

MYANMAR

ILYIR 2025 PANEL II – RECENT DEVELOPMENTS AT INTERNATIONAL COURTS

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WIDESPREAD VIOLENCE – GLOBAL CRIME CAPITAL

- **Post-Coup Violence (2021 – present)**

- 5K+ civilians killed, 3.3m displaced, 19m (out of 57m population) affected by coup violence
- The National Unity Government (NUG) and its People's Defence Force (PDF) → strong resistance across militia groups → capturing territories
- Aim – “eliminating” the junta in 2025.

- **Rohingya Persecution (2016 “cleansing operations”)**

- Refugee crisis – Bangladesh (1.3m at Cox's Bazaar), Thailand, India, Malaysia, and Indonesia.
- Repatriation
- Forced conscription – “human shields”
- Voluntary conscription for citizenship

INTERNATIONAL CRIMINAL COURT

Arrest warrant for Min Aung Hlaing



- 14 November 2019 – **Authorization granted to investigate** Min Aung Hlaing for CAH against the Rohingya.
- 27 November 2024 – **Arrest warrant application** for Min Aung Hlaing for CAH.
- Potentially more ICC applications for post-coup violence.
- Controversial issues:
 - ICC is (again) overstepping its role.
 - Jurisdiction – Myanmar not a State Party, but Bangladesh is.
 - “Forgotten” conflict when compared with Ukraine. E.g. Local office, funding, etc.
 - Lack of funding.
 - Lack of enforcement – symbolic.

INTERNATIONAL COURT OF JUSTICE

The Gambia v Myanmar: 5 years and waiting



Razia Sultana, a Rohingya activist attends the International Court of Justice in December 2019 in the case of The Gambia v Myanmar.

- 11 November 2019 – Gambia (on behalf of the 57 members of the Organization of Islamic Cooperation) instituted ICJ proceedings against Myanmar for violating the Genocide Convention.
- 23 January 2020 – ICJ ordered provisional measures ordering Myanmar to prevent genocide.
- 20 January 2021 – Myanmar raised preliminary objections (jurisdiction and admissibility) – rejected 22 July 2022.
- Canada, Denmark, France, Germany, the Netherlands, the United Kingdom, the Maldives filed declarations of intervention – admissible. Slovenia filed end Nov 2024.
- Decision on merits pending – strains on funding and refugee support.

NATIONAL COURTS AND UNIVERSAL JURISDICTION



Argentine Federal Criminal Court

- Nov 2019 – Burmese Rohingya Organization UK and other human rights groups brought a case against the Tatmadaw, senior members of the junta, and Min Aung Hlaing.
- 1st universal jurisdiction case on the Rohingya. Argentina's Constitution grants its federal courts criminal jurisdiction over crimes under the Rome Statute.
- 28 June 2024, the Argentine Prosecutor asked the Court to issue arrest warrants for 25 junta members.

Indonesian Constitutional Court

- April 2023 – The Constitutional Court rejected the judicial review petition filed by Indonesian human rights advocates to allow universal jurisdiction cases, with an eye to the Myanmar violence.
- The Court's reasoning was that human rights violations in Myanmar cannot be separated from politics.
- “The implementation of Indonesia's foreign policy cannot be separated from... the survival and development of the life of the Indonesian nation.”

ASEAN'S APPROACH

Softening approach – engaging with the junta



- 2021 ASEAN 5-Point Consensus
- Myanmar was excluded from ASEAN-level meetings. Singapore the Philippines, Malaysia and Indonesia declined engagement.
- The stance has softened since 2024. ASEAN and the junta have agreed to Thailand's plan to create a "safe zone" on the Thai border.
- Hard lines that cannot be crossed.
 - Only non-political representatives can attend ASEAN meetings, E.g. A Myanmar senior foreign ministry official attended the 2024 ASEAN Summit.
 - Myanmar will not be Chair of ASEAN for 2026.
- Thailand and Cambodia regularly engage with Myanmar..
 - Cambodia PM during the 2022 Chairmanship.
 - Thailand hosts meetings with Myanmar's five neighbouring countries: China, India, Bangladesh, and Laos, who advise (and not interfere).
 - More recently, Thailand appears to support Myanmar's elections and population census planned for 2025. Thailand (and Laos) emphasize "an inclusive process that [includes] all stakeholders".
- Timor-Leste's mixed reaction