a moral ground. Therefore, using it for the study of the Burmese civil war, one can purport that the

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<sup>8</sup> Samantha Besson, *Sovereignty*, OXFORD PUBLIC INTERNATIONAL LAW, (Apr. 2011), <https://opil.oup.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1472?prd=MPIL>.

<sup>9</sup> UNITED NATIONS, [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2021/10/Summary\\_Autonomy\\_Indigenous-governance\\_ABurguete-2.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2021/10/Summary_Autonomy_Indigenous-governance_ABurguete-2.pdf) (last visited Aug. 10, 2024).

<sup>10</sup> STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <https://plato.stanford.edu/Archives/spr2004/entries/game-theory/index.html> (last visited Aug. 10, 2024).

<sup>11</sup> Mansour Vesali Mahmoud & Hosna Sheikhattar, *A Call for Rethinking International Arbitration: A TWAIL Perspective on Transnationality and Epistemic Community*, SPRINGER LINK, (May. 18, 2023), <https://link.springer.com/article/10.1007/s10978-023-09344-7>.

<sup>12</sup> STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <https://iep.utm.edu/natlaw/> (last visited Aug. 10, 2024).

conflict is a manifestation of the people's fight to assert their intrinsic rights against an oppressive regime<sup>13</sup>.

It will be apt to posit that the international legal theory is indispensable in the understanding of civil conflicts since it provides not only the theoretical framework through which causes and dynamics of internal wars can be analysed but also for the development of response in terms of legal and policy strategies. These theories will let scholars and practitioners understand how different factors interplay to lead to civil wars and what work could be done towards sustainable solutions, state sovereignty, and the upholding of international law and human rights.

## **HYPOTHESIS**

### *HYPOTHESIS: THE INTERPLAY OF INEQUALITY, STRATEGIC INTERACTIONS, AND INHERENT RIGHTS IN THE CIVIL WAR*

The Myanmar civil war rages on, a clear current example of this theory in play, involving inequality, strategic interaction, and inalienable rights. Provided that the above conditions come in concert, an environment where escalation into civil war is probable.

The hypothesis is that the three factors of inequality, strategic interaction, and inherent rights are conjoint and work interactively in an interactive fashion to raise the risk of civil war. Inequality breeds dissatisfaction and grievances; strategic interaction develops and escalates tension and conflict; violation of inherent rights justifies resistance and rebellion<sup>14</sup>. This would set up a dynamic feedback loop whereby each of the factors reinforces the others, producing a situation in which civil war would now be a probable outcome.

Indeed, the hypothesis of interaction between inequality, strategic interaction, and inherent rights that result in conditions hospitable to civil war is thus vindicated by the case of Myanmar. It is a country in a state of constant strife, and these are but a few among many factors that

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<sup>13</sup> OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <https://www.ohchr.org/en/protecting-human-rights-conflict-situations> (last visited Aug. 10, 2024).

<sup>14</sup> John Locke, *Chapter 8: Resistance against Unjust Force*, in *The Essential John Locke*, ed. Eric Mack, ESSENTIAL SCHOLARS, (2022), <https://www.essentialscholars.org/sites/default/files/2022-12/essential-locke-chapter-8.pdf>.

present a situation not only of probability but also certainty of a civil war. Such an understanding of the interactions has really important meaning when devising strategies looking toward the prevention and resolution of civil conflicts, ensuring respect for the rights of all people, and ways of tackling inequalities so as to ensure peace and stability.

## **THEORETICAL FRAMEWORK & ANALYSIS OF MYANMAR'S CIVIL WAR**

### *STRATEGIC DECISION-MAKING IN CONFLICT: THEORETICAL FOUNDATIONS OF RATIONAL CHOICE AND GAME THEORY MODELS*

The strategic decisions taken by interacting actors in a Burmese civil war would be better understood when viewed from the perspectives of Rational Choice Theory (RCT) and Game Theory. These theories depict an analysis of the motivations and tactics of the Tatmadaw, NUG, vast EAOs, and international stakeholders through a rational calculus of their actions. Rational Choice Theory (RCT) contends that subjects will consistently act strategically in their pursuit of the objectives and choose alternatives that maximize expected utility given a constraint. This model shows the strategic behaviour of actors in a civil war where the government, rebel groups, and civilians are all trying to pursue strategies that further their best interests. RCT assumes that these actors have crisp-cut preferences and also know what the implication of their behaviour is.

The coup<sup>15</sup> of the Tatmadaw in Myanmar on February 1, 2021, is another example of rational choice in the interest of maintaining power and dominance. As the NLD won the elections<sup>16</sup>, the military assessed that a coup was the only way to make sure they do not lose their political and economic benefits. Although the costs on the international stage are going to be high, the rational strategy involves an immediate crackdown on the protests, which would send a signal to the protestors that their resistance was futile and to the international community that Myanmar is and will be under military control.

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<sup>15</sup> BBC NEWS, <https://www.bbc.com/news/world-asia-55882489> (last visited Aug. 10, 2024).

<sup>16</sup> BBC NEWS, <https://www.bbc.com/news/world-asia-54899170> (last visited Aug. 10, 2024).

In contrast, the Civil Disobedience Movement (CDM) initiated by pro-democracy activists<sup>17</sup> and civil servants<sup>18</sup> represents a reasoned way of destroying the rule of the military. Using state paralysis as a strategy by participating in massive non-cooperation actions, the participants of the CDM aimed to make the rule of the Tatmadaw impossible to uphold without public support, to increase the internal costs for the regime, and to focus the attention of the international community on them.

Game Theory extends the rational choice framework to strategic interactions, where the payoff of each participant depends not only on their decisions but also on the actions of others. It models conflicts as games in which the players choose strategies based on the expectations of others' actions. Of primary importance in this theory is Nash Equilibrium<sup>19</sup>, which describes a state where no player can gain by unilaterally changing strategy if others' strategies remain unchanged<sup>20</sup>.

In Myanmar, Game Theory reveals the strategic moves of the military junta and opposition forces. To the military, its coup represented an optimal strategic move that would increase its grip on the state, and it also anticipated a specific response by the opposition. This is what the strategies of protest by the opposition, as well as alliances with the Ethnic Armed Organizations (EAOs)<sup>21</sup>, are for—to change the structure of payoffs for the military, breaking out of the old equilibrium and trying to find a new one that best serves democratic governance.

Game Theory also assists in analyzing interactions between the Tatmadaw and different EAOs as games played simultaneously. Each side's move is determined without knowing what the other's current move is. The EAOs' decision to escalate attack following the coup is a result of their calculation that the Tatmadaw's weakened legitimacy provides the opening to take more territories and increase its bargaining power. The offensives by the Tatmadaw into the EAO

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<sup>17</sup> Kai Ostwald & Kyaw Yin Hlaing, *Myanmar's Pro-Democracy Movement*, KYOTO REVIEW OF SOUTHEAST ASIA (Sept. 2021), <https://kyotoreview.org/issue-31/myanmars-pro-democracy-movement/>.

<sup>18</sup> Emily Fishbein, *Myanmar's Striking Civil Servants: Displaced, Forgotten, but Holding On*, AL JAZEERA NEWS, (Aug. 29, 2023), <https://www.aljazeera.com/news/2023/8/29/myanmars-striking-civil-servants-displaced-forgotten-but-holding-on>.

<sup>19</sup> Tahereh Ahrabi, MA, *Ukraine's crisis in 2022 through the lens of game theory*, CONCORDIA UNIVERSITY (Sep. 2022) [https://spectrum.library.concordia.ca/id/eprint/991205/1/Ahrabi\\_MA\\_F2022.pdf](https://spectrum.library.concordia.ca/id/eprint/991205/1/Ahrabi_MA_F2022.pdf).

<sup>20</sup> Kenneth Chang, *Explaining a Cornerstone of Game Theory: Josh Nash's Equilibrium*, THE NEW YORK TIMES (May. 24, 2015), <https://www.nytimes.com/2015/05/25/science/explaining-a-cornerstone-of-game-theory-john-nashs-equilibrium.html>.

<sup>21</sup> Amara Thiha, *It's Time To Rethink Myanmar's Ethnic Armed Organization*, THE DIPLOMAT (Mar. 24, 2023), <https://thediplomat.com/2023/03/its-time-to-rethink-myanmars-ethnic-armed-organizations/>.

strongholds<sup>22</sup> are strategic moves to reestablish the lost dominance and prevent state fragmentation.

Further, Game Theory can be used to model games of incomplete information, like protests and repressions. The protesters chose to hit the streets to signal widespread opposition<sup>23</sup>, and the Tatmadaw repressed them to quash dissent and reestablish control. This multi-stage game involves each side anticipating the other's responses and adjusting its strategies accordingly. The establishment of the NUG is intended to strategically consolidate anti-junta forces and confer some international legitimacy. To the extent that the NUG has gained stature as a legitimate government, it will, in turn, raise the price of military rule through resistance and sanctions. The theory, then, is to alter the payoff structure, forcing the Tatmadaw to either negotiate or lose power.

International sanctions and diplomatic pressure, looked at through an external game-theoretic lens, are efforts to increase economic and political costs to the Tatmadaw such that the continued existence of the coup regime is no longer tenable. The rational response of the military will be to trade off the benefits of maintaining internal control against the pressure and hope that the sanctions and isolation will lead to a negotiated settlement.

Humanitarian impacts, like displacement and human rights violations, are strategic considerations in this conflict. The Tatmadaw displacement of populations in contested areas<sup>24</sup> is aimed at undermining support for EAOs by making local resources unavailable to them, which risks further international condemnation. Similarly, such reports of human rights violations are strategic efforts to create terror and deter resistance, even with the moral and political costs that can otherwise jumpstart further internal resistance and severe international sanctions.

Thus, Rational Choice and Game Theory are adequate frameworks for understanding the strategic level of analysis of civil conflict, such as a civil war in Burma. They explain the

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<sup>22</sup>Tetsuo Murooka and Hiroyasu Akutsu National Institute for Defense Studies, *Chapter 4: The Korean Peninsula: North Korea's Growing Nuclear and Missile Threat and South Korea's Anguish*, EAST ASIAN STRATEGIC REVIEW (2017), <https://www.nids.mod.go.jp/English/publications/east-asian/pdf/chapter04.pdf>.

<sup>23</sup> Associated Press, *Myanmar's Yangon: Aung San Suu Kyi*, AP NEWS (Aug. 1, 2023) <https://apnews.com/article/Myanmar-yangon-aung-san-suu-kyi>.

<sup>24</sup> Human Rights Watch, *Broken People: Caste Violence Against India's Untouchables*, NEW YORK HUMAN RIGHTS WATCH, (1999), <https://www.hrw.org/reports/2005/burma0605/3.htm>.



decision-making process of several actors and the possible ways the conflict may evolve. They offer policymakers and negotiators a set of strategic models on which it can be decided how interventions will be designed to steer the course of conflict in the direction of stability and peace. So, the full complexity of all those moves and countermoves in the Burmese civil war can be appreciated, and this requires strategic interventions based on a deep understanding of the underlying motivations and potential strategies of all parties.

### **TWAIL CRITIQUE OF INTERNATIONAL LAW'S ROLE IN MYANMAR'S CRISIS**

Third World Approaches to International Law (TWAIL) involves a critical approach to international law in considering its operation and effects from a Global South perspective, usually alleging that international law operates in such a way that it reproduces historical injustices and modern inequities. To the extent that the MYCI accepts this fundamental tenet, the application of TWAIL to the case of the crisis in Myanmar will condemn international law on the count of how it failed to attend to the roots of the conflict, continued human rights abuses, and how it has reflected the interests of the powerful states over the needs of the weaker states. These dimensions of critique from TWAIL have to be dealt with in a much more elaborate manner.

### **IMPACTS OF COLONIZATION**

This ill-considered policy of the colonial administration, implemented by the British colonial administration<sup>25</sup>, remains one of the main root causes behind the current ethnic conflicts in Myanmar<sup>26</sup>. The British followed a divide-and-rule policy<sup>27</sup> and favoured some ethnic groups

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<sup>25</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Humanitarian Update*, UNITED NATIONS OCHA (May. 24, 2024) <https://www.unocha.org/publications/report/myanmar/myanmar-humanitarian-update-no-38-24-may-2024>.

<sup>26</sup> Paul Bumman, *Myanmar's Humanitarian Crises: Unraveling the Causes of the Civil War and Global Silence*, THE DIPLOMATIC AFFAIR (Oct. 3, 2023) <https://www.thediplomaticaffairs.com/2023/10/03/myanmars-humanitarian-crises-unraveling-the-causes-of-the-civil-war-and-global-silence/>.

<sup>27</sup> Mandy Sadan, *Ethnic Armies and Ethnic Conflict in Burma: Reconsidering the History of Colonial Militarization in the Kachin Region of Burma during the Second World War*, SOUTHEAST ASIA RESEARCH, JSTOR (Dec. 2013), <https://www.jstor.com/stable/23752603>.

over others, thus further widening the differences and resentments. To use just one example, during British colonial rule, Karen and some other minority groups were recruited into many positions within the colonial military and administration<sup>28</sup>, and this created tensions with the Bamar majority<sup>29</sup>.

International law has historically legitimized these colonial borders and state structures, which also legitimize the conflicts arising from these artificially created entities. Without addressing the colonial past and recognizing the territorial integrity and sovereignty of Myanmar, the international community keeps on perpetuating the underlying tensions. The international legal framework often overlooks the fact that such colonial creations were never meant to accommodate the ethnic and cultural diversity of the population within their borders. It is on account of this oversight that strife continues between the central government and ethnic minority groups, such as the Kachin, Shan, and the Rohingya<sup>30</sup>.

### *Post-Colonial State-Building*

International post-colonial state-building in Myanmar was heavily influenced by post-1945 international norms<sup>31</sup> and practices focusing on state sovereignty and non-interference that, in many cases, favoured a high degree of centralized control<sup>32</sup> and the integrity of the nation over the accommodation of ethnic diversity. The 2008 constitution of Myanmar that received international support and recognition, both institutionalized military domination and failed to provide genuine federalism or adequate ethnic representation<sup>33</sup>.

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<sup>28</sup> Minority Rights Group International, *Karen in Myanmar*, MINORITY RIGHTS GROUP INTERNATIONAL, (Aug. 2017), <https://minorityrights.org/communities/karen/>.

<sup>29</sup> Htet Paing Oo, *Identity and Social Inclusion*, KYOTO REVIEW OF SOUTHEAST ASIA, Issue 31 (Sep. 2021), (<https://kyotoreview.org/issue-31/identity-and-social-inclusion/>).

<sup>30</sup> Human Rights Watch, *World Report 2020: Myanmar*, HUMAN RIGHTS WATCH (2020), <https://www.hrw.org/world-report/2020/country-chapters/myanmar>.

<sup>31</sup> Emizet F. Kisangani & Jeffrey Pickering, *Rebels, Rivals, and Post-Colonial State-Building: Identifying Bellicist Influences on State Extractive Capability*, 58 *Int'l Stud. Q.* 187, 187-98 (2014), <http://www.jstor.org/stable/24017857> (last visited Aug. 10, 2024).

<sup>32</sup> Kim N.B. Ninh & Matthew Arnold, *Decentralization in Myanmar: A Nascent and Evolving Process*, *J. Southeast Asian Econ.* (2016), <https://www.jstor.org/stable/44132303>.

<sup>33</sup> *Myanmar's Fundamental Problem: The 2008 Constitution*, Asia Times (2021), <https://asiantimes.com/2021/02/myanmars-fundamental-problem-the-2008-constitution/>.

For instance, the constitution reserved 25% of the parliamentary seats for the military<sup>34</sup> and enabled it to assume control of key ministries, which in itself guaranteed that the military, whatever the results of any elections, would have the major say. Such a setup has been disadvantageous to ethnic minorities whose clamour for a more autonomous setup has been consistently unheeded. The inability of these groups to air their concerns has, in fact, exacerbated the conflict and instability within the country.

### WEAK AND HYPOCRITICAL RESPONSES

After the military coup of February 1, 2021, the international community, the United Nations<sup>35</sup> to ASEAN<sup>36</sup>, spoke out in a concerted chorus of condemnation calling for a return of democracy. However, from the perspective of TWAIL analysis, these responses are much too weak and hypocritical. Various Western nations have imposed sanctions<sup>37</sup> on the leaders of Myanmar's military, but the impact these methods will have in changing the behaviour of military elites is usually minimal. More often than not, the measures increase the pain for ordinary people, who are clearly not insulated from the economic impacts of sanctions.

The sanctions, for instance, have brought economic hardships, with the most vulnerable populations in society bearing the brunt<sup>38</sup>, as the military seeks ways through which to circumvent these restrictions, including illicit trade<sup>39</sup> and support from allied nations<sup>40</sup>. The

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<sup>34</sup> House of Commons Library, *Myanmar: Military Takeover and International Response* (Feb. 1, 2023), <https://commonslibrary.parliament.uk/myanmar-military-takeover-and-international-response/>.

<sup>35</sup> Edith M. Lederer, *U.N. Adopts Resolution Urging Myanmar to End Violence, Free Detainees*, Associated Press (June 18, 2021), <https://apnews.com/article/united-nations-general-assembly-united-nations-myanmar-business-global-trade-72dbb95927b735de2b83dc1a85abdd72>.

<sup>36</sup> Hunter Marston, *Addressing the 2021 Myanmar Coup: A New Strategy for ASEAN*, Austl. Inst. Int'l Aff. (June 7, 2023), <https://www.internationalaffairs.org.au/Leiden/J.Int'l.L./australianoutlook/addressing-the-2021-myanmar-coup-a-new-strategy-for-asean/>.

<sup>37</sup> *US, Canada and UK Impose New Sanctions on Myanmar Military*, Al Jazeera (May 17, 2021), <https://www.aljazeera.com/news/2021/5/17/us-canada-and-uk-impose-new-sanctions-on-military-military>.

<sup>38</sup> U.N. Press Release, *Security Council Resolution on Myanmar Adopted with 12 Votes in Favour, 1 Against, 2 Abstentions*, U.N. Press Release SC/14788 (Dec. 21, 2022), <https://press.un.org/en/2022/sc14788.doc.htm>.

<sup>39</sup> *Myanmar Junta's Drug Trafficking Links*, The Diplomat (June 6, 2023), <https://thediplomat.com/2023/06/myanmar-juntas-drug-trafficking-links/>.

<sup>40</sup> *The China-Myanmar Economic Corridor 2 Years After the Coup*, The Diplomat (Feb. 7, 2023), <https://thediplomat.com/2023/02/the-china-myanmar-economic-corridor-2-years-after-the-coup/>.

limited effectiveness of sanctions points to the need for a more nuanced and comprehensive approach to international pressure.

## INTERNATIONAL LAW APPLICATION

This is an essential problem with international law: powerful states and their allies don't tend to be held accountable for their human rights crimes<sup>41</sup>, while weak states are often targeted and punished for far less. That said, selective application of international law<sup>42</sup> is a major concern because those states, characterized by their entrenched record of human rights abuse by the Tatmadaw against a plethora of ethnic groups, including, though not limited to, the Rohingya, have not translated into a firm international legal response.

For instance, evidence abounds of crimes against humanity and genocide, but the response from the international community has been slow and ineffective. The International Criminal Court has opened a preliminary investigation into the killings, but the process has been painfully slow, and Myanmar's non-membership with the ICC<sup>43</sup> limits the jurisdiction of that court.

A further soft and unprincipled response from the international community will send a clear signal that it applying international norms and laws solely a posteriori. In the final analysis, such selective application would delegitimize the very credibility and strength of international law in an age that appears more like a tool in a few powerful states' hands than a genuine mechanism for justice.

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<sup>41</sup> Amnesty Int'l, *Iraq: Twenty Years on, Still No Justice for War Crimes by US-Led Coalition* (Mar. 17, 2023), <https://www.amnesty.org.uk/press-releases/iraq-twenty-years-still-no-justice-war-crimes-us-led-coalition>.

<sup>42</sup> Matthew Saul, *International Responses to Situations of Effective Control*, 34 739 (2021), <https://eprints.whiterose.ac.uk/178016/7/LJIL%20author%20accepted.pdf>.

<sup>43</sup> Utkarsh Dubey, *ICC Jurisdiction Over Nonparty States*, *Jurist* (May 13, 2021), <https://www.jurist.org/commentary/2021/05/utkarsh-dubey-icc-jurisdiction-over-nonparty-states/>.

## THE ROHINGYA CRISIS

International responses to the crisis of the Rohingya have received criticism for being highly insufficient and late. There have been gross human rights violations, including evidence of genocide and ethnic cleansing<sup>44</sup>, yet international legal mechanisms failed to provide timely accountability and punishment for Myanmar. The preliminary investigation of the ICC<sup>45</sup> into the crimes against the Rohingya is running at a sluggish speed, complicating further the non-membership status of Myanmar.

The emphasis ASEAN places on the principle of non-interference has also impeded the coherent international response to the crisis. The reluctance of the ASEAN to interfere in the internal political affairs of Myanmar has enabled the military junta to continue the persecution of the Rohingya with minimal fears of serious ramifications.

It shows, from the TWAIL perspective, that the inability to protect the Rohingya and respond with accountability again highlights the system inadequacy and bias within the international human rights regime. Based on this experience, TWAIL scholars argue for a more robust and balanced international legal regime that would prioritize the protection of vulnerable populations and ensure accountability, without regard to other geopolitical interests.

## THE HUMANITARIAN INTERVENTIONS AND SOVEREIGNTY

Indeed, TWAIL-based criticisms of humanitarian intervention stress how selective it is, as well as how it serves as a tool for political and military meddling by powerful states. In Myanmar, it may be a sign of a broader pattern of engagement that is strategic in nature rather than prompted by consistent legal or ethical standards.

The most telling of these, however, remains the Free Burma Rangers, a humanitarian group working in conflict zones in Myanmar<sup>46</sup>. They deliver medical treatment, food, and shelter for

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<sup>44</sup> Feliz Solomon & Esther Htusan, *Myanmar's Rohingya Muslims Face Ethnic Cleansing*, TIME (Sept. 6, 2017), <https://time.com/4936882/myanmar-ethnic-cleansing-rohingya/>.

<sup>45</sup> Helen Regan, *ICC Prosecutor Karim Khan Visits Rohingya Refugees in Bangladesh*, CNN (July 7, 2023), <https://edition.cnn.com/2023/07/07/asia/icc-prosecutor-karim-khan-rohingya-bangladesh-myanmar-int-hnk/index.html>.

<sup>46</sup> David Scott Mathieson, *On the Front Lines with the Free Burma Rangers*, Asia Times (Apr. 15, 2023), <https://asiatimes.com/2023/04/on-the-front-lines-with-the-free-burma-rangers/>.

people who are in displaced places, in most cases, in territories where no other organizations are capable of coming in. Paradoxically, despite how critical their work is, they get little international support<sup>47</sup>, thus epitomizing the selective nature of humanitarian action.

### *DEALING WITH SYSTEM-LEVEL PROBLEMS*

The TWAIL-grounded approach to international law, therefore, stresses the necessity of addressing the root causes of conflict and inequality in Myanmar. This would redress the decolonial legacies of current borders and political structures and allow for genuine federalism with ethnic representation.

The colonial rule in Myanmar resulted in arbitrarily drawn borders and centralized power structures that did not take into consideration the ethnic diversity of the country. To usher in durable peace and stability, these historical injustices must be addressed. On the other hand, the more inclusive political framework on which real representation of all ethnic groups will be based is another way of satisfying the many years that the members of society have grieved. This could be manifested in the possible forms of greater autonomy for the ethnic regions and full participation of those regions in national governance.

### *EQUITABLE ECONOMIC POLICIES*

International economic policies and interventions must always safeguard equitable development and social justice. Economic growth and investment must achieve fair sharing of benefits and prevent displacement and environmental degradation.

Strict guidelines for international financial institutions have to be put in place, ensuring that investments in Myanmar's infrastructure and industries result in benefits for its local communities, protect its environment, and are aimed at ensuring sustainable development. This

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<sup>47</sup> Dave Eubank et al., *Insurgent Relief and Assistance Teams: Free Burma Rangers Organize, Train, Equip, Sustain*, Small Wars J. (Nov. 13, 2023), <https://smallwarsjournal.com/jrn1/art/insurgent-relief-and-assistance-teams-free-burma-rangers-organize-train-equip-sustain>.

encompasses the provision of fair compensation for displaced communities, local employment opportunities, and the enforcement of strict environmental regulations.

### *THE PRINCIPLE OF NON-INTERFERENCE*

It is this firm belief instilled in the ASEAN policy framework, namely the principle of non-interference, that has likely prevented any effective regional intervention in Myanmar. The principle is fundamentally based on a colonial history in which external intervention was often a disguise for imperial control. Its capability to justify inaction on countless forms of human rights violation should be a caution to the world. There needs to be developed a balance between sovereignty and human rights protection, and the reconfiguration must come through advanced international law, more particularly when the state itself is the violator.

The policies and conditions as spelled out by the International Monetary Fund and the World Bank dictate the economic policy of Myanmar<sup>48</sup>. The conditions and policies as spelled out by these two organizations have only made the structural adjustment programs and the economic reforms further accelerate the liberalization of markets and the austerity measures that increase social unrest and inequalities in the country. For instance, the focus on economic reforms that do not take into consideration changes in human rights and social stability often sets perfect grounds for conflict. Economic policies that fail to consider deep-rooted issues such as ethnicity and politics will only result in uneven development and benefits that are not aptly distributed, such as in the case of Myanmar. This disparity only fuels further resentment and conflict between different ethnic groups.

### *INTERNATIONAL TRADE AND INVESTMENT*

International trade and investment policies are mainly controlled by major global players and enforced by transnational corporations, and they are one of the massive contributors to the

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<sup>48</sup> World Bank & International Monetary Fund, *Myanmar: Joint World Bank-IMF Debt Sustainability Analysis* (June 1, 2023), <https://documents1.worldbank.org/curated/en581881602272455292/pdf/Myanmar-Joint-World-Bank-IMF-Debt-Sustainability-Analysis.pdf>.

crisis in Myanmar. Most of the country's resources, including jade<sup>49</sup>, timber<sup>50</sup>, oil and gas<sup>51</sup>, are harnessed with international investment, which displaces local communities and exerts a negative impact on the environment<sup>52</sup>.

For example, the jade mining industry in Kachin State has brought in enormous revenues for the military<sup>53</sup>, with vast environmental devastation and displacement of local communities<sup>54</sup>. The oil and gas sectors, dominated by foreign investment<sup>55</sup>, likewise provide revenues to the military and its business cronies<sup>56</sup>, who, in turn, leave the local populations steeped in poverty and marginalized.

These international economic laws and investment treaties have been criticized by TWAIL academics as continuing to reproduce exploitation and inequality. They argue that such an arrangement has been set in favour of benefiting powerful nations and multinational corporations while exploiting developing countries. What TWAIL calls for is the total overhaul of such policies to work in favour of local communities hosting such resources and at the same time contain strict enforcement of environmental protections. It involves the pushing of laws that call for fair compensation of uprooted communities and stringent environmental regulations to prevent degradation.

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<sup>49</sup> Sebastian Strangio, *A Deadly Gamble: Myanmar's Jade Industry*, The Diplomat (July 13, 2020), <https://thediplomat.com/2020/07/a-deadly-gamble-myanmars-jade-industry/>.

<sup>50</sup> Sebastian Strangio, *Myanmar Timber Exports Continue Despite Western Sanctions: Report*, The Diplomat (Mar. 15, 2022), <https://thediplomat.com/2022/03/myanmar-timber-exports-continue-despite-western-sanctions-reports/>.

<sup>51</sup> Norton Rose Fulbright, *Oil and Gas Exploration and Production in Myanmar*, Norton Rose Fulbright (Mar. 1, 2023), <https://www.nortonrosefulbright.com/en/knowledge/publications/03c8960e/oil-and-gas-exploration-and-production-in-myanmar>.

<sup>52</sup> *Myanmar Climate: Latest News, Breaking Stories and Comment*, Al Jazeera (Dec. 1, 2021), <https://www.aljazeera.com/news/2021/12/1/myanmar-climate>.

<sup>53</sup> Shannon Tiezzi, *Myanmar's Junta Tightens Its Grip on Jade Billions: Report*, The Diplomat (June 29, 2021), <https://thediplomat.com/2021/06/myanmars-junta-tightens-its-grip-on-jade-billions-report/>.

<sup>54</sup> Shannon Tiezzi, *Myanmar's Junta Tightens Its Grip on Jade Billions: Report*, The Diplomat (June 29, 2021), <https://thediplomat.com/2021/06/myanmars-junta-tightens-its-grip-on-jade-billions-report/>.

<sup>55</sup> Nearly \$23bn Invested in Myanmar's Oil and Gas Sector till October, Eleven Myanmar (Oct. 10, 2022), <https://elevenmyanmar.com/news/nearly-23bn-invested-in-myanmars-oil-and-gas-sector-till-october>.

<sup>56</sup> *How Myanmar's Post-Coup Economy Fuels War and Profits the Military*, Myanmar Now (Oct. 18, 2022), <https://myanmar-now.org/en/news/how-myanmars-post-coup-economy-fuels-war-and-profits-the-military>.



International organizations, especially the United Nations and the Association of Southeast Asian Nations (ASEAN), have been widely criticized for their timid, circumscribed, and essentially ineffective engagement with Myanmar<sup>57</sup>. For TWAIL scholars, international organizations like these are typically limited and pushed around by the more powerful members at the cost of any attempts to transcend human rights abuses and affect justice.

For instance, both China and Russia, as veto-wielding powers in the UN Security Council, have repeatedly blocked stronger international actions against the military junta<sup>58</sup> in Myanmar, citing their geopolitical and economic interests as being more important than human rights concerns. Chinese investments in the infrastructure and resources of Myanmar are very big<sup>59</sup>, and the People's Republic attaches strategic interest to the stability along its border, which is why China hesitates to.

ASEAN has also been slow to act, often hamstrung by its overarching principle of non-interference in the internal affairs of member states. This became evident in the bloc's limited response to the coup and subsequent violence, with fractures showing in its organizational structure and the influence of member states with closer links to Myanmar's military regime.

Arguably, these examples underline how international law and institutions have been tailored to serve the interests of powerful actors, as opposed to promulgating justice and accountability for weaker states and their populations. This argues in favour of reforms in which human rights and democratic principles are placed above geostrategic interests.

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<sup>57</sup> *How the UN is Falling Myanmar*, Special Advisory Council (Oct. 03, 2023), <https://specialadvisorycouncil.org/wp-content/uploads/2023/10/SAC-M-Summary-UN-Myanmar-ENGLISH.pdf>.

<sup>58</sup> Sebastian Strangio, *China, Russia Again Veto UN Statement on Myanmar Conflict*, THE DIPLOMAT (May 30, 2022), China, Russia Again Veto UN Statement on Myanmar Conflict – The Diplomat.

<sup>59</sup> Dr. Anuradha Oinam, *China's Investments in the Post-Coup Myanmar: An Assessment*, CLAWS (Apr. 08, 2023), China's Investments in the Post-Coup Myanmar: An Assessment – Center For Land Warfare Studies (CLAWS).

### *ADDRESSING ROOT CAUSES*

An international law approach grounded in TWAIL would be focused on dealing with the root causes of conflict and inequality in Myanmar. This would entail revisiting the colonial legacies that demarcated the current borders and political structures and promoting genuine federalism with ethnic representation.

Colonial rule in Myanmar created artificial boundaries and centralized structures with power that did not take into account the ethnic diversity in the country. This has been a legacy that fueled other problems between the central government and various ethnic groups.

For example, making the political framework more inclusive and representative of all ethnic groups will help alleviate the grievances that have been long-standing. This could be in the form of more ethnic regional autonomy and ensuring their involvement in national governance.

### *EQUITABLE ECONOMIC POLICIES*

Inclusive growth and social justice should be the pillars on which international economic policy and interventions are based. It has to do so without causing displacement and environmental degradation while ensuring economic growth and investment with fair shares and benefits.

For instance, strong safeguards must be put in place by international financial institutions to ensure that investment in infrastructure and industry in Myanmar would only benefit the local people, protect the environment, and foster sustainable development, including providing fair compensation to the displaced people, local employment, and strictly implemented environmental laws.

### *STRENGTHENING INTERNATIONAL LEGAL MECHANISMS*

There is also a need to strengthen international legal mechanisms for ensuring accountability with regard to human rights violations and for protecting vulnerable populations. This involves expanding the jurisdiction and enforcement powers of international courts, such as the International Criminal Court, and developing regional human rights mechanisms.

Reform to empower these international legal mechanisms will have to be undertaken, therefore, if such mechanisms are expected to fight human rights abuses, especially when potent states have vested interests. Reforms to empower the ICC with more jurisdiction and enforcement capabilities, so it can bring to justice the perpetrators of human rights abuses regardless of political powers.

For example, a strong regional human rights body in Southeast Asia would bring the issue of human rights abuses in Myanmar closer to the limelight. Such an initiative might have practicality in having a human rights body run parallel to the regional level of Southeast Asia to keep the ICC informed and work together on a joint operation for accountability and protection of vulnerable populations.

#### *REIMAGINING INTERNATIONAL LAW*

In the view of TWAIL, the role that international law has played in the crisis in Myanmar is deeply problematic due to the way it demonstrates how international legal regimes ultimately tend to align the interests of power states with the perpetuation of historical and contemporary injustices. There is a need to reimagine international law from its very foundations so that justice and equity should be the centre of it according to the needs of the global South.

This could be done by restructuring international agreements and institutions in such a way that developing countries, their interests, and representation and protection are adequately addressed. This will mean the establishment of a legal framework that will accord priority to human rights, social justice, and sustainable development over geopolitical and economic interests.

This includes international trade and investment agreements that are designed in a way to protect community interests and ecological integrity in order that the fruits of economic development be equitably shared. International organizations should be reformed to make sure that actions taken are guided by ethical principles and the need to serve vulnerable populations, rather than the strategic interests of powerful member states.

International law should be reconceptualized as an instrument for justice and equity, without which the crisis in Myanmar cannot be addressed and real global justice and peace cannot be attained. Such a reconfigured situation will make international law an instrument of for the realization of human rights, social justice, and sustainable development benefiting all nations and peoples.

#### *NATURAL LAW'S ROLE IN THE GENESIS OF CIVIL UNREST*

The second one is that Natural Law theory asserts that some of the rights are natural to humankind and are deducible by reason. This theory has significantly influenced people's moral and legal systems. More often than not, it has been a foundation for civil unrest under the violation or denial of natural rights.

#### *NATURAL LAW IN CIVIL WAR IN MYANMAR*

According to this theory, the government is illegitimate if it fails to protect the natural rights of citizens or, even worse, violates those rights<sup>60</sup>. Therefore, this theory was the basis for the interpretation of the civil disobedience of the people in Myanmar after the military-led coup of February 1, 2021. To be more exact, power was usurped by the military junta without the people's consent, and hence, it was deprived of its natural right to self-determine and opt for the way of being governed by consent. The brutal suppression of peaceful protests was also the violation of natural rights to life and liberty. The proof that people cannot "concur" with the junta was given. Natural Law and Use of Force to Resist Repression

Natural Law – Natural Rights to War principles—. People have a right to war against tyranny. Thus, this rule has been one of the reasons the people of various ethnic groups in Myanmar have resorted to armed resistance against the military authority. In fact, most ethnic armed organizations and newly formed resistance organizations have increased their campaigns, as they believe the only option is an armed struggle to get back their rights and freedoms.

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<sup>60</sup> *Locke's Political Philosophy*, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Oct. 06, 2020), *Locke's Political Philosophy* (Stanford Encyclopedia of Philosophy).

The Natural Law theory posits the social contract as having been entered into by those who are ruled to be ruled by and under the law in exchange for the protection of their natural rights. In the context of Myanmar, the military coup is held to be a breach of the social contract and, hence, a breach of the source of moral authority of the state. The resultant civil disorder, therefore, is an expression of this breached social contract where people feel that resistance is a moral duty toward the universal principles of justice and human rights.

#### *HISTORICAL IMPLICATIONS OF NATURAL LAW FOR CIVIL UNREST*

Most freedom-fighting movements trace their theories and aspirations to the precepts of the Natural Law theory. The American Revolution was based on the fact that British rule was contravening the natural rights of the colonists. At the core of the French Revolution was the idea of establishing an ideal society that represented such ideals of natural rights to liberty, equality, and fraternity. More recently, the Arab Spring was based on movements that demanded that respect be made for their natural rights to freedom, dignity, and economic opportunity.

#### *ETHICAL FOUNDATIONS AND CONFLICT RESOLUTION*

Underlying the Natural Law theory is a premise that governance systems must be based on universal moral principles. In conflict resolution, such as is the case in Myanmar, ethical principles to be regarded in the process include autonomy, justice, beneficence, non-maleficence, and fidelity. Interventions must be just, non-prejudicial or selectively discriminatory, and aimed at benefiting the population without causing unintended harm. Fidelity, which demands that promises made in negotiations are kept, is also essential for the building of trust among the stakeholders of a conflict.

#### *GOVERNANCE AND ORDER IN LIGHT OF NATURAL LAW*

Natural Law theory, conceived by thinkers like Thomas Aquinas and John Locke, holds that a lawful and systematic society bases its ideals on universal moral principles that reflect human nature. As such, the operation of governance and social order on the tenets where political

power is only recognized with the consent of the governed. In Myanmar, the military coup and the associated conflict have undermined the rule of law so much that it now approximates to the state of nature that Locke describes, where natural rights are unassured by the state. It will take the governance of this state based on Natural Law principles, where the consent, justice, and respect of natural rights are observed in Myanmar so that peace and stability are realized.

It underlines the doctrine of Natural Law as much as it is intertwined with civil disturbance: civil unrest always follows when the citizens feel that their natural rights are under threat, as has happened in Myanmar. This theory, at the bottom line, is a moral and philosophic defence for resistance and is underlined by an appeal for structures of governance to be characterized by respect and protection of the same. The resolution of the conflict in Myanmar calls for a fundamental rethinking based on the doctrine of Natural Law in governance and social order so that there is justice, equity, and protection of man's rights.

## **DISCUSSION**

### *COMPARATIVE ANALYSIS OF OTHER THIRD WORLD CONFLICTS*

The civil war in Myanmar reflects the complex interplay of internal and external factors that are common to many third-world conflicts. Comparative analysis with other third-world conflicts reveals shared characteristics and divergent outcomes, providing insights into the nature of such conflicts and potential pathways to their resolution.

**Shared Features of Third World Conflicts:** It has been seen that many of the third world conflicts share some of the fundamental features. Among these legacies of colonialism, are arbitrary borders, and power structures that do not take cognizance of the political and social realities of post-colonial states, and many of these conflicts are rooted in deep-seated ethnic, religious, or ideological divisions that have been exacerbated by external influences and internal power struggles.

For instance, the DRC conflict shares with Myanmar a colonial history of exploitation and post-independence chaos. The DRC is mired in one of the deadliest conflicts since World War

II<sup>61</sup>, which has claimed millions of lives. It is a result of a complex web of internal and external factors, including ethnic tensions and the involvement of neighbouring countries.

Theoretical Lens of International Legal Theory: International legal theory, especially TWAIL, serves as a theoretical lens through which the operations of the international legal system have mostly overlooked the needs of third-world countries embroiled in conflict. It emphasizes the ways by which international law can reinforce and reproduce structural inequalities and injustices that contribute to the outbreak and continuation of conflicts.

In the case of Syria, for example, it is well-established that international legal interventions have been fraught with geopolitical interests and, thus, severely limited by international law in addressing the root causes of conflict. The Syrian civil war, like that of Myanmar's, has been dominated by gross human rights abuses<sup>62</sup> and the failure of the international community to effectively intervene<sup>63</sup>.

Divergent Outcomes: These similarities notwithstanding, third-world conflicts can yield divergent outcomes depending on, among other factors, the nature of international intervention, the resilience of state institutions, and the capacity of civil society to mediate and resolve conflicts. The role of natural resources, strategic geopolitical interests, and the involvement of external powers can also significantly influence the trajectory of a conflict.

A case in point is the civil war in Sri Lanka, which for over 25 years was able to find a resolution through a decisive military victory by the government forces. Yet, the issues involved were truly ethnic tension and political representation, and these remain unsolved in their roots, showing that the issue of the attainment of peace sustainably is complex even after the ceasing of active conflict.

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<sup>61</sup> *Conflict in DR Congo is deadliest since World War II, says The International Rescue Committee*, RELIEFWEB (Apr. 08, 2008), Conflict in DR Congo deadliest since World War II, says the IRC - Democratic Republic of the Congo | ReliefWeb

<sup>62</sup> *Accountability for human rights violations in Syria and the role of the UN Security Council*, AMNESTY INTERNATIONAL PUBLICATIONS, (2011), Syria: Accountability for human rights violations in Syria and the role of the UN Security Council (amnesty.org).

<sup>63</sup> Sebahate Shala, *The Responsibility to Protect: How the World Failed in Syria*, WORLD MEDIATION ORGANIZATION (Mar. 13, 2024), The Responsibility to Protect: How the World Failed in Syria – WMO (worldmediation.org).

Implications for Myanmar: Such a comparison, therefore, lends support to the proposition that the end of third world conflicts, including Myanmar's, would need a multifaceted approach to address the underlying causes of the conflict. This would range from tackling issues of inequality and injustice to understanding the strategic interactions of the actors involved and ensuring the legitimate rights of all individuals. The analysis further shows the relevance of international legal theory in response to such conflicts. This has really called for a re-examination of the international legal order in the interest of third-world countries in order to contribute its quota towards the resolution of conflicts in a just and equitable manner.

In essence, the comparative study of third-world conflicts shows that, while the common lines running through these conflicts are obvious, each of them is unique and requires a corresponding solution. The case of Myanmar is a point in the case compared to other third-world conflicts that underline the need for a comprehensive approach combining insights of theory and practical interventions for addressing the complex realities of civil strife.

#### *Historical Context and Its Relevance to the Current Situation*

Potentially, deep down in the historical experiences of colonialism and post-colonialism lay the roots of this conflict that organized the political and social terrain of these third-world countries. The term "Third World" was a Cold War invention<sup>64</sup> for those countries that remained non-allied with the capitalist West or the communist East. However, the very non-alignment did not protect them from the influence of the superpowers or the pervasive legacies of the colonial powers.

Such a background is very relevant for such instances as the civil war in Myanmar. More often than not, colonial powers drew borders without any consideration of the ethnic or cultural situation on the ground. What often followed after independence were simply internal conflicts. More so, economic exploitation by the colonial powers simply mainly left these nations underdeveloped, and incapable of dealing with poverty, inequality, and weak institutions.

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<sup>64</sup> Leslie Wolf-Philips, *Why 'Third World'?: Origin, Definition and Usage*, Vol. 9, No. 4, Third World Quarterly, pp.1311-1327, (1987), *Why 'Third World'?: Origin, Definition and Usage* on JSTOR.



The British policy of divide and rule only worsened the ethnic differences in Myanmar, creating a fertile ground for future conflict. In the case of independence, where a stable and inclusive structure of governance could not be shaped, it only created the most prolonged- running civil war in the world, with different ethnic groups either seeking autonomy or federal rights.

The dynamics in third-world nations were further complicated by the Cold War, where superpowers sponsored proxy wars in such countries to forward their geopolitical interests. Interventionist policies by the United States in Latin America<sup>65</sup>, for example, meant decades of civil strife and dictatorships<sup>66</sup>. Similarly, Myanmar's strategic position necessarily made it a region of interest to the Western and Eastern blocs, and its internal politics would therefore be always influenced.

Third-world conflicts did not end with the Cold War. In fact, more often than not, the vacuum that the superpowers left behind in cases of internal disputes only meant further escalation, as has been seen in the Balkans and several African countries. The response from the international community channelled through international legal theories, has often been skewed to the level of sometimes fanning conflicts through wrong-headed interventions.

Today, the historical context remains highly relevant as it continues to exert significant influences on the present political and social realities. This includes a shift in power dynamics globally with new economic powers such as China and India, which has introduced new variables in the equation. These countries today take on greater roles in the international scene as investments, diplomatic forays, and sometimes involvement as military backers in the third world further shape today's conflicts on the ground.

In Myanmar, historical grievances of ethnic minorities, a legacy of authoritarian rule, and the strategic interests of regional powers conflate to create a volatile cocktail of conflict. The international legal system, stemming from a colonial past, often struggles with dealing

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<sup>65</sup> Leticia Abad and Noel Maurer, *When Interventions Fail: Lessons from the U.S. Experience in Latin America*, CATO INSTITUTE, <https://www.cato.org/research-briefs-economic-policy/when-interventions-fail-lessons-us-experience-latin-america>.

<sup>66</sup> Hilary Goodfriend, *US Imperialism Alone Can't Explain the Triumph of the Right in Latin America*, JACOBIN (Feb. 05, 2023), <https://jacobin.com/2023/05/us-imperialism-far-right-latin-america-dictatorships-homegrown-book-review/>.

effectively with these multi-tiered issues. A fundamentally TWAIL critique of international law points to the fact that the legal regime must take serious account of historical context and the several forms of power relations that help to perpetuate conflicts and crises.

Hence, the past is not just a background to contemporary happenings in third-world struggles; it is a living history that completely defines the present. A meaningful analysis of current conflicts—and prescriptions for sensible strategies—can only be done with an understanding of the historical context and a sensitivity to the specificities of each particular case. The case of Myanmar shows how history may be a powerful determinant of contemporary conflicts and proves the need to draw on historical insights in the frameworks of international legal theory and policy.

#### *MULTI-DISCIPLINARY INSIGHTS INTO THE CIVIL WAR IN MYANMAR*

The civil war in Myanmar is a multidimensional war with deeply rooted historical aspects that have to be approached multidisciplinary to understand the complexity of the war. Insights from political science, sociology, anthropology, and international relations, among others, contribute to a holistic understanding of the conflict.

One is to understand the civil war from the **perspective of political science** using a state formation approach and the nature of sovereignty. To a political scientist, the stranglehold of the army on power, despite the country's recent flirtations with democracy, is an illustration of the political difficulties in transforming the country from a military dictatorship to a civilian-led one. Equally illustrative of this point is the 2008 constitution, which gave a quarter of parliamentary seats to the army. The author cites this as an example of entrenched power.

The conflict, **viewed sociologically**, is a result of social stratification and marginalization of certain ethnic groups. The crisis with Rohingyas is also seen not just as a political issue but as an expression of society's attitude and internal, deeply ingrained prejudices. However, the military's modus operandi, including the destruction of hospitals and schools, can only be seen as a plan to create havoc in the social structure of the communities siding with the opposition. It is from an **anthropological perspective** that the cultural dimensions to the conflict can be understood. The EAOs and their resistance against the junta reflect their quest for cultural autonomy and preservation. Thus, different ethnic groups challenge the junta's authority by

creating alliances among themselves while becoming new groups since the 2021 coup. This challenges and expresses cultural dissent to central rule.

The **international relations perspective** provides a lens through which to view the externalities that drive the conflict. Myanmar's strategic positioning has attracted the attention of global powers, changing the conflict's dynamics. The international response, the ASEAN Five-Point Consensus<sup>67</sup>, and the decisions by the UN Security Council have been crucial to the junta's strategies and the resilience of the opposition.

The **economic perspective** would focus on resource allocation and distribution and economic inequality that have played a part in the origin of the war. Natural resources have been exploited, depriving the local communities of fair compensation. Economic sanctions and foreign investments have also influenced the junta's resourcing in controlling violence, as well as the opposition in resourcing their resilience.

**Military studies** would elaborate on the tactics and capabilities of the two belligerents. Despite their greater armoury, and support from Russia<sup>68</sup> and China<sup>69</sup>, the military controls less than half of the country<sup>70</sup> and struggles to recruit new cadets<sup>71</sup>. The success of the opposition, courtesy of powerful militias and newer resistance forces, highlights the shifting war dynamics in the region.

The disciplines that take **on a humanitarian lens** will focus on the repercussions of the war on the civilians. More than two million people have been displaced, with the healthcare system collapsing<sup>72</sup> under the weight of more cases than patients. Humanitarian aid organizations will

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<sup>67</sup> *Chairman's Statement on ASEAN Leaders' Meeting: Five-Point Consensus*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN), (2021), Chairman's Statement on ALM - 24 April 2021 - 5pm (asean.org).

<sup>68</sup> Poppy Mcpherson, *Russian Support for Myanmar Junta destabilising Southeast Asia: US Envoy*, REUTERS (March 24, 2023), Russian support for Myanmar junta 'destabilising' Southeast Asia – U.S envoy | Reuters.

<sup>69</sup> Sebastian Strangio, *China Pledges Support for Myanmar's Junta No Matter How the Situation Changes*, THE DIPLOMAT (April 04, 2022), <https://thediplomat.com/2022/04/china-pledges-support-for-myanmars-junta-no-matter-how-the-situation-changes/>.

<sup>70</sup> Yangon, *The Military Dictatorship Controls less than 50% of Myanmar*, THE ECONOMIST (May 16, 2024), The military dictatorship controls less than 50% of Myanmar (economist.com).

<sup>71</sup> Reuters, *Myanmar's struggling junta to start drafting young people as soldiers*, NBC NEWS (Feb. 14, 2022), Myanmar's struggling junta to start drafting young people as soldiers (nbcnews.com).

<sup>72</sup> Richard C. Paddock, *Myanmar's Health System is in Collapse 'Obliterated' by the Regime*, THE NEW YORK TIMES (April 19, 2022), Myanmar's Health System Is in Collapse, 'Obliterated' by the Regime - The New York Times (nytimes.com).

be at the centre of supporting the fighting soldiers and the people in the midst of the war in the nation.

Finally, it would be through the **perspective of international and human rights laws** that the conflict would take centre stage. The actions of the junta, through the suppression of the protestors<sup>73</sup> and the direct attacks on the civilians in the name of quelling the protests, bring on a question of war crimes<sup>74</sup> in the most literal manner and the international community's responsibility to intervene.

It will be apt to say that a multi-disciplinary approach to the conflict in Myanmar reveals a kind of interconnection among various factors in sustaining the conflict: political power struggles, social inequalities, and cultural identities; economic interests, military strategies, humanitarian crises, and legal implications all intermingle in this complex tapestry that defies simple solutions. These multi-disciplinary insights themselves hold the key to crafting and undertaking effective responses to the conflict and set in place a way towards realizing a solution that is borne of peace.

## **SOLUTIONS AND RECOMMENDATIONS**

### *ADDRESSING INEQUALITY THROUGH INTERNATIONAL COOPERATION*

Inequality is a complex issue. For example, in countries with conflict, like Myanmar, the issue goes far beyond economic inequality, as it also relates to opportunities<sup>75</sup>, resources, and power, with such marginalization usually targeting certain groups, mainly women and girls<sup>76</sup>.

Resolving inequality through international cooperation would thus target a fairer distribution of resources and inclusive growth. This must involve investment in education and skills development to empower people of all classes. Such improvements in human capital will

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<sup>73</sup> BBC NEWS, Myanmar coup: Dozens killed as army opens fire on protesters during deadliest day (bbc.com), (Feb. 1, 2021).

<sup>74</sup> AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/latest/news/2024/02/myanmar-military-air-strikes-that-killed-17-civilians-must-be-investigated-as-war-crimes/>, (Feb. 14, 2024).

<sup>75</sup> *Employment in Myanmar in the first half of 2022: A rapid assessment*, INTERNATIONAL LABOUR ORGANIZATION (ILO Brief), (2022), ILO Brief Myanmar FINAL corr.pdf (un.org).

<sup>76</sup> Kathleen Kuehnast, *Myanmar's Ongoing War Against Women*, UNITED STATES INSTITUTE OF PEACE (Nov. 18, 2023), <https://www.usip.org/publications/2021/11/myanmars-ongoing-war-against-women>.

finally eliminate poverty and inequality, which can make citizens substantial contributors to the economy.

A very important aspect of this is to institute measures of social protection. This means that safety nets and welfare schemes should be in place to provide support to the vulnerable and, ideally, a way out of poverty. These should be designed to be inclusive, to ensure that the most marginalized receive the aid they require.

Inequality can be reduced through combating discrimination. International cooperation can support legislation and policy aimed at eliminating discrimination based on such factors as gender, ethnicity, or economic status. A country encouraging equality will finally ensure that all citizens participate productively in society.

There can also be the use of international cooperation to promote targeted interventions that support social groups at the periphery. Through international partnerships, countries will have the best chance to share experiences and offer technical aid in the development of targeted interventions for social groups that have been left at the fringes, such as ethnic minorities and the rural population.

International cooperation can also work to reduce inequalities by developing a just trade and financial system. By encouraging trade agreements that work for everyone and financial inclusion mechanisms, countries will create a more just, equitable global economy.

After all, international cooperation that can really deal with inequality should be multi-dimensional and adapted to the different dimensions from which it exists. Issues ranging from equitable resource distribution, education, social protection, anti-discrimination, marginal groups, and support to fair trade can be just some of the ways through which the international community comes to the aid of countries like Myanmar in the uprooting of deeply founded inequalities that give rise to civil unrest. Peace and stability, together with the sustainable development of nations into an equitable and just world, is the result.

#### *STRATEGIC INTERVENTIONS BASED ON GAME THEORY*

Game Theory is a mathematical model devised for the purpose of analysing strategic interactions. Its application could inform an understanding of the design of interventions in cases of civil conflicts, such as in Myanmar, with a point of understanding the interdependencies and possible reactions of each stakeholder.

It allows the use of game theory to study strategic intervention, which involves the analysis of who the players in the system are, their set of strategies, and possible upshots of these strategies. This, in the context of Myanmar, will have potential players: the military junta, various ethnic armed organizations, the civil government and its supporters, and international players. The different power levels and different goals of each player have to be taken into account in creating relevant strategies.

An application in Game Theory is through the design of an incentive structure, some kind of arrangement that would naturally lead the contesting parties into cooperating. For instance, international players may give or withhold economic aid or sanctions to the military junta. That is, create a Nash Equilibrium where the best response of all parties will lead to the most preferred outcome of peace. And this has to be calibrated in providing robust incentives to change behaviour without leading to another unintended consequence.

Other strategic interventions are signalling and commitment devices by international players who clearly communicate intentions and credibly commit to back them, thereby influencing the strategic calculations of the junta and other opposition parties. This may include promises for the protection of civilians, in return for some kind of concession by the military, or a hands-off policy.

Game Theory also suggests understanding the sequential nature of strategic decisions, implying that the timing and sequence of interventions can be used to change the path of a conflict, understanding that conflict is dynamic and pinpointing the window of opportunity.

To put it briefly, Game Theory offers a systematic way to design strategic interventions in civil conflicts. By taking into account the preferences, strategies, and potential reactions of all parties, international actors can design interventions that are likelier to bring about a peaceful and stable equilibrium. Application of Game Theory to the Myanmar conflict could help in

designing strategies that address the root causes of the conflict and pave the way for a resolution agreeable to all stakeholders.

### *UPHOLDING NATURAL LAW TO RESTORE PEACE*

The concept of Natural Law, which argues that certain rights are inherent and universal, can be a powerful tool in restoring peace to conflict zones such as Myanmar. Upholding Natural Law means the respect and protection of these fundamental rights, most of which form the basis of civil unrest.

The military coup and its follow-up actions in Myanmar have been seen as a violation of the people's natural rights, leading to wide resistance and conflict. The resolution to that effect is that to restore peace, there must have an address and resolution to such perceived violations so that a system of governance treating all citizens with the respect they are due can be realized. International cooperation plays a pivotal role in this process. An example is the fact that the United Nations has the rule of law at the base of peace and stability. In other words, it states that all, including the state itself, shall be held accountable before the law, and the law will stand between peace and a struggle for power and resources. This principle is based on Natural Law since all international efforts to reintroduce peace in Myanmar must focus on the creation of a legal and political order that respects and protects natural rights.

Efforts in peacebuilding should ensure that the most vulnerable are protected from discrimination, harassment, and abuse, as these usually precede conflict. The international community, by upholding Natural Law, can support the establishment of fair, inclusive economies and societies that only lead to lasting peace.

Finally, respect for Natural Law will bring peace back to Myanmar. This calls for the protection of inalienable human rights, the rule of law where everybody is accountable, and international cooperation that guarantees the same. In this way, peace and stability can be ensured in the future with all the conditions that may render it likely.

### **CONCLUSION**

A complex web of civil conflict in Myanmar ties history-based grievances, socio-economic disparities, and contestation for political power together in a tapestry that is quite complex and defies linear solutions. If one inspects this conflict informed by international law and game theory, it seems to be not just a political or military conflict but a manifestation of evil, deeply woven into society, one that has been ignored or unheeded for a long time.

International law and policy will have a major role to play in dealing with the conflict. The inadequacy of the conventional legal framework to deal with these multidimensional problems becomes very clear. It requires the global legal community to reform its principles, suitable for the changing scenario of conflict, especially in countries like Myanmar. How can international law keep evolving to meet the challenges thrown by unequal levels of development? How can legal mechanisms be proactive, and not reactive, in conflicts of this nature? These are urgent questions.

Cooperation should be fostered to ease inequality, but only if based on a real understanding of the causes of the conflict and supported by strategic intervention by the international community. What would be the role of Game Theory in crafting interventions in which the interests of all are aligned? How does Natural Law guide Myanmar toward a future defined by lasting peace?

Myanmar presents an opportunity for the international community to show that it has learned its lessons and can now proceed toward a new era of peace and justice. Very concretely, what would this journey be, and how can we be sure that it is inclusive and just, on the one hand, and sustainable, on the other? Would it be possible to develop a model of conflict resolution in Myanmar applicable to other parts of the world?

Make all the citizens of the world introspective and committed to the cause of peace and justice in Myanmar. Do we take into account the strategic imperatives of all stakeholders? Are our interventions really well-meant and impactful? How do we gauge the effectiveness of these interventions and recalibrate our strategies?

At this defining moment, we have to answer some serious questions. The road to peace in Myanmar is long and tough, but it is a road worth travelling, a road that could make a difference not only in Myanmar but in all nations that are now or in the past stricken by conflicts. Let's



go ahead with this challenge in the hope and knowledge of being able to build a future of peace and solidarity, learning from the mistakes of the past.