

References: <http://hammun.de/wp-content/uploads/2018/11/ICJ-Study-Guide-Final-Version.pdf>

## WARMUN 2022

### **The international court of justice (ICJ)**

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*Reviewing the legality of the detention and trial of Indian national, Mr. Kulbhushan Sudhir Jadhav by Pakistan's Military Courts by reassessing the provisions under the Vienna Convention 1969*

#### Agenda II

*Determining the Status of Rohingya Muslims in Myanmar and reviewing the convention, prevention and punishment of the Crime of Genocide*

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## About the Chairs

### **Fasih Sheikh U. Rehman:**

Hey Everyone! I'm Fasih, I'm going to be the head-chair for the Warwick Model UN ICJ (International Court of Justice Committee). I'm a final year law student at the University of Essex and I have a solid 7 year experience with Model UN Debate and I hope to MUN you all very soon! When I'm not doing MUN, I love listening to The Strokes, Kanye West, Andre 3000, The Doors or some cheeky Mozart. I like indie arthouse movies and I hate male cockroaches because they can fly and can also survive a nuclear holocaust (scary). I hope to see you all soon at WARMUN 2022 and the socials too!

### **Ethan Wong:**

Hello! I'm one of the chairs for Warwick Model UN ICJ. I'm a first year Computer Science student at the University of Warwick and have been involved in MUN and Debate for 4 years. I love music and sports. Outside of MUN, you can see me on the fields playing frisbee or in the music rooms jamming with friends. I'm excited to meet you guys and hope you'll have an enjoyable time! We hope this ICJ experience will be rewarding. It'll be fun expanding your knowledge on legal and political affairs while boosting your confidence in debating.

### **Zakiyyah Osman:**

Hello, I'm Zakiyyah and I'm a first-year Politics, international relations and French student at the University of Warwick, where I've joined the university's MUN team in 2022 as a co-chair. I like MUN because I find that it's a great way to gain a deeper understanding of world politics as well as developing my confidence. In my spare time I like to binge watch Netflix shows and pretend I'm the protagonist or try out different food places! I'm very much looking forward to being one of your chairs at WARMUN 2022.

# The International Court Of Justice (ICJ)

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). The first President of the ICJ was elected on 1st April 1946, and the first public sitting took place on the 18th in the same month. The ICJ's first case, the Corfu Channel Case, was submitted by the United Kingdom against Albania in 1947.

The Court's primary task is to settle international disputes between states (and only states). If this sounds confusing, bear with me. As we are talking about relationships between states, we are consequently also talking about disputes about international law. A dispute, therefore, does not mean more or less than the circumstance that two states have an ongoing disagreement about a matter of law.

It is essential to note that the ICJ is NOT a criminal court. Please do not confuse it with the International Criminal Court (ICC) which would indeed hear cases where an individual was accused of a crime. The ICJ hears disputes between states and does not have the jurisdiction to adjudicate anything else.

All member states of the United Nations are automatically parties to the ICJ Statute; however, that does not mean that the ICJ automatically has jurisdiction over these states. It only means that this state is entitled to participate in the Court's proceedings. For the ICJ to have jurisdiction, states need to submit to the jurisdiction of the court one way or another, this question will be explored a little bit further below.

The ICJ is composed of 15 Judges which are chosen by both the Applicant and the Respondent, the delegates which are not chosen will remain as political advisors, witnesses and/ or political actors.

Judges in the ICJ have the task to listen to the presentation of both parties. They have to remain neutral until the end of the public proceedings. They are allowed to ask

questions to both parties, but they cannot investigate themselves. Ultimately, the judges “just” have to answer the questions the Applicant asked in the application. Having listened to the arguments presented and the evidence submitted, they determine what the law says by applying international law to the case at hand. It is important to note that the ICJ does not have the power to create law – it will, however, determine what the law says.

The Counsel for the Applicant presents the legal views of the country that brought the case to the Court. Consequently, the representatives for the Respondent present the views of the state that has been accused of the wrongdoing. If you want to find out more about the roles and what you can do to prepare for them, continue with the next section.

A Model UN International Court of Justice (ICJ) committee operates more like a moot court committee rather than a normal UN committee. A moot court is just a court simulation, just like suits (not really). The main difference between a normal committee and an ICJ committee is that ICJ will follow more strict procedural rules and that it will be focused on the legal aspect of international politics and relations rather than the political aspect. Note that the ICJ is a judicial body not a political one.

The Presidency will only choose to hear a case that will be based on a legal dispute between two sovereign states.

## *Definitions*

**Judges/ Justices:** The role of a Justice is much different from the traditional role as an MUN delegate, and significantly distinct from that of an Advocate. As a Justice, you have several responsibilities. All 15 ICJ Justices are responsible for reading the briefs and hearing arguments on each of the 3 cases. You will then deliberate to analyse and discuss the cases and arguments in order to determine the appropriate applications of international law in each case. Justices are also responsible for writing opinions for each case. Preparation for this role is very important. Please familiarise yourself with the relevant law surrounding each case. Coming to a conference with a strong working knowledge of each case is a key element to a successful and rewarding simulation. A well-prepared Justice is well versed in the laws surrounding each case, familiar with ICJ procedures, and able to write a legal opinion.

**Advocates:** The role of an Advocate is a very stimulating role at Conference. Your Advocate role is in addition to your Committee/Council assignment with the privilege of representing your country by arguing a case before the ICJ. Preparing for this role can be time consuming, as it not only involves dedicated research and writing, but it also requires an oral presentation before the Court. Appropriate preparation is essential to a rewarding and successful simulation of the ICJ. It is important that all Advocates properly prepare and submit Memorials on time. In addition, please use the lead up time to Conference wisely by drafting and practising your Oral Arguments. The Justices will be reading your Memorials for your country's position; however, your presentation during your Oral Argument is also a key part of the Justice's decisions. Please come to the Conference having turned in your Memorial on time, and ready to argue your case before the Court.

## *Rules of Procedure*

Different conferences may differ in how they operate. Nevertheless, most ICJ Model UN conferences have a common denominator. They usually start proceedings with Chairs (President and Vice-President at the ICJ) opening the proceedings and calling a roll-call for all judges and advocates present. Then we start with calling for the Applicant to make their opening speech (10 minutes) and then the Respondent may make their opening speech (if they wish to do so - max time 10 minutes). Since the legal onus, also known as the burden of evidence, lies on the Applicant, the Applicant will go first. The Applicant in this scenario refers to the legal counsel/ legal representation of the state that has brought the case to the International Court of Justice in the first place.

Delegates can apply to either be a judge or an advocate. Applicant Advocates and Respondent Advocates will both have 5 delegates each on either side. Both councils will have to present their cases and argue as to why their state is in the right and provide legitimate legal reasoning for the legal issues raised accordingly. The Applicant Advocates must present the legal issues first in their opening speech, alongside any facts or witnesses they would like to present to bolster their case. Within Opening speeches, delegates are not allowed to delve deeper into details of their legal reasonings nor may they apply their evidences onto their legal reasonings. They must just provide a brief insight into their case and how they are going to present it to disprove the Respondent state (or otherwise). The Respondent Advocates opening speeches, must not add new evidence unless they are rebutting what is presented by the Applicant Advocate delegates. Applicant Advocates and Respondent Advocates will be allowed to use any political actors as witnesses to improve their case.

After the opening speeches, the floor will open to 5 minutes of questioning from the Judge Delegates. Then there will be a 10 minute break for judges to move around and discuss the findings of the case and the opening speeches.

The respondent, that is to say, the legal representative of the state that has been accused of a breach of international law needs to argue why their actions indeed have not been a violation of international law. Similarly to the Applicant, they need to find legal precedent and legal sources to support their arguments.

Both parties will usually have the opportunity to submit evidence – either in written form, such as treaties, correspondence, or advice given by legal experts or they can choose to call witnesses. Bear in mind, however, that the ICJ is NOT a criminal court, witnesses are not supposed to give an account of what happened as much as give expert, specialised advice. Witnesses are, therefore, not necessarily helpful. Again, it will depend mainly on how the presidency of your ICJ wants to run their committee. Often, they prepare an evidence pack beforehand – sometimes they might provide a list from which both Counsel teams can choose.

Please note that the opening statement should sum up each advocate team's position and should include all the references, evidence and/ or witnesses they will use. It is, however, only supposed to be a taster, as added earlier the opening statement must not dive into detailed legal arguments yet.

The Counsel would like to mention the evidence and witnesses and their significance to the case at hand.

After the opening speeches, the floor will open to 5 minutes of questioning from the Judge Delegates. Then there will be a 10 minute break for judges to move around and discuss the findings of the case and the opening speeches.

After opening statements, both parties now need to prepare for their rebuttals. They will do so during the discussion period of the judges. All delegates are reminded that judges and advocates cannot be in the same room. The presidency may allow some extra time for the advocates to prepare their rebuttals.

The rebuttal takes up most of the oral proceedings and allows both parties to dissect each other's arguments. It is also the time for introducing evidence and building their own case. Again, the Applicant will start as they have the legal onus to prove the Respondents wrongdoings. It often makes sense to try and balance both making one's



arguments and refuting the points made by the opposite side. This stage of the proceedings also relies on active judges – having heard the opening statements of both parties, they will now want to ask as many questions as they can.

For the rebuttal speeches, each of the counsels must choose their first speaker, second speaker, third speaker, fourth speaker and last speaker. Counsel parties will be allowed to set the time for their respective counsel panel speeches through traditional Model UN motions and voting.

The rebuttal speeches may include examinations, questioning and cross-examinations/ questioning of the witnesses. After a witness is used by the applicant or respondent, the opposing counsel will be asked if they wish to examine the witness.

The rebuttal speeches/ statements should not be one coherent statement that can be read out by the presidency and judges unlike the Opening statements, instead, it should be story-like and should tell a tale that includes legal analysis, legal reasoning and explains why the other side has it wrong. If this seems a bit too scary, don't worry it gets scarier.

As an advocate, you should plan and make sense of what to do and in what order. So you should have an idea of which speaker should go first and what they should mention. If your arguments are building up on each other, that is good. Do not rip things apart and try to follow the most logical order for your evidence, witnesses and legal arguments.

Once the Applicant has concluded their rebuttal the Respondent can start theirs. It should roughly take up the same amount of time and follow a similar pattern.

For submitted evidence; once the Respondent has introduced a piece of evidence and made a statement, the Applicant may also give a statement and/ or piece of evidence or vice versa.

Surprisingly, we haven't even talked about judges yet. This is because the judges' tasks are usually at the end of the oral proceedings. Once, rebuttal speeches are made, the judges will break and they will have a chance to compile any questions they have for the counsel parties. This last questioning session will take a while and both parties may expand on their cases more directly in this session. Once this stage of the proceedings is over, the counsel will be allowed to make their closing statements, whilst the judges are allotted this time to discuss the findings of the last questioning session.

The closing statements are supposed to sum up and rebut all the arguments. They will last 10 minutes as well, like the opening statements. Closing statements are usually trickier as they require advocates to summarise the entirety of the case in a short, easy to understand way. Please note that we would recommend you to make the closing statement as memorable as possible.

The end of the closing statements will mark the end of the oral proceedings for the case. The counsels will be dismissed from the ICJ committee room and the judges will begin their deliberations. They will now need to answer questions (which the counsels wrote during the oral proceedings) from the applicants and respondents to the presidency dias. The presidency dias will first approve the questions and usually they will not allow any judges to answer more than 3 or 4 questions.

The Judges must then discuss the case and write their personal judgments. If you are concerned about the format, don't worry you will be provided with help from the presidency on it. As a judge, you need to determine what the law says, this can be extremely hard but remember you have 14 judges, a moderator and the presidency to help you.

Once all the statements have been presented, the counsel will be recalled and the presidency will call for votes and the judges may present a short statement as to why they have voted for or against the applicant.

## **Topics**

### **Topic A**

#### ***Pakistan v. India (Jadhav Case)***

**Agenda:** *Reviewing the legality of the detention and trial of Indian national, Mr. Kulbhushan Sudhir Jadhav by Pakistan's Military Courts by reassessing the provisions under the Vienna Convention 1969*

***Definitions:***

1. **Arrest<sup>1</sup>:** The apprehension of a person suspected of criminal activities. Most arrests are made by police officers, although anybody may, under prescribed conditions, effect an arrest. When an arrest is made, the accused must be told that he is being arrested and given the ground for his arrest.
2. **Detention<sup>2</sup>:** Depriving a person of their liberty against their will following an arrest. In general, detention of adults without charge is allowed only when it is necessary to secure or preserve evidence or to obtain it by questioning. If the ground for detention ceases, or if further detention is not authorised, the detainee must either be released or be charged and either released on bail or appear before the court. An arrested person held in custody may have one person told of this as soon as practicable. The detainee also has a right of access to a lawyer or advocate.
3. **Article 36 of the Vienna Convention on Consular Relations<sup>3</sup>:** to which 170 nations are part, requires a nation arresting or detaining a foreign national to afford the detainee access to his or her consulate and to notify the foreign national of the right of consular access.. Many of these cases have involved death penalty and a number of cases have been heard by the Supreme Court of the respective jurisdiction or the International Court of Justice.
4. **The Vienna Convention<sup>4</sup>:** The Vienna Convention on Diplomatic Relations is fundamental to the conduct of foreign relations and ensures that diplomats can

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<sup>1</sup> Oxford Law Dictionary 2018

<sup>2</sup> Ibid 1

<sup>3</sup> Ibid 1

<sup>4</sup> [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf)

conduct their duties without threat of influence by the host government/  
jurisdiction.

5. **Article 36 of the Vienna Convention on Consular Relations**<sup>5</sup>: Concerned with the communication and contact with nationals of the 'Sending State'

(1) With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

- a. consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
- b. If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;
- c. consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

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<sup>5</sup> Ibid 4

6. **Receiving State**<sup>6</sup>: The state in which trial is to be had on an indictment, information or complaint pursuant to the convention. The receiving state shall treat consular officers with due respect and shall take all appropriate steps to
7. prevent any attack on their personhood, freedom or dignity.
8. **Consular post**<sup>7</sup>: Any consulate-general, consulate, vice-consulate or consulate agency.
9. **Sending State**<sup>8</sup>: A state party to this compact in which conviction or court commitment was had, in which a prisoner is incarcerated at the time that he initiates a request for final disposition
10. **Espionage**<sup>9</sup>: or Spying is the obtaining or passing on to an enemy (state) information that might prejudice the safety or interests of the state or be useful to an enemy. This may include 'official secrets'
11. **Indication of provisional measures**<sup>10</sup>: A term that the International Court of Justice uses to describe a procedure "roughly equivalent" to an interim order, which can be either a temporary restraining order or a temporary directive order, in national legal systems. Requests for the indication of provisional measures of protection take priority over all other cases before the ICJ due to their urgency.
12. **Restitutio in integrum**<sup>11</sup>: a latin term meaning 'restoration to the original position,' This term signifies the rescinding of a contract or legal transaction so as to place the parties to it in the same position with respect to one another which they occupied before the contract was made or the transaction took place. Developed by *Livingstone v. Rawyards Coal Co* (1880) case which first postulated the principle of 'Restitutio in integrum' in cases of compensation
13. **Conviction**<sup>12</sup>: An adjudication of a criminal defendant's guilt, specifically it is the act or judicial process of finding a criminal defendant guilty of a charged offence. It is a determination that a person has violated or failed to comply with the law in

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<sup>6</sup> Ibid 4

<sup>7</sup> Ibid 4

<sup>8</sup> Ibid 4

<sup>9</sup> Ibid 1

<sup>10</sup> Ibid 1

<sup>11</sup> Ibid 1

<sup>12</sup> Ibid 1

a court of original jurisdiction, this verdict is rendered by a legally constituted jury or by a court of competent jurisdiction.

14. **Sentence**<sup>13</sup>: the term of imprisonment or probation imposed on a convicted defendant for criminal wrongdoing, it is normally at the conclusion of a trial and comes at the end of a prosecution and is a penalty ordered by a judge in a court of law.
15. **Allegation**<sup>14</sup>: a claim of fact not yet proven to be true this statement of claimed fact contained in a complaint (a written pleading filed to begin a lawsuit), a criminal charge, or an affirmative defence, part of the written. Until each statement is proved it is only an allegation. Some allegations are made "on information and belief" if the person making the statement is not sure of a fact.
16. **Confess**<sup>15</sup>: A confession is defined as a voluntary admission, declaration or acknowledgement (made orally or in writing) by one who has committed a felony or a misdemeanour stating that they committed the crime/offence or participated in its commission. A confession is considered voluntary when made of the free will and accord of the accused, without fear or threat of harm and without hope or promise of benefit, reward, or immunity.

## History:

<sup>16</sup>On March 3, 2016, Kulbhushan Jadhav was arrested with the military establishments and law enforcement agencies of Pakistan accusing Jadhav of espionage, having

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<sup>13</sup> Ibid 1

<sup>14</sup> Ibid 1

<sup>15</sup> Ibid 1

<sup>16</sup><https://www.cambridge.org/core/journals/american-journal-of-international-law/article/jadhav-case-india-v-pakistan/DD5928FD5A298073FAC9970811419AED>

crossed over from Iran into southern Balochistan, Pakistan. The facts of this case were disputed by both India and Pakistan, with India claiming all the allegations levelled against Jadhav to be baseless.

According to Pakistan, Jadhav was in possession of an Indian passport bearing the name “Hussein Mubarak Patel,” a claim denied by India. In support of its allegations, Pakistan released a video in which Jadhav appeared to confess to his involvement in acts of espionage and terrorism in Pakistan at the behest of India's foreign intelligence agency.

The external affairs minister of Pakistan sent a “Letter of Assistance for Criminal Investigation against Indian National Kulbhushan Sudhair Jadhav” on January 23<sup>rd</sup>, 2017 to the High Commission of India in Islamabad, seeking support in obtaining evidence for the criminal investigation

In response to this, the Indian government sought Consular access for Jadhav from Islamabad which was denied, with Jhadav being sentenced to death less than two weeks later, on the 10th of April 2017.

## Background:

<sup>17</sup>Pakistani and Indian governments have an inherent desire to tightly control information about their intelligence services. These two nuclear-armed countries fought three official wars and continually engaged in border clashes.

Both India and Pakistan have a strong foundation of intelligence networks, with the Research and Analysis Wing (RAW) being founded in 1968 to counter external security

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<sup>17</sup> <https://blogs.lse.ac.uk/southasia/2019/10/01/indian-and-pakistani-spies-why-the-lack-of-transparency/>



threats in india. <sup>18</sup>The RAW provides intelligence to policymakers and the army as it keeps a close eye on the activities of the neighbouring countries. Furthermore, Indian intelligence played a key role in the 1971 dismemberment of Pakistan, this is evidenced by Indian intelligence aiding opposition to the government in East Pakistan.

<sup>19</sup>Indian military officers have been public about the part they played in obtaining intelligence, training freedom fighters and the psychological operations that caused Pakistan forces to surrender in East Pakistan, creating the new state of Bangladesh and causing Pakistan to lose around half its population.

<sup>20</sup>Similarly to RAW, Pakistan has a leading armed functioned intelligence agency, known as the inter-service intelligence (ISI) It was founded in 1948 immediately after 1947 Indo-Pak war, which plays into the narrative that the ISI and RAW look like they are chasing each other, with the policies of the ISI being made in a way that no institution is aware of its processes except the Army.

## *Overview of the Case*

On the 8th of May 2017, India files an Application instituting proceedings against Pakistan in respect of a dispute concerning alleged violations of the Vienna Convention on Consular Relations on the 24th of April 1963 “in the matter of the detention and trial of an Indian national, Mr. Kulbhushan Sudhir Jadhav”, who had been sentenced to death by a military court in Pakistan in April 2017. India claimed that Pakistan had failed

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<sup>18</sup> <https://moderndiplomacy.eu/2022/05/27/unmasking-indias-ib-and-raw/>

<sup>19</sup> Major General G.D. Bakshi in *1971: The Fall of Dacca*,

<sup>20</sup> International Journal of Innovation, Creativity and Change. www.ijicc.net Volume 13, Issue 3, 2020

to inform it, without delay, of the arrest and detention of its nationals. It further contended that Mr. Jadhav had not been informed of his rights under Article 36 of the Vienna Convention on Consular Relations, and that India's consular officers had been denied access to Mr. Jadhav while he was in custody, detention and prison, and had been unable to converse and correspond with him, or arrange for his legal representation. As a basis for the Court's jurisdiction, India referred in its Application to Article 36, paragraph 1, of the Statute of the Court and Article I of the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes.

On the same day, India also filed a Request for the indication of provisional measures, requesting the Court to direct Pakistan to "take all measures necessary to ensure that Mr. Kulbhushan Sudhir Jadhav is not executed" and to "ensure that no action is taken that might prejudice the rights of the Republic of India or Mr. Kulbhushan Sudhir Jadhav with respect to any decision the Court may render on the merits of the case".

By an Order dated 18 May 2017, the Court directed Pakistan to "take all measures at its disposal" to ensure that Mr. Jadhav would not be executed pending a final decision in the case, and to inform the Court of all the measures taken in implementation of that Order. It also decided that, until the Court had given its final decision, it would remain seated on the matters which formed the subject matter of the Order.

Public hearings on the merits of the case were held from 18 to 21 February 2019. In its Judgment of 17 July 2019, the Court first outlined the background of the dispute, before concluding that it had jurisdiction to entertain India's claims based on alleged violations of the Vienna Convention. The Court next addressed the three objections to admissibility raised by Pakistan, which were based on India's alleged abuse of process, abuse of rights and unlawful conduct. The Court concluded that India's Application was admissible.

Pakistan has not contested any of the claims made against them as of yet, for the purposes of this Model United Nations simulations, we will assume that this committee will take place after the arrest and detention of Mr. Jadhav and the case being submitted and concluded admissible into the ICJ. All delegates may present evidence, witnesses, testimonies adverse to the actual proceedings that have already taken place in the past. Nevertheless, the chairs would recommend a deep analysis of the case itself (<https://www.icj-cij.org/en/case/168>) to better understand the proceedings that have already concluded.

### *Key Participants*

**India (Applicant)**

**Pakistan (Respondent)**

## **Topic B**

### **The Rohingya Genocide Case**

**Agenda:** *Determining the Status of Rohingya Muslims in Myanmar and reviewing the convention, prevention and punishment of the Crime of Genocide*

## Definitions

1. Status: refers to the rights, formal designation, citizenship of Rohingya people.
2. Genocide: Cambridge dictionary: "the crime of intentionally destroying part or all of a national, ethnic, racial, or religious group, by killing people or by other methods" <sup>21</sup> In this ICJ, you may explore associated crimes such as assault, rape, arson etc, to support the claim of Genocide.
3. As defined by the UN: Crime of Genocide : First Recognised under international law in 1946 by the United Nations General Assembly (A/RES/96-I). It was codified as an independent crime in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention). The Convention has been ratified by 149 States (as of January 2018).<sup>22</sup> Myanmar became a signatory on 30 Dec 1949 and ratified it on 14 Mar 1956. <sup>23</sup>
  - a. However Myanmar's declaration reads:
    - i. "(1) With reference to article VI, the Union of Burma makes the reservation that nothing contained in the said Article shall be construed as depriving the Courts and Tribunals of the Union of jurisdiction or as giving foreign Courts and tribunals jurisdiction over any cases of genocide or any of the other acts enumerated in article III committed within the Union territory.
    - ii. "(2) With reference to article VIII, the Union of Burma makes the reservation that the said article shall not apply to the Union."

## History:

Myanmar: Formerly known as Burma, is a Southeast Asian nation of more than 100 ethnic groups, bordering India, Bangladesh, China, Laos and Thailand. A predominantly Buddhist country with nearly 88% of its population identifying as Buddhist. Other

<sup>21</sup> <https://dictionary.cambridge.org/dictionary/english/genocide>

<sup>22</sup> <https://www.un.org/en/genocideprevention/genocide.shtml>

<sup>23</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-1&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en)

religious denominations like Christianity, Islam and Hinduism are also present in Myanmar.

## Background:

### Who are the Rohingya?

The Rohingya is an ethnic minority believed to be descendants of Arab traders and other groups from around the region. In 2017 before the crisis, they stood at 1.4 million strong. Rohingya Muslims represent the largest percentage of Muslims in Myanmar, with the majority living in Rakhine state. The Rohingya possess their own language and culture.<sup>24</sup>

Despite living in Myanmar for generations, the government has denied the Rohingya citizenship and have excluded them from the 2014 census.<sup>25</sup> They are instead seen as illegal immigrants from Bangladesh.

The Rohingya have often been a stateless people with many of them migrating across the region since the 1970s. In the last few years, before the latest crisis, thousands of Rohingya made perilous journeys out of Myanmar to escape communal violence or alleged abuses by the security forces.

On August 25, 2017, a shadowy Rohingya armed group, called the Arakan Rohingya Salvation Army (ARSA) carried out coordinated attacks on dozens of police posts in Myanmar's coastal Rakhine state, killing at least a dozen officers. In retaliation the Myanmar army conducted operations to flush out ARSA members. It says it killed 400 armed fighters but critics say most of the dead are civilians. The United Nations estimates that at least 1,000 people were killed in the first two weeks of the military operations.<sup>26</sup>

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<sup>24</sup> <https://www.bbc.co.uk/news/world-asia-41566561>

<sup>25</sup> <https://www.theguardian.com/world/2014/apr/02/burma-census-rohingya-muslims-un-agency>

<sup>26</sup> <https://www.aljazeera.com/news/2022/8/25/timeline-five-years-of-rohingya-refugee-crisis>

Since the crisis, at least 6,700 Rohingya, including at least 730 children under the age of five, were killed in the month after the violence broke out, according to medical charity Médecins Sans Frontières (MSF). Furthermore, Amnesty International says the Myanmar military also raped and abused Rohingya women and girls.

The government, which puts the number of dead at 400, claims that "clearance operations" against the militants ended on 5 September 2017, but BBC correspondents have seen evidence that they continued after that date.

At least 288 villages were partially or totally destroyed by fire in northern Rakhine state after August 2017, according to analysis of satellite imagery by Human Rights Watch.

## Current Situation:

### Timeline to ICJ Case:

Gambia filed the case before the ICJ in November 2019 alleging that the Myanmar military committed the genocidal acts of “killing, causing serious bodily and mental harm, inflicting conditions that are calculated to bring about physical destruction, imposing measures to prevent births, and forcible transfers ... intended to destroy the Rohingya group in whole or in part.”<sup>27</sup> Three days later, The Hague-based International Criminal Court (ICC) approved a full investigation into the persecution of the Rohingya.<sup>28</sup>

The Myanmar Crisis has become one of the world’s worst refugee crises. Before the crisis, around 1.4 million Rohingyas lived in the Rakhine State of Myanmar. Today, it is estimated only 600,000 remain in Myanmar still facing oppression. 700, 000 have fled to Bangladesh living in the world’s largest refugee camp.

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<sup>27</sup> <https://reliefweb.int/report/myanmar/world-court-rejects-myanmar-objections-genocide-case>

<sup>28</sup> <https://www.theguardian.com/world/2021/nov/29/argentina-court-myanmar-war-crimes-rohingya>

## Key Participants:

Myanmar: Security forces are said to be responding to Islamist terrorist threats to Myanmar's unity, stability, and sovereignty. As a result, they devised comprehensive plans to starve the militants of food, funds, intelligence, and recruits.<sup>29</sup> Furthermore, it is alleged that civilians had helped to conceal the militants in their homes.

Gambia: Gambia filed the case before the ICJ in November 2019 alleging that the Myanmar military committed the genocidal acts of “killing, causing serious bodily and mental harm, inflicting conditions that are calculated to bring about physical destruction, imposing measures to prevent births, and forcible transfers ... intended to destroy the Rohingya group in whole or in part.”<sup>30</sup>

Argentina: According to a court decision respecting the ideals of “universal justice,” Argentina's legal system will look into claims that the Myanmar military perpetrated war crimes against that nation's Rohingya minority. According to the legal theory of “universal justice,” some crimes, such as war crimes and crimes against humanity, are so heinous that they are not exclusive to one country and can be tried elsewhere.<sup>31</sup>

USA: The United States on March 21, 2022 officially declares the 2017 violence amounted to genocide, saying there was clear evidence of an attempt to “destroy” the Rohingya.<sup>32</sup>

## Bibliography

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<sup>29</sup> <https://www.usip.org/publications/2018/08/myanmars-armed-forces-and-rohingya-crisis>

<sup>30</sup> <https://reliefweb.int/report/myanmar/world-court-rejects-myanmar-objections-genocide-case>

<sup>31</sup> <https://www.theguardian.com/world/2021/nov/29/argentina-court-myanmar-war-crimes-rohingya>

<sup>32</sup> <https://www.aljazeera.com/news/2022/3/21/us-determines-myanmar-army-committed-genocide-against-rohingya>

## Works Cited

- Bakshi, G D. 1971 : *The Fall of Dacca*. New Delhi, Kw Publishers Pvt. Ltd, 2018.
- BBC. “Myanmar Rohingya: What You Need to Know about the Crisis.” *BBC News*, 23 Jan. 2020, [www.bbc.co.uk/news/world-asia-41566561](http://www.bbc.co.uk/news/world-asia-41566561).
- France-Presse, Agence. “Argentina Court to Investigate Myanmar War Crimes against Rohingya Muslims.” *The Guardian*, 29 Nov. 2021, [www.theguardian.com/world/2021/nov/29/argentina-court-myanmar-war-crimes-rohingya](http://www.theguardian.com/world/2021/nov/29/argentina-court-myanmar-war-crimes-rohingya).
- . “Argentina Court to Investigate Myanmar War Crimes against Rohingya Muslims.” *The Guardian*, 29 Nov. 2021, [www.theguardian.com/world/2021/nov/29/argentina-court-myanmar-war-crimes-rohingya](http://www.theguardian.com/world/2021/nov/29/argentina-court-myanmar-war-crimes-rohingya).
- “GENOCIDE | Meaning in the Cambridge English Dictionary.” *Dictionary.cambridge.org*, [dictionary.cambridge.org/dictionary/english/genocide](http://dictionary.cambridge.org/dictionary/english/genocide).
- Ijicc Net. *International Journal of Innovation, Creativity and Change*, Volume 1, Issue. Lulu Com, 2013. Volume 13, Issue 3, 2020.
- “Indian and Pakistani Spies: Why the Lack of Transparency?” *South Asia LSE*, 1 Oct. 2019, [blogs.lse.ac.uk/southasia/2019/10/01/indian-and-pakistani-spies-why-the-lack-of-transparency/](http://blogs.lse.ac.uk/southasia/2019/10/01/indian-and-pakistani-spies-why-the-lack-of-transparency/). Accessed 10 Nov. 2022.
- Jaaved, Amjed. “Unmasking India’s IB and RAW.” *Modern Diplomacy*, 27 May 2022, [moderndiplomacy.eu/2022/05/27/unmasking-indias-ib-and-raw/](http://moderndiplomacy.eu/2022/05/27/unmasking-indias-ib-and-raw/). Accessed 10 Nov. 2022.
- Kattan, Victor. “Jadhav Case (India v. Pakistan).” *American Journal of International Law*, vol. 114, no. 2, 1 Apr. 2020, pp. 281–287,



[www.cambridge.org/core/journals/american-journal-of-international-law/article/jadhav-case-india-v-pakistan/DD5928FD5A298073FAC9970811419AED](http://www.cambridge.org/core/journals/american-journal-of-international-law/article/jadhav-case-india-v-pakistan/DD5928FD5A298073FAC9970811419AED), 10.1017/ajil.2020.6.

Press, Associated. “Burma Census Is Not Counting Rohingya Muslims, Says UN Agency.” *The Guardian*, 2 Apr. 2014, [www.theguardian.com/world/2014/apr/02/burma-census-rohingya-muslims-un-agency](http://www.theguardian.com/world/2014/apr/02/burma-census-rohingya-muslims-un-agency).

“Timeline: Five Years of Rohingya Refugee Crisis.” *Wwww.aljazeera.com*, [www.aljazeera.com/news/2022/8/25/timeline-five-years-of-rohingya-refugee-crisis](http://www.aljazeera.com/news/2022/8/25/timeline-five-years-of-rohingya-refugee-crisis).

United Nations. “United Nations Office on Genocide Prevention and the Responsibility to Protect.” *United Nations*, [www.un.org/en/genocideprevention/genocide.shtml](http://www.un.org/en/genocideprevention/genocide.shtml).

“United Nations Treaty Collection.” *Treaties.un.org*, [treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-1&chapter=4&clang=\\_en](http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en).

“US Declares Myanmar Army Committed Genocide against Rohingya.” *Wwww.aljazeera.com*, [www.aljazeera.com/news/2022/3/21/us-determines-myanmar-army-committed-genocide-against-rohingya](http://www.aljazeera.com/news/2022/3/21/us-determines-myanmar-army-committed-genocide-against-rohingya).

“World Court Rejects Myanmar Objections to Genocide Case - Myanmar | ReliefWeb.” *Reliefweb.int*, [reliefweb.int/report/myanmar/world-court-rejects-myanmar-objections-genocide-case](http://reliefweb.int/report/myanmar/world-court-rejects-myanmar-objections-genocide-case). Accessed 10 Nov. 2022.

“World Court Rejects Myanmar Objections to Genocide Case - Myanmar | ReliefWeb.” *Reliefweb.int*, [reliefweb.int/report/myanmar/world-court-rejects-myanmar-objections-genocide-case](http://reliefweb.int/report/myanmar/world-court-rejects-myanmar-objections-genocide-case). Accessed 10 Nov. 2022.

