



ADDRESSING CONFLICT-RELATED SEXUAL VIOLENCE THROUGH MULTILATERAL SANCTIONS Learning from Myanmar¹



Myanmar: Inle Lake, Bagan, Yangon. /
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The Georgetown Institute for Women, Peace and Security

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Learning from Myanmar¹

AUTHORS

Dr Robert U. Nagel, Research Fellow, Georgetown Institute for Women, Peace and Security

Julia Maenza, Research Assistant, Georgetown Institute for Women, Peace and Security

Daniel Salazar, Research Assistant, Georgetown Institute for Women, Peace and Security

Aminah Mohamad Yusuf, Research Assistant, Georgetown Institute for Women, Peace and Security

Diamond Jones, Research Assistant, Georgetown Institute for Women, Peace and Security

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Cover: Protest in Myanmar against Military Coup 14 February, 2021. / Photo by: MgHla (aka) Htin Linn Aye

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To contact the Institute or the authors of this study, email: giwps@georgetown.edu.

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Twenty-two-year-old Minara Begum walks through Balukhali camp on 5 March 2018. Minara Begum is another outreach worker for the Multi-Purpose Women's Centre. Minara has helped pregnant women reach relief distribution points and carried relief items for them. She has learned to speak up and now presents the issues of other Rohingya women refugees to the authorities in charge of the day-to-day management of the camp. / Photo by: UN Women/Allison Joyce

Executive summary

With the next open debate in the United Nations (UN) Security Council on sexual violence in armed conflict scheduled for April, it is timely to examine what the UN and individual Member States can and should do to more effectively address conflict-related sexual violence, reduce impunity, and improve accountability.

The Security Council showed encouraging signs of success adopting six Women, Peace and Security (WPS) resolutions since 2010, despite the Council's increased divisions over that period. As recently as 2019, the Council adopted Resolution 2467, which recognizes the importance of national governments' ownership and responsibility in addressing sexual violence and its root causes.² Nevertheless, the Council displays a troubling lack of action concerning reports of systematic conflict-related sexual violence. One of its worst failures is its disregard of the Tatmadaw's pattern of brutality and violence in Myanmar, both before and after the military's coup d'état on February 1, 2021. The Tatmadaw is responsible for the vast majority of sexual violence in Myanmar including 82 percent of all gang rapes in the country.³ Their use of sexual violence likely amounts to war crimes and crimes against humanity.⁴

Protection from sexual violence in armed conflict has been one of the most prominent aspects of the Women, Peace and Security agenda,⁵ but the Security Council's silence about Myanmar demonstrates that the WPS consensus exists only in theory. With no indication of abating internal tensions in the Security Council, individual Member States must find other ways of working together to live up to their commitments to human rights, the WPS agenda, and the Responsibility to Protect.

Currently, there are 14 UN sanctions regimes, five of which use sexual violence as a designation criterion.⁶

As senior UN personnel emphasize, this is a vast improvement compared with a decade ago, when not a single sanction regime relied on sexual violence as a designation criterion.⁷ There continues to be an immense discrepancy, however, between those identified as perpetrators of sexual violence in the Secretary-General's yearly report and those who are sanctioned. In 2021, the Secretary-General report on sexual violence identified 52 people and entities worldwide, including the Tatmadaw, as perpetrators, 70 percent of whom were repeat offenders who appeared on the list for five or more years.⁸ Yet the United Nations Security Council (UNSC) has used sexual violence as a designation criterion only for five sanctions regimes.⁹

In 2018, the Georgetown Institute for Women, Peace and Security (GIWPS) published a report identifying multiple dynamics that contribute to the UN's failure to use sanctions to address conflict-related sexual violence.¹⁰ The report highlighted geopolitical competition and bureaucratic impediments and technicalities as central obstacles to the systematic use of sanctions. Because sexual violence often is a sign of escalating violence,¹¹ this inability to hold perpetrators accountable has dire consequences for people in conflict zones.¹²

In particular, the failure of the international community to hold the Tatmadaw accountable for targeted sexual violence against the Rohingya and other minorities has contributed to a culture of impunity that emboldens Tatmadaw soldiers to use sexual violence in concerted and deliberate ways. This impunity further marginalizes and prevents women and men from reporting sexual and gender-based violence, obstructs reform efforts to address violence against women, engenders grievances, deepens structural inequalities, and damages prospects for an equitable and inclusive peace.¹³

This report draws on the case of Myanmar to demonstrate that multilateral, coordinated sanctions can play an important role in responding to reports of conflict-related sexual violence but that sanctions alone are not enough. Amid a humanitarian crisis where more than 320,000 people have been displaced and more than 1,500 civilians have been killed since February 2021, the Tatmadaw continues to be accused of conflict-related sexual violence against citizens it has detained since the coup. The citizens of Myanmar have repeatedly advocated for international intervention and have welcomed sanction measures by the United States (US), Canada, the European Union (EU), and the United Kingdom (UK). Drawing on semi-structured interviews with senior UN officials, former senior US State Department and Department of Commerce officials, officials from Global Affairs Canada, activists and members of civil society organizations in Myanmar, academic experts, and policy analysts, we argue that the urgent crisis in Myanmar necessitates multilateral and coordinated action in which sanctions are part of a comprehensive policy and strategy.

The report describes how the UN, the Association of Southeast Asian Nations (ASEAN), the US, Canada, EU, and UK have responded to the multifaceted crisis and how these efforts can be improved through a series of tailored recommendations. We believe that the use of sanctions to target impunity for conflict-related sexual violence can help to strengthen each actor's implementation of the WPS agenda. We argue, for example, that the US is underutilizing the Global Magnitsky Act and could do more in leading multilateral efforts to use sanctions as part of a coordinated strategy with a coalition of governments to address the ongoing crises in Myanmar.¹⁴

We begin with an overview of how and when sanctions work, emphasizing the importance of considering the different objectives that sanctions can serve. We highlight that the effectiveness of sanctions is increased by alliance membership and multilateralism. Next, we review how the international community responds to conflicts involving sexual violence and why the UN has

underutilized sanctions in addressing conflict-related sexual violence. We provide a brief background and an overview of the situation in Myanmar, then examine how international actors have used sanctions to respond, and how Myanmar's civil society has informed these decisions. We find that despite some multilateral sanction regimes, there is a lack of coherence and strategy that fails to meet the gravity of crimes committed by the Tatmadaw. Lastly, we discuss potential actions to improve accountability and reduce impunity for conflict-related sexual violence, including five key recommendations:

1. Following the model of designation for the recruitment of child soldiers, the UN should systematically incorporate conflict-related sexual violence as a stand-alone criterion when adopting new sanctions regimes.¹⁵
2. The UN sanctions committee should adopt a thematic sanction regime for conflict-related sexual violence that is automatically triggered when the UN Secretary-General report on sexual violence in armed conflict lists an individual or entity for consecutive years.
3. The US government should use the Global Magnitsky Act to impose targeted sanctions on any individual or entity listed in consecutive years in the UN Secretary-General report on sexual violence in armed conflict.
4. As Member States revise their National Action Plans on Women, Peace and Security, they should integrate targeted sanctions for repeat perpetrators of conflict-related sexual violence, as identified in the UN Secretary-General's report on sexual violence in armed conflict.
5. The US, Canada, UK, and EU should strengthen their coordination efforts to ensure that targeted sanctions are part of a coherent global strategy for improving accountability and reducing impunity for conflict-related sexual violence.

How and when do sanctions work?

Sanctions have been a popular tool of international politics since 1990, and particularly over the last two decades. There are two broad categories of sanctions: comprehensive and targeted. Comprehensive sanctions disproportionately impact women,¹⁶ reducing their economic, social, and political rights¹⁷ and lowering their life expectancy.¹⁸ Targeted, or “smart,” sanctions have become a common alternative to comprehensive sanctions because of the perception that they are more politically feasible and less likely to adversely impact civilians.

Many people think of sanctions solely as a coercive measure intended to change the behavior of the target. Sanctions as coercion usually take the form of imposing financial strains intended to force the target entity to reassess the costs and benefits of its behavior, creating an incentive for change by increasing the costs. Sanctions do not only serve to coerce, however; the intent can also be to constrain or signal.

The goal of sanctions as constraining measures is to change the target’s available options by making it more difficult to engage in a proscribed activity through limiting access to necessary resources. Arms embargoes, for example, can be constraining measures. Recognizing that a change of behavior is unlikely, the goal is to “curb the capacities of targets to embark on specific policies.”¹⁹

Signaling represents a “more nuanced way of exercising power” for targets that may be unwilling to comply if faced with harsh sanctions, taking into account the domestic and international audiences that can also act as targets.²⁰ Signaling also serves a longer-term goal: to

“underline the importance of a norm in international relations and to stigmatize non-compliance with that norm.”²¹

Directing sanctions at the military can reduce battlefield violence as well as mitigate humanitarian emergencies.²² However, military regimes such as Myanmar’s junta are among the most difficult to successfully sanction because their repressive and hierarchical nature can insulate them from pressure.²³ Alliances between the sender and the target increase the likelihood of concessions.²⁴ In the case of Myanmar, this dynamic underscores the importance of ASEAN. In addition to alliances, multilateralism generally, and support from international organizations particularly, increases the likelihood of sanctions’ success. This fact highlights the urgency of international coordination among governments and the UNSC.²⁵

The UN Targeted Sanctions Consortium demonstrates the importance of evaluating effectiveness of sanctions in the context of their particular aims. Their analysis shows that UN sanctions are almost three times more effective in signaling or constraining a target than in coercing a change in its behavior.²⁶ When briefing the UNSC in February 2021, the Under-Secretary-General for Political and Peacebuilding Affairs, Rosemary DiCarlo, emphasized the importance of sending signals when it comes to human rights abuses, torture, and sexual violence: “The imposition of sanctions solely for such acts is a relatively recent and welcome step. Its use sends an unmistakable signal.”²⁷

The effectiveness and negative externalities of targeted sanctions have been a point of contention among

Sanctions do not only serve to coerce, however; the intent can also be to constrain or signal.

scholars and have potentially important implications for the implementation of targeted sanctions going forward. UN targeted sanctions have been criticized for failing to respect the due process of the target, especially in the counterterrorism sanctions framework based on Resolution 1267, leading experts to call for increased capacity in delisting, monitoring, and judicial review.²⁸ Nonetheless, former US government officials acknowledge that UN sanctions are the “gold standard” and that governments should strive to work through the UN.²⁹

The role of conflict-related sexual violence in shaping interventions

Starting with the adoption of UN Security Council Resolution 1325 on Women, Peace and Security (WPS) in 2000, conflict-related sexual violence has received increased attention in the Security Council. Since Resolution 1325, the Council has adopted five other WPS resolutions that explicitly concern conflict-related sexual violence. The WPS agenda and these resolutions specifically have transformed how the international community, including the UN, responds to armed conflicts that feature sexual violence.

UN peace operations are more likely to have gender-mainstreamed mandates when operating in conflicts with sexual violence.³⁰ The Security Council is more likely to address a conflict in which there are reports of sexual violence with a resolution³¹ and more likely to send peace operations to such conflicts.³² Similarly, regional organizations such as the Economic Community of West African States and EU are more inclined to send peacekeepers to conflicts featuring sexual violence.³³ However, Myanmar and the Tigray conflict in Ethiopia demonstrate that geopolitical dynamics play an important role in determining where peacekeepers intervene.

While most observers welcome the increased attention to sexual violence in armed conflict, some argue that the WPS agenda’s outsized focus on the protection of women contributes to the fetishization of conflict-related sexual violence.³⁴ Treating sexual violence in armed conflict as exceptional, they contend, reinforces the gendered hierarchy that subordinates women as needing protection and diminishes their agency. Moreover, they say, increased attention to sexual violence can incentivize armed groups to perpetrate it to leverage political gains such as participation in peace talks.³⁵

A 2018 Georgetown Institute for Women, Peace and Security (GIWPS) report that examined how the Security Council has employed sanctions to address sexual violence in conflict and revealed substantial gaps and inconsistencies in their use.³⁶ The report identified divisions among Security Council members over human rights and the use of coercive measures, as well as competing political objectives, as impediments to the proper or adequate functioning of sanctions committees. Failure to reach consensus among the 15 members of this committee repeatedly prevented action.

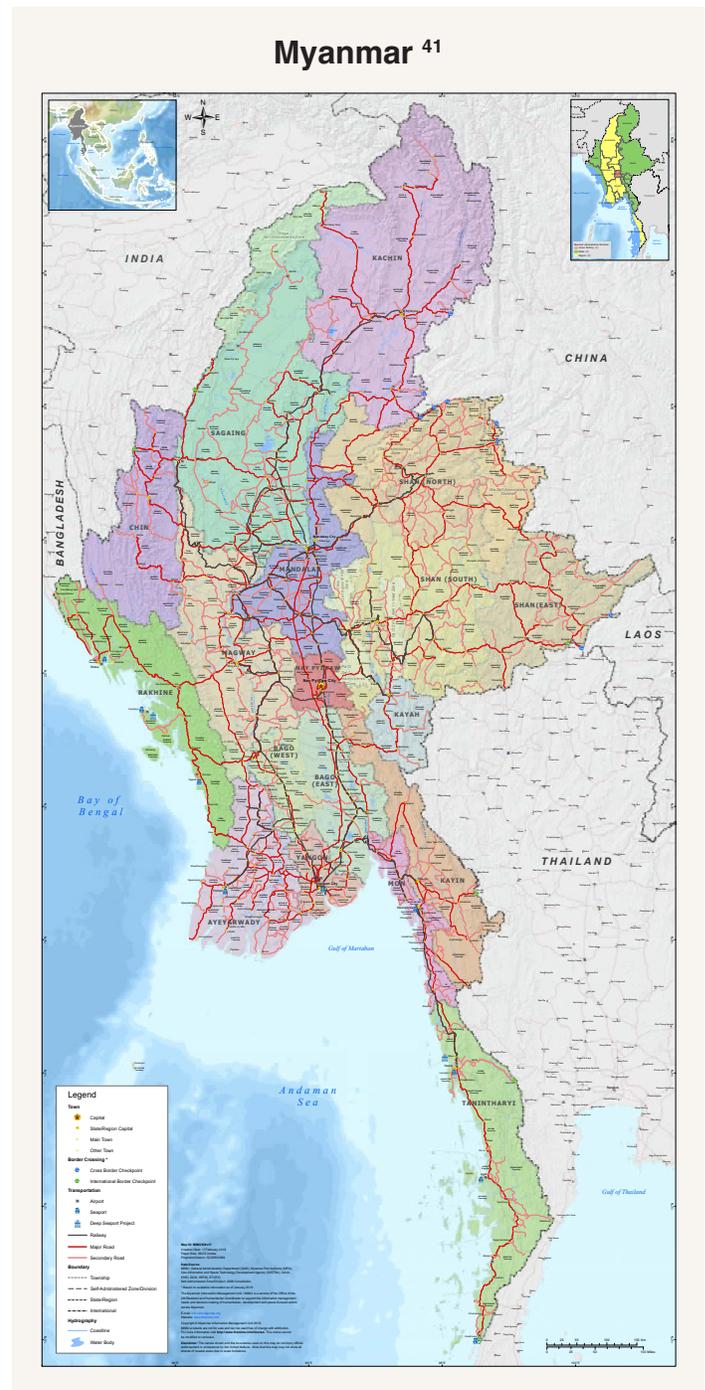
Currently, five sanction regimes explicitly include sexual and gender-based violence as designation criteria along with other human rights violations: Central African Republic (CAR), Democratic Republic of the Congo (DRC), Mali, Somalia, and South Sudan.³⁷ However, the language varies across even these regimes, which leads to inconsistencies. The South Sudan and DRC regimes, for example, refer to “rape or other sexual violence,” while the Somalia regime mentions “sexual and gender based violence.” CAR is the only sanction regime in which sexual violence is a stand-alone criterion.

Based on a review of UN documents and interviews with officials and experts, the 2018 GIWPS report recommends: an increase in briefings by the Special Representative on Sexual Violence in Conflict; use of sexual violence as a stand-alone designation criterion for UN sanctions; and referral to the Security Council in the event of gridlock in the sanctions committee.³⁸ Building on the 2018 document and its recommendations, this report examines how to improve accountability and reduce impunity for conflict-related sexual violence.

Background on Myanmar

Since gaining independence from the British in 1948, Myanmar and its governing institutions have largely been dominated by the powerful military known as the Tatmadaw. The country's political history has been punctuated by the Tatmadaw seizing power from nominally civilian governments through coups, in 1962 and 2021, as well as clinging to power by violently suppressing protest movements, such as those in 1988 and 2007. The Tatmadaw and central government have long fought ethnic armed organizations (EAOs) on the country's periphery, in some cases for decades, from various Kachin, Karen, Shan, Chin, and other minoritized groups. One such marginalized group is the Rohingya Muslims, who are rendered stateless by draconian citizenship rules and stigmatized by exclusionary narratives.

The early 2010s marked significant changes for governance in Myanmar. The government released democracy advocate Aung San Suu Kyi from house arrest and eased restrictions on the press and public gatherings. Citizens voted in parliamentary by-elections considered to be generally free and fair in 2012. Aung San Suu Kyi's National League for Democracy (NLD) scored widespread victories in parliamentary elections in 2015, reinforcing hopes of Myanmar's ostensible democratization. The apparent political progress reaped benefits, as foreign investment tripled from \$901 million in 2010 to \$3.2 billion in 2016 and substantial foreign aid allocations—\$13.7 billion for new projects between 2011 and 2015—led to a yearly economic growth rate of roughly 7 percent between 2011 and 2020.³⁹ The Obama administration lifted sanctions on Myanmar in 2016, a controversial decision within the administration which human rights organizations warned would embolden the military.⁴⁰



Violations amounting to the gravest crimes under international law against the Rohingya and other civilians in Kachin and Shan states, where the Tatmadaw waged campaigns against civilians that amounted to war crimes and crimes against humanity.

Despite apparent progress in the country's governance, Myanmar had at best a quasi-civilian government where some patterns of long-standing repression and violence continued. The 2008 constitution granted the military's commander-in-chief authority to appoint 25 percent of the seats in both chambers of the Union Parliament. The Tatmadaw also controlled the ministries of defense, home affairs, and border affairs, giving it wide control over the country's security apparatus. War resumed in Kachin State in 2011 after a ceasefire reached in 1994 collapsed. Waves of Tatmadaw violence continued to devastate Rohingya and other communities, undermining the ostensible democratization at the time. Across a dozen townships in 2012, the Tatmadaw burned houses, looted shops, conducted mass arbitrary arrests, killed indiscriminately, and systematically committed rapes and other forms of sexual violence.⁴²

In August 2017, the Tatmadaw seized on an attack by the Arakan Rohingya Salvation Army to launch a brutal and disproportionate response—so-called clearance operations that targeted Rohingya civilians and communities across Rakhine State. The UN, media outlets,

human rights groups, and humanitarian organizations all reported serious human rights abuses committed against the Rohingya during these operations, including sexual violence, torture, and arbitrary killings of civilians. Within two months of the Tatmadaw's "clearance operations," more than 600,000 Rohingya fled into eastern Bangladesh.⁴³ During the operations, more than 40 percent of all villages in northern Rakhine State were partially or completely destroyed. By September 2018, the number of Rohingya displaced to Bangladesh reached over 725,000.⁴⁴ Many of these Rohingya remain there—with Kutupalong in eastern Bangladesh's Cox's Bazar district now considered to be the largest refugee camp in the world. Today, Bangladesh hosts around 900,000 Rohingya refugees.

The UN Human Rights Council (UNHRC) established the Independent International Fact-Finding Mission on Myanmar (IIFFM) in March 2017, several months before the August 2017 "clearance operations" in Rakhine State. The mission's report to the UNHRC in September 2018 detailed violations amounting to the gravest crimes under international law against the Rohingya and other civilians in Kachin and Shan states, where the Tatmadaw waged campaigns against civilians that amounted to war crimes and crimes against humanity. The report described the Tatmadaw's "clearance operations" as a foreseeable and planned catastrophe that "resulted from the systemic oppression of the Rohingya, the 2012 violence, and the Government's subsequent actions and omissions."⁴⁵ Documenting a pervasive culture of impunity in Myanmar, the mission urged the international community to seek accountability. The IIFFM explicitly called for an investigation and prosecution of senior generals of the Myanmar military in an international criminal tribunal for genocide, crimes against humanity, and war crimes.⁴⁶ Despite thorough documentation of the brutality, then-State Counsellor and de facto leader Aung San Suu Kyi did not condemn it and instead defended Myanmar against accusations of genocide at the International Court of Justice (ICJ).⁴⁷

The 2021 coup d'état and situation today

The National League for Democracy was poised to expand its power after having won more than 80 percent of the contested seats in the Union Parliament elections

of November 2020.⁴⁸ Instead, citing dubious claims of election irregularities, the Tatmadaw on February 1, 2021, launched a military coup—declaring a state of emergency, detaining NLD officials including Aung San Suu Kyi, and imposing a curfew. Meeting pro-democracy protests with violence, the Tatmadaw reinstated full control over the national government under an entity named the State Administration Council.

The coup drew swift international condemnation for derailing Myanmar’s path toward democracy. The US, UK, EU, and Canada issued multiple rounds of targeted sanctions, including asset freezes and travel bans, over the course of 2021 as the international community increasingly ostracized the regime. The US, UK, and Canada issued new, coordinated targeted sanctions on the eve of the coup’s one-year anniversary.⁴⁹ Other states, such as Australia, expressed concerns about the coup but did not issue sanctions.

Following the coup, ousted NLD activists, politicians, representatives, and supporters have formed and worked to advise the National Unity Government (NUG). It represents a shadow government that opposes Tatmadaw rule. The NUG has sought support from groups inside the country such as EAOs and from international actors more broadly. While the NLD did not condemn the atrocities against the Rohingya at the time they were occurring, the NUG recognized the Rohingyas’ right to citizenship and declared it was open to initiating processes “to grant International Criminal Court jurisdiction over crimes committed within Myanmar against the Rohingya and other communities.”⁵⁰

The human security situation in Myanmar has rapidly deteriorated in the year since the coup. Nearly 1,600 civilians have been killed, according to an estimate

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by the Assistance Association for Political Prisoners. Myanmar’s economy teetered on financial ruin throughout 2021 as its healthcare system was overwhelmed by a wave of Covid-19 cases in the summer. According to UN figures, more than 320,000 people have been newly displaced by violence since the coup, mainly in the country’s periphery, where EAOs and the Tatmadaw clash most often.⁵¹ This instability is a direct threat to the WPS agenda, with women activists targeted by the military junta.⁵² Civilians detained since the coup have been subject to beatings, torture, rape, and other forms of sexual violence, according to accounts gathered by human rights groups.⁵³

Responses to the crises

Civil society responses

Even prior to the coup, activists faced several obstacles, including a policy that requires organizations to register with the government to be eligible for domestic and international funding.⁵⁴ The military takeover has substantially impacted civil society organizations and activists. Many organizations, including those that were registered and had engaged with the NLD government on several topics such as security sector reform and increasing women’s participation, ceased all activities following the coup.⁵⁵ For many, their mission shifted to protecting women peacebuilders and assisting them in moving to safe zones across the country. Others who had worked with NGOs in the aid sector or assisted the UN’s work in the country during the NLD administration had to flee to neighboring countries after repeated threats by the junta because of their past work with international organizations.⁵⁶

In the past, only a few civil society groups in Myanmar spoke out against the atrocities committed against the Rohingya. In contrast, in response to the 2021 coup, women-led and women-centered organizations have called for decisive international action. Activists and citizens responded to the coup with widespread protests and calls for international interventions. Protesters carried “We Need R2P” signs referencing the Responsibility to Protect, an international commitment to prevent genocide, war crimes, ethnic cleansing, and crimes against humanity. The Responsibility to Protect can manifest in several forms of intervention, ranging from preemptive diplomacy to military intervention. Some protesters in Myanmar vocally demand military intervention.⁵⁷ One Myanmar expert summarized local demands as, “They want the 82nd Airborne. Tomorrow afternoon, they want the 82nd.”⁵⁸ Notwithstanding the implausibility of an armed inter-

vention, these demands underscore the broad support for external actions including the sanctions imposed by several governments.

Civil society actors have consistently expressed their support for sanctions. As a sanctions practitioner at the UN-level noted, “Local activists were calling very strongly for even tougher sanctions and sanctions covering sectors that the US and Europe and elsewhere were reluctant to sanction.”⁵⁹ For example, 540 civil society organizations signed a letter urging sanctions on the military gas company Myanmar Oil and Gas Enterprise, which is a joint venture partner with Total, Chevron, and Thailand’s PTT Exploration and Production.⁶⁰ Some activists, such as Wai Wai Nu, executive director of the Women’s Peace Network, believe that Western states removed their sanctions prematurely during the country’s nascent democratization process—focusing too much on the global status of Aung San Suu Kyi and ignoring the abuses that took place under the nominally civilian government.⁶¹

One civil society activist emphasized that when news of the sanctions on the Tatmadaw spread in 2021, members of the community were encouraged. “Some people will be affect[ed]” as a result of the sanctions, the interviewee recognized, but went on to say that sanctions should be instituted regardless of potential negative consequences in the larger community.⁶² Wai Wai Nu pointed to the large-scale protests, strikes, and attempts to boycott military products, noting: “Some policymakers are worried about affecting the whole population, but they are not listening to the people of Myanmar, who are willing to endure sanctions and sacrifice to take the military down.”⁶³ Not everyone agrees, however, as another activist pointed out: “We have been calling for targeted

sanctions from the beginning, even before the coup, but we are very wary of larger sanctions because we do not want to punish the entire population.”⁶⁴ That interviewee observed that “the general population, the garment workers, they call for blanket sanctions” based on “inadequate information [that] if blanket sanctions are imposed the junta would collapse overnight.”⁶⁵ The activist also voiced concern that the junta will “weaponize it and instrumentalize it” if the impact of sanctions is felt by the general population. These viewpoints highlight the importance of maintaining direct contact with diverse civil society organizations, including grassroots organizations inside Myanmar, to ensure that the narrative around sanctions does not change and that external interventions remain legitimate in the eyes of the people in Myanmar.

Representatives and policymakers from the US, UK, and Canada have dedicated email and phone message inboxes for gathering information and input on sanctions from members of NGOs and civil society. To increase accessibility and reach, these inboxes are open to submissions from anywhere in the world. Some observers worry that these mechanisms can be inundated with messages and that organizations lack knowledge about how to submit.⁶⁶ However, a Canadian diplomat described submissions as “every once a few weeks” and far from overwhelming.⁶⁷ The organization Human Rights First provides online templates that explain the process to ensure that local voices have a role in shaping sanctions regimes.⁶⁸ Diplomats point out that while they process all messages and share them internally, whether or not action is taken is ultimately a foreign policy decision.⁶⁹

UN responses

The NLD’s April 2012 electoral triumph, where the party won 43 of 44 parliamentary seats in by-elections, bolstered international hope for democratic progress. But waves of anti-Rohingya violence in the Rakhine State only two months later left 192 dead, 265 injured, and 8,614 homes destroyed.⁷⁰ Despite widespread violence and destruction, the Security Council did not release a statement or address the 2012 crisis in any meaningful way.

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The August 2017 “clearance operations” elicited unprecedented international attention to the human rights abuses against the Rohingya. While the September 2017 report of the Special Rapporteur did not cover the events because of time constraints, the Third Committee of the UN General Assembly in October 2017 adopted a resolution expressing concern at the disproportionate use of force, widespread sexual violence, and discrimination against Rohingya civilians.⁷¹ A November 2017 Security Council presidential statement decried the atrocities in Myanmar, which Myanmar’s representative said “place[s] undue political pressure” on the government. The Security Council took no additional action.⁷²

Even before the Tatmadaw’s “clearance operations,” the UNHRC had established the IIFFM in its Resolution 34/22 to investigate the situation in Kachin, Rakhine, and Shan states since 2011. In December 2017, Pramila Patten, the UN Special Representative of the Secretary-General (SRSG) on Sexual Violence in Conflict, visited Myanmar. Upon conclusion of her visit, she declared she was looking forward to “the swift adoption of a Joint Communiqué [...] on the prevention and response to conflict-related sexual violence.”⁷³



 Reports and UNGA resolutions
 UNSC Press Statement

A year after the Tatmadaw's brutal campaign, the IIFFM published its report and presented evidence that the Tatmadaw's "clearance operations" amounted to genocide, war crimes, and crimes against humanity targeting the Rohingya.⁷⁴ The IIFFM recommended that the situation be referred to an international criminal tribunal, since Myanmar did not, and still does not, have the political will or capacity to hold perpetrators accountable. The Myanmar government has not complied with this August 2018 report. When the IIFFM chair briefed the Security Council, Russia, China, and Myanmar strongly condemned the report and subsequent briefing.⁷⁵

Despite the overwhelming evidence the IIFFM presents, the Security Council still has not adopted a resolution on Myanmar. The adoption of the Joint Communiqué in December 2018, a year after the SRSG's visit, also led to no further action by the UNSC. The Council's silence prompted the IIFFM to publish a second, thematic report focused exclusively on the sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts. The 2019 report details widespread incidents of rape, sexual slavery, and other forms of sexual and gender-based violence against women, girls, men, boys, and transgender persons, calling sexual and gender-based violence "a hallmark of the Tatmadaw."⁷⁶ In November 2019, the Republic of The Gambia filed a lawsuit at the ICJ against Myanmar for violating the Genocide Convention. Despite these developments, the UNSC still has not even included Myanmar on its agenda, meaning the ICJ lawsuit remains the only effort to formally establish Myanmar's responsibility for genocide.

After taking no action in response to the 2017 "clearance operations," the UNSC responded to the 2021 coup by issuing a statement of concern. In September 2021, the Special Rapporteur on the situation of human rights in Myanmar published a new report detailing a "brutal campaign of the military [that] likely meets the threshold for crimes against humanity and war crimes under international law."⁷⁷ The report urges the UN and Member States "to apply targeted, sustained pressure on the military junta."⁷⁸ In stark contrast to the warranted urgency expressed in that document, the UNSC continues to neglect Myanmar.

A February 2022 Special Rapporteur report calls out China, Russia, and Serbia for continuing to arm the junta.⁷⁹ While the UNSC released three further statements regarding the situation and violence in Myanmar over the course of 2021, China and Russia continue to supply weapons to the Tatmadaw and prevent inclusion of Myanmar on the Security Council's agenda for any subsequent meaningful action.

ASEAN responses

In light of the Security Council's inability to overcome its geopolitical divisions, greater responsibility falls to regional organizations. ASEAN has taken steps to improve its implementation of the WPS agenda, developing a Regional Plan of Action on WPS and convening the first meeting of the Expanded Advisory Group on Women, Peace and Security in January 2022.⁸⁰ Yet faced with reports of systematic rape in Myanmar the Association has remained passive. The nonintervention principle of ASEAN makes it an unlikely party to forcefully respond to the atrocities in Myanmar. ASEAN's actions are guided by the principles enshrined in its charter, including "territorial integrity, non-interference, [and] consensus."⁸¹ ASEAN member states share a colonial history that informs their stance on intervention, particularly when it is Western-led. ASEAN actively avoids actions toward a member state that would alienate it from the organization.⁸²

ASEAN's response to the Rohingya genocide was even less pronounced than its limited response to the coup. Specific member states within ASEAN, particularly Malaysia, voiced concern about the Tatmadaw's persecution of the Rohingya and the NLD's tolerance for it, but ASEAN remained largely silent. Following the coup, ASEAN has continually tried to engage with the junta while strategically denying their legitimacy and expressing concern.

At the April 2021 ASEAN summit, parties agreed to a five-point consensus that includes "an immediate cessation of violence in Myanmar, constructive dialogue among all parties, the appointment of a special ASEAN envoy to facilitate dialogue, the provision of humanitarian assistance, and a visit by the envoy to Myanmar."⁸³ Critics point out, however, that the junta's leader Min



Marzuki Darusman, Chairperson, Independent International Fact-finding Mission on Myanmar briefs the press on the Humanitarian Situation in Myanmar, Geneva. 27 August 2018. / Photo by: Violaine Martin

Aung Hlaing used the meeting and the five points to bolster his own legitimacy and to claim he would implement them “after stabilizing the country.”⁸⁴

The most serious repercussion from ASEAN was their refusal to invite Min Aung Hlaing to the 2021 summit because of his lack of implementation on the five-point consensus.⁸⁵ One interviewee saw this move as a productive step, explaining, “It’s important that we deny them opportunities to gain any advantage by virtue of the appearance of legitimacy.”⁸⁶

Still, ASEAN’s charter not to take decisive action against a member state determines that it will not be the solution to the crises in Myanmar. This is exemplified by the visit of Cambodian prime minister and ASEAN chair Hun Sen (himself linked to human rights violations) to Myanmar at the beginning of 2022. In meeting with

Min Aung Hlaing, the ASEAN chair announced that he would invite the junta leader to the next ASEAN summit assuming “there was progress in the implementation of the five points.”⁸⁷ ASEAN’s failure to exert diplomatic pressure on the junta means that coordinated and sustained international action must step up to fill the void.

United States responses

A relatively new US law provides the government additional options for targeted sanctions. The Global Magnitsky Act in 2016 altered the nature of US sanctions, allowing the President to impose financial and visa restrictions to persons tied to certain human rights abuses or corrupt acts anywhere in the world.⁸⁸ The law prevents designated people and entities they own from engaging in transactions with US entities,⁸⁹ representing a trend toward thematic sanctions that

apply to perpetrators of certain acts rather than the more traditional geographic sanctions.⁹⁰ Because of their flexibility and thematic focus, Global Magnitsky Act sanctions also present opportunities to target impunity for conflict-related sexual violence.

The Trump administration used the law to sanction Myanmar's Maj. Gen. Maung Maung Soe, constituting some of the first sanctions under the new mechanism.⁹¹ That administration also used the law to target four officers and two military units in 2018,⁹² as well as four more Tatmadaw officers in December 2019.⁹³ While these measures outpaced the inaction of the UNSC, they were ad hoc and did not reflect broader US strategies for Myanmar or for the WPS agenda, an illustration of the need for better integration of the 2017 WPS Act into US foreign policy.⁹⁴

Following the February 2021 coup, President Biden took decisive action in imposing sanctions on 65 individuals, as well as sanctioning or placing export controls on 26 organizations "with close regime ties."⁹⁵ Biden issued Executive Order 14014, "Blocking Property With Respect to the Situation in Burma," which was specifically drafted in response to the coup.⁹⁶ The US sanctioned two persons and two entities in March 2021 for the suppression of pro-democracy protests in Myanmar after the coup,⁹⁷ 12 members of the State Administrative Council in May,⁹⁸ and 22 individuals connected to Myanmar's military regime in July.⁹⁹

Sanctions could go further, however, to target the Tatmadaw's wide-ranging business interests, such as its revenue-generating oil and gas sector as well as its aviation, cargo, and logistics operations that maintain its air campaign against the EAOs.

The measures against Myanmar officials are part of the Biden administration's broader efforts to infuse human rights into its foreign policy: In recognition of Human Rights Day in December 2021, the Treasury Department sanctioned 25 individuals under the Global Magnitsky Act and the US State Department designated 12 government officials from a variety of countries for "gross violations of human rights," according to Secretary of State Antony Blinken.¹⁰⁰

In October 2021, US House Foreign Affairs Committee Chairman Gregory Meeks with bipartisan support introduced the BURMA Act. If signed into law, the legislation would condemn the coup; authorize additional sanctions; place import restrictions on gemstones; create a Special Coordinator position within the State Department to promote democracy in Myanmar and enforce multilateral sanctions; authorize humanitarian assistance to civil society in Myanmar, Bangladesh, and Thailand; and call on the State Department to make a determination about whether persecution of the Rohingya constitutes genocide.¹⁰¹ Secretary Blinken officially designated the persecution of the Rohingya a genocide on March 21, 2022, specifically noting the role of sexual violence in the genocide as well as U.S. sanctions that continue to limit the revenue of the military.¹⁰²

European Union and United Kingdom responses

Like many other actors in the international community, the EU and UK have struggled to reconcile their commitments under the WPS agenda and the Responsibility to Protect with their pre-coup optimism that lifting sanctions and positive engagement with Myanmar would contribute to its democratization. The EU suspended most of its sanctions in 2013 in response to perceived political progress, with the "exception of the arms embargo and the embargo on equipment which might be used for internal repression."¹⁰³

It took ten months for the EU to implement targeted sanctions against those responsible for the 2017 atrocities against the Rohingya and other minorities, partly because of the "consensus decision-making" within the EU that slows progress.¹⁰⁴ In 2018, the EU extended targeted sanctions to include 14 entities in total. In 2018, the EU Council published conclusions of the WPS agenda that included a sanctions mechanism to particularly target perpetrators of conflict-related sexual violence, and in 2020, it adopted a human rights framework for sanctions similar to the United States' Global Magnitsky Act.¹⁰⁵ Still, the next round of sanctions did not occur until after the coup.¹⁰⁶ The EU suspended development aid and ultimately sanctioned 35 entities for undermining democracy. Notably, the EU did not participate in the coordinated sanction

A February 2022 Special Rapporteur report calls out China, Russia, and Serbia for continuing to arm the junta.⁷⁹

effort by the US, Canada, and UK that marked the one-year anniversary of the coup.

The UK's initial response to the 2017 Rakhine crisis reflected a poor understanding of identity-based violence and lack of a coherent framework for atrocity prevention or the WPS agenda.¹⁰⁷ It also overemphasized democratization and the specific role of Aung San Suu Kyi while underestimating the power of the Tatmadaw.¹⁰⁸ This democracy-first strategy led to neglect of internal mechanisms to assess risk, such as the Joint Analysis of Conflict and Stability, a cross-government process to develop National Security Council Strategies, which was not fully commissioned until 2018.¹⁰⁹ The UK's 2018-2022 National Action Plan on WPS identified sexual violence against women in Rakhine State as a concern, though it is not clear how this has tangibly informed foreign policy or atrocity prevention strategies for Myanmar.¹¹⁰ The ad hoc nature of these frameworks as well as human error and bias in drawing upon them undermined an adequate response.

Following the military coup, the UK imposed sanctions on six members of the Tatmadaw in February 2021 and imposed further sanctions in coordination with the EU and the US a month later.¹¹¹ The UK also attempted to suggest "further measures" against the Myanmar military in a presidential statement at the Security Council, but dropped it after objections from China, Russia, India, and Vietnam.¹¹² The government also cut humanitarian aid to Rohingya refugees in Bangladesh by more than 40 percent, demonstrating its lack of a holistic approach to the WPS agenda, aid, ad-

vocacy, and accountability.¹¹³ On March 25, 2022, the UK and Canada announced further sanctions against a combined list of four individuals and three companies, including key sources of aircraft, weapons, and commercial support.¹¹⁴

Canada responses

In April 2012, Canada amended several of its regulations and eased sanctions on Myanmar following the country's ostensible progress toward democracy after the general election. To show support for the democratic transition and the release of political prisoners including Aung San Suu Kyi, Canada removed sanctions on exports, imports, and asset freezes while maintaining other sanctions such as its arms embargo.¹¹⁵

Following the Tatmadaw's 2017 "clearance operations," Canada's Special Envoy to Myanmar, Bob Rae, provided recommendations to his government, including financial aid "to UN and other international organizations."¹¹⁶ These recommendations resulted in the announcement of Canada's *Strategy to Respond to the Rohingya Crisis in Myanmar and Bangladesh*, which dedicated \$300 million in international assistance in line with its Feminist International Assistance policy.¹¹⁷ In coordination with the EU, Canada also added seven senior Tatmadaw officials to its sanctions list as key actors in June 2018.¹¹⁸ Canada sees these targeted sanctions as a condemnation of human rights violations and also as part of the international pressure on the Tatmadaw to end its brutal treatment of ethnic minorities.¹¹⁹

The Justice for Victims of Corrupt Foreign Officials Act, which Canada introduced in 2017, enables sanctioning those "responsible for or complicit in gross violations of internationally-recognized human rights."¹²⁰ At the state level, however, Canada still largely relies on the Special Economic Measures Act, which it can use under four conditions: (1) in response to an international organization calling for Canada to take economic action, (2) when there is a threat to international peace and security, (3) where gross human rights violations have been committed, and (4) when a foreign official is responsible for significant corruption.¹²¹ In the case of Myanmar, all Canadian sanctions except those against Maj. Gen. Maung Maung Soe have relied on the Special Econom-



A young Rohingya refugee girl in a UNICEF temporary learning centre supported by UK aid, in Kutapalong, Cox's Bazar, Bangladesh. / Photo by: Russell Watkins/Department for International Development

ic Measures Act, which implicitly treats most sanctioned Tatmadaw officials as state representatives.

Canada responded more forcefully to the 2021 coup than to the mass atrocities against the Rohingya and other minorities in 2017. Following the coup, the Canadian government added nine more senior level officials including Min Aung Hlaing to its existing targeted sanctions, which include, but are not limited to, prohibition on financial transactions or services between Canadians and the individuals on the sanction list with an aim to “change its behavior and reverse its actions.” The UK and US also imposed sanctions directly after the coup, while the EU and Australia expressed their concern but avoided immediate and decisive action.¹²²

In May 2021, Canada added 16 military and military-appointed officials, as well as their family members, to the regulations. They also included ten com-

panies with ties to the Tatmadaw¹²³ and four entities for their connection to human rights violations in Myanmar.¹²⁴ These sanctions were imposed in coordination with the UK and the US, and they also aligned with measures by the EU.

In January 2022, to mark one year after the coup, the US, UK, and Canada announced coordinated sanctions on three key Tatmadaw officials involved in persecution of political dissidents. US Secretary Blinken said of the sanctions, “We are coordinating these actions with the United Kingdom and Canada to demonstrate the international community’s strong support for the people of [Myanmar] and to further promote accountability for the coup and the violence perpetrated by the regime.”¹²⁵ This step indicates the possibility of further cooperation in sustained multilateral sanctions on the junta. Simultaneously, the US imposed additional sanctions, which Canada and the UK did not reciprocate.¹²⁶

Summary

Despite numerous UN reports presenting overwhelming evidence of genocide, crimes against humanity, and war crimes, the UNSC has failed to respond to the Tatmadaw's ongoing use of sexual violence in Myanmar. While the UN has adopted numerous WPS resolutions and Member States have adopted National Action Plans, many with specific references to the protection against conflict-related sexual violence, WPS integration into broader engagement strategies on Myanmar remains minimal. To holistically address the range of human rights violations by the Tatmadaw, sanctioning perpetrators of conflict-related sexual violence should be part of the broader Myanmar engagement strategy. In light of the prevalence of conflict-related sexual violence, the failure to sanction conflict-related sexual violence stands in stark contrast to the nominal support for the WPS agenda and the central role protection from sexual violence has played in WPS so far.

The strong recommendations of the IIFFM, the urgent calls for international criminal prosecution from the Special Rapporteur, and outrage from a majority of UNSC members notwithstanding, the political climate of the Security Council has made comprehensive UN action unattainable. Activists in Myanmar have repeatedly requested direct action, including targeted sanctions, to undermine the junta and support the National Unity Government. With the Security Council refusing to hear these calls, Member States are left to respond individually.

This pattern accentuates the historical failures of the international community to adequately address violations of essential human rights in conflict-affected states. The EU and individual governments such as the US, UK, and Canada reacted to the 2017 “clearance operations” by re-imposing sanctions on Myanmar. However, these

measures did not meet the urgency and enormity of the situation. Moreover, governments imposed them slowly and with little coordination. Importantly, it was unclear to what extent the sanctions were supposed to coerce, constrain, or signal because they lacked a broader engagement strategy and failed to specify the role of conflict-related sexual violence as a targeted violation in the atrocities. Following the February 2021 coup, states imposed sanctions more quickly and cohesively, further highlighting how insufficient the response to the earlier mass atrocities against the Rohingya and other marginalized groups was.

While actors have placed sanctions on some individuals in the Tatmadaw since the coup, there are other opportunities to place sanctions and delegitimize the regime. As activist Wai Wai Nu puts it, “the sanctions by the US, the UK, and Canada are a great start, but they are not enough. Sanctions should ... target the entire military, including economic corporations and military businesses.”¹²⁷ Indeed, Member States have not used creative tools like the Global Magnitsky Act in an expansive enough way to target the pervasiveness of the Tatmadaw's crimes, both before and after February 1, 2021.

To address the inadequacies detailed above, we offer several recommendations for the UN Security Council and Member States, both for Myanmar specifically as well as for imposing targeted sanctions for conflict-related sexual violence more broadly. It is our hope that the application of these recommendations will help improve accountability and reduce impunity for conflict-related sexual violence and support the people of Myanmar in creating a more just, equitable, and peaceful future.

Policy recommendations

Myanmar recommendations

The Tatmadaw lack popular support and enforce their feeble hold on power through brutal repression. To weaken the Tatmadaw, the international community and individual governments should seek to deny them three key resources: weaponry, economic funds, and legitimacy.

For Member States

1. Consult with civil society activists for guidance on implementing targeted sanctions. To ensure that sanctions are as effective as possible without adversely impacting civilian populations, policymakers must consider local complexities and attitudes. This approach includes both a review of existing mechanisms for gathering information and active and intentional outreach to local stakeholders before action is taken.
2. Increase humanitarian aid and ensure that it is distributed to civil society organizations in consultation with local actors, especially recognizing the key role of women peacebuilders in facilitating change.¹²⁸ This is particularly pertinent in light of reports that between 2018 and 2021, the UN Refugee Agency shared Rohingya refugees' data without their consent, which ultimately ended up with Myanmar's government.¹²⁹
3. Continue coordinated implementation of targeted sanctions against military businesses and assets connected to Tatmadaw human rights violators, consistently including conflict-related sexual violence as a stand-alone criterion for designation. Working with partner states to increase effectiveness, states must continue to impose sanctions on repeat offenders of human rights in Myanmar. Conflict-related sexual violence should be included as an equal offense to other crimes against humanity to fully represent the scope of the atrocities committed by the Tatmadaw.
4. Utilize human rights-based sanctions regimes and avoid actions that recognize or imply that the Tatmadaw is the legitimate governing authority of Myanmar. The Canadian government, for example, almost exclusively uses the Special Economic Measures Act when issuing sanctions. Canada should continue to sanction the Tatmadaw, but instead use the Justice for Victims of Corrupt Foreign Officials Act—the specific human rights framework for non-state actors—to indicate that it does not recognize the Tatmadaw as a legitimate state actor.
5. Deny legitimacy to the military junta. By refusing to be photographed with leaders of the junta or to coordinate with them, individual states can limit the Tatmadaw's influence and legitimacy both in and outside of Myanmar.
6. Recognize and support the National Unity Government (NUG) and its related entities, the Committee Representing Pyidaungsu Hluttaw and the National Unity Consultative Council, as the legitimate authority of Myanmar. By engaging with and recognizing the NUG, governments can empower pro-democracy forces and secure delivery of humanitarian resources.
7. Support The Gambia's case at the ICJ that charges Myanmar with violating the Genocide Convention in their treatment of the Rohingya to support international justice and accountability for violations of human rights, including, but not limited to, sexual violence.¹³⁰

8. Adopt responsible business reporting requirements for domestic companies to file publicly available due diligence reports when meeting a threshold of business, activity, or investment in Myanmar.¹³¹ These policies can be modeled after the US *Burma Responsible Investment Reporting Requirements* that require US companies to report on their investments in Myanmar as they relate to human rights, labor rights, corruption, government payments, oil and gas investment, and contact with the military or other armed groups.¹³² These requirements will foster transparency and accountability, increase awareness of how Member States' commercial ties support the Tatmadaw, and enable advocacy groups to exert pressure.
9. Take decisive action and leadership at the United Nations and, if possible, the Security Council. The initiatives of individual states are necessary to urge action and accountability at the international level. Actors should therefore ensure that Myanmar is a consistent topic of discussion and remind others of their commitment to international human rights.

For the UN

1. Allow an open debate and vote for targeted sanctions on Myanmar at the Security Council. The threat of a veto from China and Russia has limited discourse about human rights violations in Myanmar. An interviewee emphasized: "People have just been in despair because of the failure of the Security Council to take action, so it seems to me that [...] if the Security Council is not going to act, it should at least be held responsible to consider action in a very open and transparent way [...] let the chips fall where they may on a vote, and let those who are appointed veto in the full light of day, and then let them be held accountable for that."¹³³
2. Continue to invest in research and monitoring on the crises in Myanmar to keep the international community educated and engaged. Resources including the reports of the IFFM and the Special Rapporteur are essential for Member States and coalitions that wish to legitimize their actions. This includes empowering the Special Rapporteur and the Special Representative of the Secretary-General on Sexual Violence in

Conflict to continue their work on the ongoing atrocities in Myanmar.

3. Advance a global arms embargo. To maintain power, the Tatmadaw requires weapons and ammunition. To complement the existing arms embargoes of the EU, US, UK, and Canada, the US and UK should leverage their seats on the Security Council to advance a global arms embargo to undermine the Tatmadaw's access to weapons and ammunition and directly challenge members, namely Russia and China, who continue to arm the junta.¹³⁴

General sanctions recommendations

For Member States

1. Continue to use the human rights and corruption-based sanction regimes to impose sanctions on individuals and entities that are repeatedly listed in the UN Secretary-General report on sexual violence in armed conflict. This includes the Global Magnitsky Act in the US, as well as human rights sanctions in Canada and the EU. The UN's collection of data and public naming and shaming can provide an important source for other actors, and coordinated action against repeat offenders can aid effectiveness.
2. Raise awareness of and expand the capacity of existing inboxes and phone lines for activists and citizens to share information that could lead to sanctions. Many questions and submissions to these inboxes are about delistings, while civil society actors and other informants do not systematically consult them. For this reason, a more active approach in communicating with relevant local actors is needed.
3. As part of the regular revision process, Member States with existing National Action Plans on the WPS agenda should include the imposition of targeted sanctions on individuals with leadership and command responsibility who are listed in the Secretary-General's report on sexual violence for consecutive years. By adding such language, sanctions would constitute a credible threat to repeat perpetrators of conflict-related sexual violence, could be used consistently, and would not need to be produced ad hoc.



Myanmar/Burma: Little hope for Rohingya IDPs. / Photo by: Mathias Eick, EU/ECHO, Rakhine State, Myanmar/Burma

4. Strengthen coordination among Member States to better integrate sanctions into a larger strategy for accountability for conflict-related sexual violence. A multilateral approach to sanctions will increase effectiveness and help to address impunity. Sanctions alone cannot stop conflict-related sexual violence, nor can they be used as a punitive measure to replace domestic and international legal accountability mechanisms. When utilized as a strategic tool as part of a larger and coordinated effort, however, sanctions can help to coerce and constrain behavior as well as signal a global commitment to addressing conflict-related sexual violence.

For the UN

1. Systematically incorporate conflict-related sexual violence as a stand-alone criterion when adopting new sanctions regimes. When a UN report such as by an independent fact-finding mission or Special Rapporteur presents evidence of conflict-related sexual violence as part of a genocide, a crime against human-

ity, and/or war crimes, the UN should automatically impose sanctions.

2. Adopt a thematic sanction regime for conflict-related sexual violence that is triggered when the UN Secretary-General report on sexual violence in armed conflict lists an individual or entity for consecutive years. Existing publications are underutilized for this purpose, and coordinated efforts within the UN will help to streamline action to target perpetrators of conflict-related sexual violence.

3. Strengthen monitoring and due process mechanisms across all sanctions regimes to ensure that the human rights of the accused are protected as well as to protect the legitimacy of UN sanctions. This includes an expansion of the Ombudsperson to all sanctions regimes, including those implemented in response to conflict-related sexual violence. The Office of the Ombudsperson should also be improved, beginning with increased institutional independence and a permanent mandate.¹³⁵

Endnotes

¹ This report refers to the country as “Myanmar” as many international organizations do, although the US still refers to the nation as “Burma.”

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GIWPS Georgetown Institute for
Women, Peace and Security

1412 36th Street, N.W.,
Washington D.C. 20057

giwps.georgetown.edu