

UN REPORT ON MYANMAR REVEALS THE GENOCIDAL INTENT AGAINST ROHINGYA MUSLIMS - DAILY SABAH - 03.10.2018

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In 2017, the United Nations Human Rights Council adopted a resolution on the human rights situation in Myanmar and established an independent international fact-finding mission. The said mission was tasked with determining the facts and circumstances of the human rights violations and abuse by military and security forces of Myanmar particularly in the countrys Rakhine state against the Rohingya people. Human rights violations are listed as including, but not limited to: arbitrary detention; torture and inhuman treatment; rape and other forms of sexual violence; extrajudicial, summary or arbitrary killings; enforced disappearances; forced displacement and unlawful destruction of property. It is mentioned in the resolution that the fact-finding mission was established with a view of ensuring full accountability for perpetrators of the violations and bringing justice for victims. The President of the Council appointed Marzuki Darusman (Indonesia) as chairperson and Radhika Coomaraswamy (Sri Lanka) and Christopher Sidoti (Australia) as members.

The said mission presented its 20-page fact-finding report to the UN Human Rights Commission on 27 August 2018. According to the paragraph 14 of the report, The Mission strictly adhered to the principles of independence, impartiality and objectivity. It sought consent from sources on the use of information, ensuring confidentiality as appropriate. Specific attention was paid to the protection of victims and witnesses, considering their well-founded fear of reprisals. The Mission assessed the facts in light of international human rights law, international humanitarian law and international criminal law, as

applicable in Myanmar.

The fact-finding Mission also released the full 440-page account of the findings of its 15-month examination of the situation in three states in Myanmar (Rakhine, Shan, and Kachin) on 18 September 2018. According to UN Human Rights Office of the High Commissioner statement of 18 September 2018, the 440-page account makes dozens of recommendations, including to the UN, the international community, and the Government of Myanmar. The account states that the Fact-Finding Mission calls for the investigation and prosecution of Myanmars Commander-in-Chief, Senior General Min Aung Hlaing, and his top military leaders for genocide, crimes against humanity and war crimes. It is also critically important to note that the 20-page report as well as the 440-page account of the findings refer to the existence of a genocidal intent against the Rohingya in Myanmar.

In this context, from my perspective, the 20-page report remarkably explains the legal framework of genocidal in its paragraphs from 84 to 87 and states the following regarding genocide within the context of Myanmar:

Genocide occurs when a person commits a prohibited act with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such. The Rohingya are a protected group under this definition. Their treatment by the Myanmar security forces, acting in concert with certain civilians, includes conduct which amounts to four of the five defined prohibited acts; (a) killing, (b) causing serious bodily or mental harm, (c) inflicting conditions of life calculated to bring about the physical destruction of the group in whole or in part, and (d) imposing measures intending to prevent births. (Paragraph 84)

The said report refers to the critical element of the crime as genocidal intent (Paragraph 85) and in Paragraph 87 states clearly that The Mission concluded, given these considerations on the inference of genocidal intent, that there is sufficient information to warrant the investigation and prosecution of senior officials in the Tatmadaw (Myanmar military) chain of command, so that a competent court can determine their liability for genocide in relation to the situation in Rakhine State.

In the Main Conclusions and Recommendations section of the Report, the Fact-Finding Mission draws attention to the following priority areas for action:

- The international community, through the United Nations, should use all diplomatic, humanitarian and other peaceful means to assist Myanmar in meeting its responsibility to protect its people from genocide, crimes against humanity and war crimes. It should take collective action in accordance with the United Nations Charter, as necessary (Paragraph 103 a)
- The Security Council should ensure accountability for crimes under international law committed in Myanmar, preferably by referring the situation to the International Criminal Court or alternatively by creating an ad hoc international criminal tribunal. Further, the Security Council should adopt targeted individual sanctions, including travel bans and asset freezes, against those who appear most responsible for serious crimes under international law. It should also impose an arms embargo on Myanmar. (Paragraph 103 b)

The 400-page account of the finding of the Mission sets out in extensive detail its findings on the extreme violence perpetrated against the Rohingya in Rakhine State. It documents in unsparing detail how the Tatmadaw (Myanmar military) took the lead in killing thousands of Rohingya civilians, as well as forced disappearances, mass gang rape and the burning of hundreds of villages. The report reveals a pattern of rape and other forms of sexual violence committed on a shocking scale. Hundreds, possibly thousands, of Rohingya women and girls were brutally raped, including in public mass gang rapes. Many victims were then killed or mutilated. This represents a particularly serious pattern of orchestrated and condoned sexual violence. The report concludes that rape and sexual violence are part of a deliberate strategy to intimidate, terrorize or punish a civilian population, and are used as a tactic of war. According to the above-mentioned UN Human Rights Office of the High Commissioner statement of 18 September 2018, Radhika Coomaraswamy of the Fact-Finding Mission stressed that The horrors inflicted on Rohingya men, women and children during the August 2017 operations, including their indiscriminate killing, rise to the level of both war crimes and crimes against humanity. She also underlined that The crimes themselves, and the manner in which they were perpetrated, were found to be similar in nature, gravity and scope to those that have allowed for genocidal intent to be established in other contexts.

The fact-finding report on Myanmar brings to the fore once again the importance and relevance of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (1948 Genocide Convention). As per the UN Treaty Collection registration, Myanmar signed the Genocide Convention on 30 December 1949 and acceded to the Convention on 14 March 1956. It should be mentioned that according to the UN treaty registration, Myanmar declared reservations regarding Article III (concerning the punishable acts including genocide) and Article VI (concerning the trial of persons charged with genocide) of the Convention.

As it was mentioned in a Center for Eurasian Studies (AVİM) analysis of last year published on the occasion of the 9 December International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of this Crime, the adoption of the said Convention came immediately after the horrific Holocaust and the Second World War. It was stated and elaborated in the said AVİM analysis that the Convention was

originally signed by 41 state parties. Currently, 149 states are parties to the Convention. According to its Article XIII, the Convention is deemed to come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession to the UN Secretary-General. The Convention took force on 12 January 1951. Turkey is among the pioneering twenty countries that deposited the notification of ratification or accession to the Convention and secured its official entry into force.

The Convention was ratified by Turkey on 23 March 1950 by the Law No: 5630 and the said law was published in the Official Gazette No: 7469 on 29 March 1950. Unlike number of other state parties, Turkey did not declare any reservation to the Genocide Convention and since then in number of occasions among the pioneer UN member states for the combat against the crime of genocide. Turkeys support to the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda are examples in this respect.

As we underlined in the latest Center for Eurasian Studies (AVİM) commentary titled UN fact-finding mission report confirm the importance of the Genocide Convention, in order to eliminate the odious crime of genocide, the international community should continue to work on the solid legal basis of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. At the same time, the international community should avoid all efforts to water down the authority of the said Convention by introducing cases not covered by or not congruent with the letter and spirit of the Convention.

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**Photo: Daily Sabah

https://www.dailysabah.com/op-ed/2018/10/03/un-report-on-myanmar-reveals-the-genocidal-intent-against-rohingya-muslims

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