

The UN Fact-Finding Mission's Mischievous Use of Historical Sources

Network Myanmar Op-Ed: 1 March 2020, revised 17 January 2022

Derek Tonkin ¹

Abstract

The detailed 2018 Report of the Fact-Finding Mission on Myanmar contains several errors of historical fact. Equally misleading are interpretations in the Mission's Report which are clearly prejudiced in favour of narratives hostile to the Myanmar Government. In presenting certain events, the Report also ignores materials which invite a different interpretation. To what extent these errors of omission and commission can be attributed personally to the Members of the Mission themselves is not clear, but these errors seem at the very least to reflect on their part a lack of intellectual rigour and curiosity, an inclination to gullibility and a readiness to put the worst possible interpretation on events. I analyse eight examples of the Report's hubristic failings in this context.

[In my Op-Ed of 7 December 2019](#) I sought to show how the detailed Report of the Independent International UN Fact-Finding Mission on Myanmar of 17 September 2018 had failed to demonstrate the historical objectivity and rigorous intellectual integrity which we all expect from an "independent" Mission appointed by the Human Rights Council to establish the facts about the recent troubles in Rakhine State.

In this further Op-Ed I shall concentrate on errors of fact. I shall also seek to show how the Mission Report not only misinterpreted important events but presented dubious if not spurious evidence in support of its presentation. A main culprit could be the Mission's reliance on biased materials and deliberate disinformation submitted to the Mission. But their own prejudices, gullibility and ignorance could also be major factors. I make no comment however on the credibility of the many hundreds of individual cases of undoubted crimes against humanity presented in the Report which have been passed on to the Independent Investigative Mission for Myanmar.

Misrepresentation of U Thein Sein's Meeting with António Guterres in July 2012

My first concern is with the gratuitous insult to a former Head of State U Thein Sein in Paragraphs 712 and 1424 of the Mission Report. They read:

¹ Derek Tonkin is a retired British diplomat. His final post 1986-89 was Ambassador to Thailand.

“712. On 11 July 2012, President Thein Sein held a meeting in Naypyidaw with Mr. Antonio Guterres, then United Nations High Commissioner for Refugees. During this meeting, the President referred to ‘illegal migrants’ who ‘sneaked into’ Myanmar and ‘later took the name Rohingya’. He stated that he could not take responsibility for them and that they should either be sent to IDP camps and be supported by UNHCR, or be sent to a third country.¹⁵³⁰ A depiction of this nature by Myanmar’s highest official further stigmatised the Rohingya in an already tense climate.”

¹⁵³⁰ V-243

This alleged reference to illegal immigrants sneaking into Myanmar is repeated in Paragraph 1424 of the Mission Report in a slightly different version:

“1424. Statements have been made by some of the most authoritative figures in Myanmar society. In July 2012, then President Thein Sein publicly stated, “the last resort to this issue is to hand in the Rohingya who sneaked in to UNHCR to stay in the refugee camps”

The facts are that on 11 July 2012 President Thein Sein of Myanmar discussed in Nay Pyi Taw with the then UN High Commissioner for Refugees (UNHCR) António Guterres, who is currently UN Secretary-General, pressing problems in Kayin (Karen), Kachin and Rakhine States. Much of their time was devoted to the troubles in Rakhine State.

The published official Burmese statement on the Meeting

In a statement (the text in Burmese and an unofficial translation into English may be found at Annex A of this article) issued on 12 July 2012², the President’s Office recorded that U Thein Sein had explained to the UNHCR the historical background to the arrival in Rakhine State of settlers from Bengal during British rule. He said that some had decided to stay because it suited them to do so, and that according to Myanmar law their grandchildren, the “Third Generation”, were entitled to citizenship. Today, there were those in Rakhine State who were descendants of these British-era migrants. But there were others who were illegal migrants who had arrived after independence in 1948. These new arrivals called themselves “Rohingya”. Myanmar did not recognise them as a national race. Their presence threatened peace and stability. He would like to put these illegal migrants in camps and to ask for the UNHCR’s help in resettling them overseas.

On Page 182 of his latest book, “The Hidden History of Modern Burma”, the writer and historian Thant Myint-U has provided his own idiomatic translation:

² <https://web.archive.org/web/20120715042113/http://www.president-office.gov.mm:80/briefing-room/daily-news/news1061> . The statement in the Burmese language is also reproduced at Annex A with unofficial translation.

“During the colonial period, many Bengalis came to Arakan to work. A portion chose to stay. Under Burmese laws, anyone who is a third-generation descendant of these immigrants is entitled to Burmese citizenship. But there are also illegal immigrants who have come since colonial times and who are using the name ‘Rohingya’. Their presence threatens stability. We cannot take responsibility for them. The UN should place them in refugee camps until they can be taken to a third country.”

Thant Myint-U’s translation is totally consistent with the original text which was published in the Burmese language only.

Mr Guterres was sympathetic to Myanmar’s difficulties, but explained at a press conference in Yangon on 12 July 2012 that, as he had told the President, his responsibility as UNHCR was to seek to resolve problems concerned with refugees, not with illegal migrants. According to the ‘Myanmar Times’ of 16 July 2012 ³ Mr Guterres said he was trying to explore other possible ways to resolve the crisis.

“We have discussed different actions in applying [the] nationality law and in attributing nationality to the people who are entitled to have nationality according to [the] nationality law and a certain number of other measures and it is in this context that I believe the cooperation between the UNHCR and Myanmar will be very positive.”

He also noted that:

“For the government of Myanmar, this population is designated as the Muslim community or the Bengali Muslim community of north Rakhine State. The government of Myanmar doesn’t use the word Rohingya, which is a word that is used by others ... internationally it is a common word. But I think it is important to say that that is not the designation that the government of Myanmar uses for the population.”

Disingenuous Nature of the Mission Report of the Meeting

The Mission Report account is disingenuous for several reasons. While it is true that the President referred to “illegal migrants”, he made it clear that he was referring only to illegal migrants who had entered Arakan **after independence** in 1948. The average reader of the Report might well conclude however that, through the omission of any reference to legal Bengali settlers during British rule entitled by statutory right to Burmese citizenship ⁴, the President was referring to all those Arakan Muslims who self-identify as Rohingya. Such a

³ <https://www.mmmtimes.com/national-news/yangon/395-unhcr-seeks-true-community-reconciliation-in-rakhine-state.html>

⁴ Provided for in Article 4(2) of the [1948 Union of Burma Citizenship Act](#) and in the provisions for “associate citizenship” in the [1982 Citizenship Law](#).

characterisation was neither made nor intended by the President. The allegation that the President had “further stigmatised the Rohingya in an already tense situation” is not fair comment.

The conclusion to which I am drawn is that paragraphs 712 and 1424 of the Mission Report denigrated the President without good reason. I do not know whether these paragraphs were actually drafted by one of the three appointees to the Mission (Marzuki Darusman - chair; Radhika Coomaraswamy and Christopher Sidoti – members), but it was they who approved the Report, even if the actual drafting was left to advisers and UN permanent staff.

The Report generally has been characterised as a campaigning document by Professor William Schabas, leading Counsel for Myanmar, who noted in the ICJ court on 11 December 2019:

“With respect, it [the UN Fact-Finding Mission] is campaigning for a case rather than assessing a situation in an objective and impartial manner, and it is indifferent as to factors that tend to prove the contrary.”⁵

The rather uncouth and decidedly un-presidential phrase attributed to the President - “sneaked into” Myanmar - is nowhere to be found in the presidential statement itself, nor in any media reports at the time of what the President reportedly said. There was only one presidential statement and no subsequent clarification or expansion. The original Burmese text is not in dispute and has been available online ever since it was issued, either on the President’s Office website during his tenure of office (though there were sustained periods when the website was offline because it had been hacked) or at web.archive.com (the Wayback Machine) where it was first “captured” on 15 July 2012 and again on 14 August 2012, and has been available to the general public ever since.

The last time I accessed the document on the presidential website was on 15 February 2015. ⁶ Thein Sein stepped down as President on 30 March 2016. Thant Myint-U believes, as do I, that the President’s remarks “were later taken down from his web-page precisely because he had gone further in suggesting citizenship for Muslims in Arakan than any government leader had before. It was a potential opening for the UN to work with the new government on this now explosive issue. But it was not followed up.” It is true that the news item disappeared soon after mid-February 2015 and was not available on the presidential website after Thein Sein had stepped down, although several other items from the Thein Sein Presidency remained accessible until they were (all) eventually removed as the new

⁵ <https://www.icj-cij.org/files/case-related/178/178-20191211-ORA-01-00-BI.pdf> pp 34-35.

⁶ The evidence is at <http://www.networkmyanmar.org/ESW/Files/Thein-Sein-Guterres.pdf>

Presidency weeded all content relating to the old presidency. This is consistent with normal international practice e.g. in the United States, where the websites of former presidencies are archived, but remain publicly available. In the case of Myanmar, the public archive has been the Wayback Machine.

Lost Translation more than Lost in Translation

This is not to say that there are no “sneaks” around. The document of comment from Rakhine personalities identified at Footnote No. 12 has no fewer than 13 references to “sneaking”, 7 to “sneaked” and 2 to “sneak”. Related documents have the odd “snuck” here and there. But the prevalence of “sneaks” among Buddhist Rakhine personalities is no good reason to attribute them to the President personally. The explanation might be found in the document referenced in the Report at Footnote № 5130: “V-243” which we may assume contains the source of the words quoted.

I asked the Office of the High Commissioner for Human Rights (OHCHR) in Geneva in December 2019 whether I might have a sight of this document. They are aware that I do not think the Report’s presentation on this issue is reliable as there is already on record a definitive public statement from the presidential office. But it is not possible to reach any conclusion on this matter as OHCHR have declined to provide a copy of this document on the grounds of confidentiality.⁷

The authors of the Mission Report might claim that there was some confusion at the time about what President Thein Sein had actually said, as there was no official translation. It should also be noted that even the Burmese original of the presidential statement did not appear in such State dailies as Myanmar Alinn (“Light of Myanmar”) and Kyemon (“The Mirror”), as can be checked with the Online Burma Library archive of these publications for the whole of July 2012. Unfortunately, international media reported that Thein Sein “had told Guterres that the UN should intern all Rohingya and then ship them overseas”⁸ Here are two samples from the UK press:

“President Thein Sein, who has been internationally lauded for spearheading Burma’s reform, on Wednesday unsuccessfully requested UN help in resettling abroad nearly one million Rohingya. Critics have likened it to an attempt at mass deportation.” Francis Wade: The Guardian, 13 July 2012⁹

⁷ “The archives of the FFM being confidential, I regret I am not in position to discuss the nature of any of its reports’ non-public annexes.” Extract email from Senior Policy Legal Adviser Paul Oertly 16 April 2020.

⁸ Thant Myint-U “The Hidden History of Burma” Page 182.

⁹ <https://www.theguardian.com/world/2012/jul/13/burma-humanitarian-crisis-rohingya-arakan>

“In their talks, President Thein Sein also asked Mr Guterres for UN help to resettle up to 1m Muslim Rohingya either in refugee camps or resettlement in a third country.” Gwen Robinson: Financial Times, 15 July 2012 ¹⁰

Those experienced and normally reliable Burma commentators Francis Wade and Gwen Robinson had simply got it wrong, like practically everyone else (including I confess myself – see later). The President had not asked the UNHCR to resettle up to one million Rohingyas, but only those who were post-1948 illegal migrants.

As Thant Myint-U explains in his latest book:

“This [the President’s remarks] wasn’t a statement of universal brotherhood. But neither was it a call to expel all Muslims. Instead, the President was confirming that Muslims were entitled to citizenship, except for those who had illegally entered the country since 1948. In private, Burmese ministers admitted that, at most, some 20 per cent were illegal immigrants.” ¹¹

There were however three outlets which got it (generally) right. Radio Free Asia (RFA) in their Burmese-language Service, translated into English, highlighted on 15 July 2012 ¹² the essence of the presidential statement under a sub-headline “Distinctions”. This was despite a seriously misleading headline: “Call to put Rohingya in Refugee Camps”. After this basic error, RFA got it more or less right:

“Distinctions

“In his statement, Thein Sein outlined the legal distinction between those who came to Burma before the country’s independence in 1948 - often called ‘Bengalis’ - and those who came after.

“In Rakhine state now, there are two distinct generation groups. The first group is those born from the pre-1948 Bengalis. Another generation group, under the name Rohingya, came to Burma later.”

“He said those who were brought over to Burma during British rule between 1824 and 1948 were welcome in the country.

“ ‘Before 1948, the British brought Bengalis to work on the farms, and since there were ample opportunities to make a living here compared to where they came from, they

¹⁰ <https://www.ft.com/content/1615ef40-ce70-11e1-9fa7-00144feabdc0>

¹¹ At <http://www.networkmyanmar.org/Illegals.html> there is a compendium of statements about illegal immigration from various sources since 1947.

¹² <https://www.rfa.org/english/news/rohingya-07122012185242.html>

didn't leave,' he said.

“ ‘According to our laws, those descended from [the Bengalis] who came to Burma before 1948, the “Third Generation”, can be considered Burmese citizens,’ he said.

“He added that current situation involving the Rohingyas living in Rakhine illegally was ‘threatening the country’s stability’ .”

The second source, which was not available until recently, was a leaked submission dated 15 October 2013 to the Lower House with several linked documents, following discussions among Rakhine representatives and personalities, endorsed by the Speaker of the Assembly, Thura Shwe Mann. One of the recommendations (“c” on page 23) ¹³ showed that the presidential distinction between legal Bengali Muslim residents and illegal migrants had been fully understood in Rakhine State. The recommendation reads (uncorrected translation):

“(c) Following the President’s comment when the President met with UNHCR on 11th Sept.2012 at Presidential house, scrutinize strictly illegal Bengalis by 1982 citizenship law. Provide the rights by legal way to the people who are legal and keep the people who are illegal in the refugee camps as international procedure. In this way, the riots happening now will be ceased in short period and the sovereignty of the Union will be secured.”

Provided the scrutiny was fair and impartial, it is difficult to fault this approach in terms of logic. The suspicion however must be that the Myanmar authorities would seek to declare “illegal migrants” anyone who did not have the documentation providing evidence of family roots in Arakan prior to independence in 1948. Very few ever had or today have such documentation, though the archives of the authorities in Rakhine State hold much of the relevant details from compulsory annual house registrations and the national censuses of 1953, 1973, 1983 and 2014, if only these detailed archives were to be made available to those needing to establish their ancestry.

The third source was the privately-owned Burmese-language “Weekly Eleven” of 12 July 2012. Nick Cheesman referred to this source in his article published in March 2017 in the Journal of Contemporary Asia. ¹⁴ He wrote:

“In mid-2012 then-President U Thein Sein told the visiting head of the United Nations

¹³ <http://www.networkmyanmar.org/ESW/Files/doc-8-translation-of-the-documents-about-rakhine.pdf>

¹⁴ <http://www.networkmyanmar.org/ESW/Files/Nick-Cheesman.pdf>

(UN) High Commission for Refugees that with regard to people who had fled from recent attacks into Bangladesh his government would ‘take responsibility for our taingyintha, but under no circumstances would accept illegally entering non-taingyintha “Rohingya” ‘.”

I do not have easy access to a copy of this publication, but I think it more than likely, to judge from past practice, that the journal stuck closely to the report from the presidential office. The words “illegally entering” quoted by Cheesman correctly reflect the latter part of the presidential statement.

The UN Fact-Finding Mission Enters the Fray

It was inevitable that the UN Fact-Finding Mission would light on this particular episode. The F-FM team had indeed approached me at an early stage to ask whether I might have any documents relevant to their enquiries. I made a short submission to them,¹⁵ based on four original documents which I felt I should draw to the attention of the Mission. There is no mention of two of these documents in the Mission Report (Francis Buchanan’s essay on languages published in 1799¹⁶ and an address by the Jamiat-ul-Ulema [Council of Scholars] North Arakan of 1948¹⁷); the third was General Ne Win’s Speech of 8 October 1982 on the 1982 Citizenship Law¹⁸ to which the Mission Report indeed refers; and the fourth document was the presidential statement of 12 July 2012¹⁹, in which context I provided a copy of the translation into English at Annex A made by an experienced translator in Yangon.

I hoped to ensure that the Mission did not make the same mistake that I too had made earlier, for in an article in the Democratic Voice of Burma published on 17 August 2014²⁰ I had written, to my eternal shame:

“So did President Thein Sein [refer like General Ne Win to the principle of citizenship for the third generation] when discussing the Rohingya issue with UNHCR Antonio Guterres in July wish to resolve the problem by resettling the entire ‘Rohingya’ population.”

¹⁵ <http://www.networkmyanmar.org/ESW/Files/UNFact-Finding-Mission-Submission.pdf>

¹⁶ <http://www.networkmyanmar.org/ESW/Files/Buchanan-1799-London.pdf>

¹⁷ <http://www.networkmyanmar.org/ESW/Files/J-U-25-October-1948.pdf>

¹⁸ https://www.burmalibrary.org/docs6/Ne_Win's_speech_Oct-1982-Citizenship_Law.pdf

¹⁹ <http://www.networkmyanmar.org/ESW/Files/Thein-Sein-Guterres.pdf>

²⁰ <http://english.dvb.no/analysis/the-r-word-and-its-ramifications-burma-myanmar-rohingya/43271>

The Mission chose however to support a hostile narrative and completely ignore the official record of Thein Sein's meeting with António Guterres which remains the only authoritative record.

Further Examples of Bias and Fabrication

This unjustified denigration of the former President of Myanmar is not an isolated instance of the anti-regime bias which permeates the Mission Report. Let me take you on a voyage of discovery through some of the more dubious and bizarre attempts in the Report to rewrite history.

A. Our first port of call is paragraph 84, which concludes:

“Before Burma gained independence, General Aung San and a number of ethnic leaders agreed, at the Panglong Conference in 1947, on a constitutional framework that recognised the distinctive identities of minorities and granted them a high degree of autonomy. **The Panglong Agreement has never been implemented.**”

For those of you who have never read [the Agreement](#), now is your opportunity. It is only some 500 words long, and has a brief preamble and nine short clauses. The first four clauses concerned the expansion, at Aung San's recommendation during his talks in London in January 1947, of the Governor's Executive Council, which was effectively the Cabinet-in-waiting run by Aung San himself. Clause 5 promised full autonomy in internal administration, Clause 6 supported the creation of Kachin State. Clause 7 guaranteed democratic rights and privileges for citizens of the Frontier Areas. Clauses 8 and 9 concerned financial arrangements for the Shans, Kachins and Chins.

The 13 short operative sentences which comprise this accord hardly merit the description “constitutional framework”. In his report of 22 February 1947 to the Dominions Office on the Agreement, the Governor Sir Hubert Rance observed in paragraph 6:

“6. It will be noted that the Panglong Agreement although referring to Frontier Areas apparently as a whole, only mentions the Shans, Kachins and Chins: Representatives from following States and Districts were not present at Panglong: Naga Hills Districts, Southern Chin Hills subdivision of Kanpetlet, Wa States and Kokang, the Salween District, Arakan Hill Tracts, and Karenni States. Future of peoples of these areas will have to be ascertained separately ²¹ and it cannot be taken for granted that they will accept the Panglong Agreement. The Karens in particular will I think be difficult and possibly will not agree to their interests being looked after by a Shan Counsellor and Kachin and Chin deputy counsellor. I believe

²¹ The Frontier Areas Committee of Enquiry was appointed to ascertain the views of those not represented in Panglong and completed its task within two months, reporting to London and Rangoon on 27 April 1947.

that the Karens in Ministerial Burma will take this opportunity of pressing for full authority of separate Karen State to include the Karens of Salween District.”

Though the Mission Report alleges that the Panglong Agreement “has never been implemented”, all the measures recommended came into effect without delay. The preamble expresses the belief “that freedom will be more speedily achieved by the Shans, the Kachins and the Chins by their immediate co-operation with the Interim Burmese Government”. Freedom and independence from the British colonial power were indeed achieved on 4 January 1948. As for the nine clauses of the accord: the Sawbwa (Ruler) of Mongpaw, Sao Hsam Htun,²² was appointed *ex officio* Counsellor on the Executive Council; Sinwa Nawng was elected as Deputy Counsellor by and for the Kachins; and Vum Ko Hau Deputy Counsellor by and for the Chins. All three had attended Panglong, the first two were signatories of the Agreement and the third could not sign as he was still in government service. Kachin State, as well as Karen State, came into effect under the relevant clauses of [the Constitution agreed later in the year](#), the financial and administrative autonomy recommended for the Shans, Kachins and Chins was incorporated in the Constitution, as were the democratic rights and privileges of all citizens in independent Burma. The election of Sao Shwe Thaik, the Sawbwa ²³ of Yawngwhe, as the first President of the Union of Burma personified the successful realisation of the Panglong Agreement - all within a matter of ten months.

When General Ne Win seized power in March 1962, the 1947 Constitution was abolished, and this inevitably included some of the arrangements agreed at Panglong and incorporated in the Constitution. Articles I to IV about appointments to the Executive Council of course lapsed on independence, Kachin State (Article VI) has remained to this day, while equal rights for citizens (Article VII) were nominally restored in Article 147 of [the 1974 Constitution](#). Administrative and financial autonomy (Articles V, VIII and IX) are today under negotiation. [The emphasis in current peace talks however is on realising the Spirit of Panglong](#), not on the renegotiation or restoration of any of the provisions of the original agreement which were generally achieved or have lapsed.

As Daw Aung Suu Kyi put it in her speech at Panglong on 12 February 2020, the 73rd Anniversary of the Agreement:

“Therefore, today, while the Union Government has been making efforts for national reconciliation and peace, the Union Peace Conference-21st Century Panglong conferences

²² Sao Hsam Htun was assassinated along with Aung San and other Cabinet colleagues on 19 July 1947.

²³ Sawbwa is the Burmese version of the Tai Shan “Saopha” which means literally Lord of the Sky”.

have been held, which are the political talks for building the democratic federal union, which has been the dream of all national races. It was named the Union Peace Conference-21st Century Panglong **because the long-desired independence was successfully regained through the united spirit of 20th Century Panglong. This we should recall and reflect, and stand united ever again.** We all should bring along the united spirit of 20th Century Panglong, and hold talks at 21st Century Panglong in relation with the times and circumstances of the present. Then we shall regain, with our collective strengths, the everlasting peace, which is now as important as our life.”

In short, to say that the Agreement “has never been implemented” is not true. The Agreement in any case:

“dealt only with broad issues relating to interim arrangements and then only so far as they concerned Shans, Kachins and Chins. The long term issues remain to be dealt with and in my judgement will be more complicated as they will have to cover Karens, Nagas, Was etc. not covered by the Panglong Agreement.”²⁴

The essence of Panglong was that Aung San, who as late as 5 February 1947 (and so only a week before the accord was signed in Panglong on 12 February 1947) had told the Governor’s Executive Council that the “AFPFL were not repeat not now interested in the Panglong Conference as in their opinion results were a foregone conclusion”²⁵, was in the event able to do a deal with the Sawbwas, the traditional rulers of the Shan States. Everything else was secondary.

The myths of Panglong, overhyped both nationally and internationally, remain to this day. The Report of the UN High Commissioner for Human Rights dated 27 January 2020 on the Situation of Human Rights in Myanmar²⁶ tends to perpetuate these myths, for we read about:

“...the historic 1947 Panglong Agreement, which aimed at establishing a federal union firmly grounded in respect for minority rights and ‘full autonomy in internal administration’. The failure of successive governments to materialize the vision of Panglong has remained a key source of ethnic grievance, and remains the main challenge to the current peace process.”

Assessing the importance of the Panglong Agreement in isolation makes little historical sense. Equally, and arguably even more important was [the Frontier Areas Committee of Inquiry](#) (see Footnote № 20) conducted during March and April 1947 to ascertain the wishes of all those Frontier Areas minorities who had not been signatories to the Panglong

²⁴ Governor of Burma Sir Hubert Rance telegraphing from Taunggyi on 16 February 1947.

²⁵ Telegram 6 February 1947 Governor Rance to Lord Pethick-Lawrence IOR: M/4/2853

²⁶ Advance Unedited Version Document A/HRC/43/18

Agreement. The conclusions of the Report of the Committee of Enquiry ²⁷ include the following less than ringing endorsement of federal status for all Frontier Areas minorities, let alone for all those minorities, notably Rakhine and Mon, who were formerly independent kingdoms in their own right, as well as many Karen, all of whom were part of Ministerial Burma or “Burma Proper” and for whom a separate federal state was at the time not an option.

“The picture that emerges from this welter of evidence is that of a federated Burma, with the federated Shan States and the Kachin Hills as two constituent states and with the Karenni States possibly another, but with Burma proper enlarged by the possible incorporation of the Chin Hills, the probable incorporation of the Salween District and the elimination in respect of many of the Part II Scheduled areas of the political disabilities now suffered by them. These amalgamations should reduce the craziness of the patchwork quilt which the present administration of the Frontier Areas resembles.”

In the event, only the Shan State and Karenni (Kayah) State were to be granted the right of secession ten years after independence under the 1947 Constitution (as subsequently amended). Karen (Kayin) State and Kachin State were specifically excluded.

It only remains for me to recall that, as already noted in [my Op-Ed of 7 December 2019](#), one member of the Fact-Finding Mission, Dr Radhika Coomaraswamy, told an audience in Colombo ²⁸ on 3 May 2018 that Aung San “called the Panglong Conference and negotiated with the ethnic minorities, including the Rohingyas, and created the Union of Burma.” Not only were the Rohingya not represented at Panglong but Aung San had never heard of them; nor too at the time had the Shans, Kachins and Chins; nor anyone else at the Conference, including [the UK Government representative Arthur Bottomley](#); nor indeed in the whole of Burma. The “Rohingyas” were not yet on anyone’s radar screen.

B. Our second port of call is paragraph 85 where we read:

“Notably, under military rule, the concept of “national races” has gradually become the key criterion for membership in the country’s political community, creating a common “other”. **The military regime has constructed eight major ethnic groups (Kachin, Kayah, Karen, Chin, Bamar, Mon, Rakhine and Shan)**, broken down further into 135 “national races”. There is no scientific basis for this division, which contains both gaps and overlaps.”

²⁷ The full Report of the Committee of Enquiry, published by the Government Printing Office in Rangoon, runs to 214 pages.

²⁸ Text at <https://www.lki.lk/publication/dr-radhika-coomaraswamy-on-myanmar-the-rohingya-refugee-crisis-roots-of-conflict-and-possibilities-for-the-future/>

It is not true that it was the military who “constructed eight major ethnic groups”. These eight groups have existed for centuries. On independence they were enshrined in paragraph 3.(1) of the [Union Citizenship Act of 1948](#) promulgated under U Nu’s civilian administration. The (1948) clause reads:

“3. (1) For the purposes of section 11 of the Constitution the expression “any of the indigenous races of Burma” shall mean the Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan race and such racial group as has settled in any of the territories included within the Union as their permanent home from a period anterior to 1823 A. D. (1185 B.E.).”

Clause 3 of the 1982 Union Citizenship Act is very similar:

“3. Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D. are Burma citizens.”

The Mission Report’s strictures on the list of 135 “national races” [first published in a definitive list only in September 1990](#) are widely shared, not least within Myanmar. The list does however derive ultimately from the ethno-linguistic data used during the British administration, but the British classified roughly [the same number of ethnicities mainly according to linguistic affinity](#). In his “[The Tribes of Burma](#)” published in 1919 the colonial administrator Cecil Lewis describes some 162 indigenous “tribal” ethnicities, though he excludes from his list the Shan, Burmese, Arakanese and Mon, historical descendants of four independent kingdoms. There is no mention of “Rohingya” in any spelling, shape or form.

It is no coincidence that the detailed ethnic tabulation of the population at the time of the 2014 Census has yet to be published. [The authorities are aware of the likely controversy](#) and of the extent of criticisms which have already been voiced. The list of 135 is in any case likely to be reviewed before the next Census due some time this decade. [The 2014 Census lists eight “main ethnic groups”](#) and provides codes for every “ethnic group” listed under the main ethnic groups. Foreign ethnic groups are listed by nationality. It is not surprising that the Rohingya did not wish to be listed as “Bangladeshi”.

The allocation of each of the declared 135 national races to one of the eight main ethnic groups is in my view not a justifiable interpretation or lawful implementation of the 1982 Law and 1983 Rules. The Law refers, in addition to the eight ethnic groups listed, to “.....ethnic

groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D.....”. Nick Cheesman has also noted ²⁹:

“Furthermore, paragraph 9 of the [1983 procedures \[Rules\]](#) recognises that apart from the eight national races listed in the law, “many other races and ethnic groups that are taingyintha [national race] remain,” hence the need to make determinations on which groups are taingyintha and which are not.”

For this reason, we might well ask on what authority were the 135 assigned by the military regime which came to power in a coup in September 1988 as sub-groups to the eight ethnic groups, when quite clearly in most cases there is no ethnic or linguistic association. The “main” ethnic group Mon has only one sub-group called Mon. The other seven groups, though they claim to associate a number of sub-groups, also have a sub-group with the same name as the main group. Was this puzzling “straight-jacket” assignment lawful in terms of the 1982 Law and 1983 Regulations? Probably not; I suspect it only reflects the natural inclination of the regime at the time to impose ‘good order and military discipline’ to contain an intractable problem. Only the Courts could decide on the legality of the assignment, but there is little prospect of such a determination in present circumstances.

C. Our third port of call is paragraph 76. We are told:

“76. In February 2008, the Government published a proposed new Constitution and announced that it would be subject to a referendum on 10 May 2008. **The process had begun in 2004 after a national convention was convened** to work on a draft under Prime Minister General Khin Nyunt’s “Roadmap to Democracy”. Daw Aung San Suu Kyi remained under house arrest and **the NLD refused to participate** in the national convention.”

The process of drawing up a new constitution did not start in 2004, but soon after the 1990 Elections. The first phase ran from 1993 to 1996, when it was adjourned not long after Daw Aung San Suu Kyi had withdrawn the NLD delegation from the Constitutional Convention. It did not convene, but reconvened in 2004. General Khin Nyunt made this [clear in his speech of 30 August 2003](#) where he set out a 7-Point Roadmap to complete the drafting of a new constitution based on [104 Principles already presented in 1993](#). Can it really be true that the Mission was so ignorant of Myanmar’s constitutional process since the 1990 Elections?

Most writers are agreed that Suu Kyi sought to negotiate the NLD’s attendance at the reconvened convention. As Peter Popham put it in his book on her life: ³⁰

²⁹ <http://www.networkmyanmar.org/ESW/Files/Nick-Cheesman.pdf>

³⁰ “The Lady and the Peacock” - pages 364-5 by Peter Popham, published by Rider 2011

“According to the defector Aung Lynn Htut, the agreement was finally drafted in May 2004 and envisaged the NLD rejoining the National Convention that it had walked out of in 1996. But when Khin Nyunt presented the agreement to Than Shwe, the latter got cold feet..... ‘ Than Tun had to go back to Aung san Suu Kyi and tell her the deal was off’ an insider said. ‘ Suu Kyi was furious “You all ought to wear htamein!” [the Burmese sarong] she exploded’, using a favourite (sexist) Burmese insult, implying that the negotiators were as ‘untrustworthy as women’.”

D. Our fourth part of call is paragraph 74:

“74. With a view to establishing a multi-party system, the SLORC **briefly allowed** the registration of political parties. Parties registering included the National League for Democracy (NLD), headed by Daw Aung San Suu Kyi, the daughter of Major General Aung San, the Burmese independence leader and founder of the Tatmadaw, who was assassinated in 1947, shortly before independence. Daw Aung San Suu Kyi had come to prominence during the 8888 Uprising. However, in 1989, the authorities placed her under house arrest. In the general election of 27 May 1990, the NLD won 60 per cent of the popular vote and, under the electoral system in place, 80 per cent of parliamentary seats. **The SLORC refused to recognise the result and maintained governmental control**, refusing to allow the legislature to assemble.”

I have seen no evidence that the State Law and Order Restoration Council (SLORC) only “briefly” allowed the registration of political parties. In the event some 235 political parties registered in due course [under the Political Parties Registration Law of 27 September 1988](#) which set no time limit for registration. 93 parties in the end put up candidates for the elections held on 27 May 1990.

The statement that the SLORC “refused to recognise the result” is widely held, but this reflects political correctness, not historical accuracy. There is convincing evidence that the elections held in May 1990 were not to a governing Parliament, but to a Constituent Assembly. Though no specific legislation was ever issued defining the precise purpose of the elections, official speeches made and official press statements released in the months prior to the elections, following the publication of the Election Law on 31 May 1989, left no doubt that it was not the military government's intention to transfer political power to civilian hands immediately after the elections.³¹

[Foreign correspondents covering the elections](#) fully understood that the elections were only the first stage in the constitutional process set out by the SLORC. They reported prior to the elections that the task of the new Assembly was to draft a Constitution and arrange a

³¹ [My updated detailed analysis of the 1990 Elections](#) originally published in ISEAS Contemporary SE Asia 2007

national referendum, and most concluded that there would then need to be a second round of elections based on the new Constitution, if and when approved. Correspondents who covered the elections from within Burma were briefed in this sense by the Election Commission, which is why they reported as they did. The military regime had insisted on Constitution first, then transfer of power to the Government elected under the new Constitution. The NLD disagreed. They insisted on the transfer of power first, then the drafting of a Constitution.

Although not granted a visa to cover the elections, that arch-critic of the military regime Bertil Lintner reported in the Far Eastern Review of 24 May 1990, only three days before the elections: "Diplomats say it might take up to two years to write a new constitution, have it approved by a referendum and then hold fresh elections. Meanwhile, the military will remain in power."

After the elections, the SLORC opened negotiations on this issue and reportedly reached an understanding with the NLD Central Executive Committee about the drafting of a new Constitution. This understanding was however rejected by the NLD rank and file, who demanded the immediate transfer of power. [A paper written in 2008](#) by the then Hong Kong based academic Dr Kyaw Yin Hlaing set out the background. Following the rejection, the NLD insisted that power must be transferred as a first step. Meetings of the Central Executive Committee in September 1990 (No. 5/90) and October 1990 (No. 6/90) continued to demand the convening of the Pyithu Hluttaw (National Assembly) as soon as possible, the transfer of power on the basis of a provisional constitution which they alone had drafted, the subsequent drafting of a new Constitution and the holding of immediate talks. However shortly afterwards in an undertaking given on 27 October 1990 the NLD abandoned their insistence on the transfer of power first and signed up to the regime's plan for a National Convention under SLORC control to draft a new Constitution.

Daw Aung San Suu Kyi (who was detained on 20 July 1989 and remained under house arrest until 10 July 1995) fully understood the position in this sense. In her interview in Rangoon on 1 July 1989 with Dominic Faulder of AsiaWeek, she told him: "Whoever is elected will have to draw up a Constitution that will have to be adopted before the transfer of power. They haven't said how the Constitution could be adopted. It could be through a referendum, but that could take months and months, if not years." ('Freedom from Fear' Chapter 17 Page 225)

Suu Kyi herself has confirmed that she herself [was not in favour of taking part in the 1990 elections](#), reflecting her 1989 expressed conviction that the NLD could not participate in the

elections until the question of the transfer of power was resolved, which it never was. This does not mean that the elections were not a free and fair expression of the will of the people [as repeated General Assembly Resolutions asserted in the 1990s](#). But it is no surprise to any impartial observer why the SLORC refused to hand over power to the National League for Democracy, which won the elections by a landslide. In the circumstances, and with hindsight, a post-election confrontation was inevitable.

The results of the elections were valid from 30 June 1990, when the final results were announced, until 8 March 2010 when it was decreed under Article 91 (b) of the Pyithu Hluttaw (Lower House) Election Law that: "As the Multi-party Democracy General Election held under the law repealed by this Law is no longer consistent with the Constitution, the results of the said election shall be deemed to be invalidated automatically." Khin Aung Myint, the Speaker of both the Upper House and the Union Parliament, acknowledged in an interview in the Yangon Times in October 2011 that: "I recognize the results of 1990 election. I am explaining the details because I recognize the election results. This incident cannot be abolished and I have no intention to abolish." The NLD and Daw Aung San Suu Kyi have taken note of this acknowledgement and have said they are satisfied with this recognition, though Khin Aung Myint expressed no opinion about the purpose of the elections, whether to a Constituent Assembly or to a governing Parliament.

Whatever view we may take about the purpose of the 1990 Elections, the issue remains for many controversial, but the simplistic assertions in the Mission Report do not reflect the historical reality.

E. Our fifth port of call on this voyage is paragraph 696. We read:

“696. The Mission has examined documents, publications, statements, Facebook posts and audio-visual materials that have contributed to shaping public opinion on the Rohingya and Muslims more generally. The analysis demonstrates that a carefully crafted hate campaign has developed a negative perception of Muslims among the broad population in Myanmar. This campaign has been the work of a few key players: nationalistic political parties and politicians, leading monks, academics, prominent individuals and members of the Government. This hate campaign, which continues to the present day, portrays the Rohingya and other Muslims as an existential threat to Myanmar and to Buddhism.¹⁵⁰⁹ In the case of the Rohingya, it has gone a step further. It is accompanied by dehumanising language and the branding of the entire community as “illegal Bengali immigrants”.

While I accept unreservedly the existence of such a hate campaign and readily acknowledge that there are many in Myanmar, especially in Rakhine State, who regard (or say they regard) the Rohingya as “illegal Bengali migrants”, the authors of the Report do not provide a

single quotation by those senior political and military personalities said to have crafted the hate campaign in which they describe, as alleged, “the entire community” of Arakan Muslims as “illegal Bengali migrants”. There is simply nothing on record, no evidence which could be produced in a court of law. On the other hand undue weight is given to an anti-Muslim diatribe, “a book published in the 1980s by an anonymous author”, as well as to anti-Rohingya publication by two known Rakhine extremist published in New York. Their case, with respect, is simply not proven.

F. Our sixth port of call is paragraph 705 and 706. We read:

“705. On 1 June 2012 – three days after the murder of Ma Thida Htwe and two days before the killing of the 10 Muslims in Toungup – Zaw Htay, the spokesperson of the President of Myanmar, posted a statement on his personal Facebook account. He warned about the arrival from abroad of “Rohingya terrorists” from the Rohingya Solidarity Organization (RSO) and stated that the Myanmar troops would “completely destroy them”:

Rohingya terrorists as members of the RSO are crossing the border into Myanmar with weapons. ... Our troops have received the news in advance so they will completely destroy them [the Rohingya]. It can be assumed that the troops are already destroying them [the Rohingya]. We don't want to hear any humanitarian or human rights excuses. We don't want to hear your moral superiority, or so-called peace and loving kindness. (Go and look at Buthidaung, Maungdaw areas in Rakhine State. Our ethnic people are in constant fear in their own land. I feel very bitter about this. This is our country. This is our land.) (I'm talking to you, national parties, MPs, civil societies, who are always opposing the President and the Government.)”

“706. Although this post was later deleted, the impact of a high official equating the Rohingya population with terrorism may have been significant ahead of the 2012 violence, which erupted a week later.”

The source of this Facebook posting is given in Footnote № 1523 as “V-247”. I would need to see the full text to be 100% certain, but my assumption is that the two phrases in square brackets “[the Rohingya]” are interpretative insertions by the authors. Yet in the context in which they appear it is quite obvious that these two phrases are incorrect and that reference should have been made, not to Rohingya generally, but to the RSO, or Rohingya insurgents which the Myanmar authorities have invariably described as Rohingya terrorists and who were alleged to be operating in the border area at that time. A court of law would ask the

authors to explain these inaccurate clarifications. Were they inserted deliberately, or mistakenly?³²

G. Our seventh and final port of call on this voyage is paragraph 718. We read:

“In late February 2014, **an international organization in northern Rakhine State, was ordered to cease operations throughout Myanmar**, shortly after releasing a statement on reported killings in Du Chee Yar Tan, Maungdaw Township. The Presidential spokesperson reportedly said it was “giving Bengalis preferential treatment”. The organization was not permitted to return to Rakhine State until December 2014. ¹⁵⁴¹ **This left many beneficiaries, particularly in the north of Rakhine State, without access to vital, and in some cases life-saving, health services.**

“1541. In January 2014, the United Nations High Commissioner for Human Rights issued a press release calling on the Government to investigate credible reports that more than 40 Rohingya had been killed in Du Chee Yar Tan between 9 and 13 January 2014. The Government strongly denied these allegations.”

Paragraph 718 and Footnote 1541 encapsulate all that is disingenuous and prejudiced in the Mission Report’s attitude to Myanmar.

The report of UNHCHR Navi Pillay about alleged killings on two occasions (9 January 2014 and 13/14 January 2014) in Du Chee Yar Tan village tract in Maungdaw Township [a sub-district of Maungdaw District] was based on evidence mainly provided by an experienced and respected UN official based in Myanmar. The report resulted in immediate protests from the international community, notably the US and UK, **who issued a joint statement**. Inquiries were launched, but very little supporting evidence was found. A **Beijing daily Quangming suggested** that the US and UK “seem to have made a big mistake on this issue”. Western Ambassadors beat a path to Du Chee Yar Chan, a village tract or collection of villages. EU Ambassador Kobia was photographed talking to local residents, but heard, saw and reported nothing to corroborate Navi Pillay’s story. Though the report might have been “credible”, many concluded that it was not true.

An Investigation Commission appointed by the Myanmar Government (with the already noted international scholar Dr Kyaw Yin Hlaing as its Secretary) **issued its own summary report in English** and a much longer report in Burmese which concluded that the reported killings on 9 January 2014 were pure fabrication. There had been no such incident, while the

³² For the most recent definitive official assessment of the extent of “illegality”, see Page 19+ of the Myanmar Institute of Strategic and International Studies background paper [MISIS-Rakhine.pdf \(networkmyanmar.org\)](http://networkmyanmar.org). Of five recorded waves of migration, only the fifth relating to post-independence arrivals is designated “illegal”; a minority. The Institute is under the control of the Ministry of Foreign Affairs.

only person killed some days later was a Police Sergeant. A [Radio Free Asia report of 11 March 2014](#) highlighted the complexity of the affair.

The UN came under considerable pressure to explain what had really happened, but never did so. Their lack of transparency is regrettable. A UN sponsored Muslim conciliator was invited to stay in the village for several days, to gain the confidence of the villagers and to report on what he believed had happened. A full report was sent to the UN in New York. The conciliator confirmed that in his view there had indeed been a serious incident which started on or about 13 January 2014, during which a number of villagers at Du Chee Yar Tan had been assaulted during a routine military patrol, including an incident of rape. All this had so infuriated the villagers that the patrol had been attacked and a Police Sergeant killed. His body has never been recovered.³³

A number of villagers who had been wounded during the police action sought medical treatment from the local Médecins sans Frontières clinic. This proved to be the “last straw”, [to quote Presidential Spokesman Ye Htut](#). MSF had stated publicly that they had treated some 22 victims of the police action. It later emerged that they had been asked to provide a list of those injured, so that they could be interviewed about the murder of the Police Sergeant. MSF reportedly declined, as we say in the UK, “to help the police with their inquiries”. The reason they gave was “patient confidentiality”. MSF operations in Rakhine State were suspended for several months.

The Mission Report’s allegation that “an international organization in northern Rakhine State, was ordered to cease operations throughout Myanmar”, presumably referring to MSF, is not true. The Ministry of Health issued [a denial published on 2 March 2004](#). It follows that beneficiaries were not deprived, as the Mission Report alleges, of vital MSF support anywhere outside Rakhine State, while within Rakhine State [the Ministry of Health claimed they could fill the gap](#) left by MSF’s departure, which proved to be only temporary. The cataclysmic deprivation of health services to the population in Rakhine State and elsewhere alleged in the Mission Report did not happen.

Much has been published about the Du Chee Yar Tan incident, some of it quite spurious. On the [Wayback Machine Network Myanmar website for events in 2014](#) there is a wealth of detailed reporting. The UN has at no time issued any clarification. The affair has been swept under the carpet. It is all too embarrassing for the UN and particular personalities.

³³ The source of my information is a conversation with a senior UN official in 2014.

The best commentary on this sorry affair was written by David Mathieson in his Tea Circle article of 2 April 2018 on [“Burma’s Lost Rapport on Rights Protection”](#).

“Evidence of the Du Chee Yar Tan massacre has never been conclusively produced, with many journalists and NGO researchers who first reported the allegations now privately claiming it was misreported, and stating the UN OHCHR report contained numerous inaccuracies. Former Burmese navy admiral, presidential advisor, and now member of parliament, U Soe Thane wrote in his recent memoirs, *Myanmar’s Transformation and U Thein Sein: A Insider’s Account*, that “a crime of killing of Muslim people in Duchira-Tan (Du Chee Yar Tan) Village in Arakan State was meticulously faked up and put out on the international front. We had to defend our innocence with the clear cut evidence.” The alleged massacre has never been fully accounted for, nor have the likely mistakes made by the media, rights groups and the UN been acknowledged or retracted.”

As Thant Myint-U put it, with reference to Du Chee Yar Tan, in his already quoted latest book:

“The suspicion grew on Burmese social media, as well as in Naypyitaw, that Rohingya leaders and their supporters abroad were becoming adept at manufacturing ‘fake news’.”

Concluding Thoughts

These examples of historical bias and misinformation in the Mission Report are the responsibility of the Mission team, even if they personally did not draft the passages in question. They suggest strongly that they were gullible in assessing information presented to them, were lacking in intellectual curiosity about events, took a simplistic and superficial view of situations which were outside their realm of knowledge and were only too willing to accept, and if necessary inject an anti-regime interpretation. The extent to which I have shown that their “facts” were either not true or fabricated should give us all cause for concern.

As the Mission Report is so frequently adduced as the main source of information in General Assembly and UN Human Right Council reports, it might be desirable for bodies like the International Court of Justice to probe the motives of the authors of the Mission Report about their use and presentation of inaccurate information. They might for example ask to see a copy of the document referenced in the Report at Footnote № 5130: “V-243” which could explain why former President Thein Sein was so deliberately misreported.

For its part, the UN General Assembly in its [Resolution of 27 December 2019](#) both welcomed “the work of the independent international fact-finding mission on Myanmar, including its final report and all its other reports” and at the same expressed deep concern

“over the virulent and rapid spread of false news, hate speech and inflammatory rhetoric, in particular through social media, tolerated by the authorities of Myanmar”. There were no strictures, however, on the Mission’s responsibility for the diffusion of fake history, ill-informed commentary and inflammatory presentation revealed in this and my previous articles. At the same time, the General Assembly are seemingly content to make their own, now ritual allegations, reiterating their grave concern in the same Resolution that:

“in spite of the fact that Rohingya Muslims lived in Myanmar for generations prior to the independence of Myanmar, **they were made stateless by the enactment of the 1982 Citizenship Law** and were eventually disenfranchised, in 2015, from the electoral process/”

The alleged effect of the 1982 Citizenship Law is a matter of considerable controversy. As Thant Myint-U puts in on Page 37 of his latest Book:

“In 1982, a new citizenship law was enacted. There is a common perception that the Rohingya were stripped of their citizenship by this law. That’s not true.....”

and proceeds to explain in detail why. Not even the Mission Report goes that far. Paragraphs 478 and 479 read:

“478. Despite this legal framework being discriminatory in intent and purpose, Rohingya are not necessarily fully excluded from citizenship. First, the Constitution and the law provide that whoever was a citizen at its entry into force would remain a citizen. Second, while it is disputed whether the Rohingya are a “national race” and automatically entitled to full citizenship on that ground, many Rohingya would have at least qualified for “associate” or “naturalised” citizenship. Their third generation offspring would have been full citizens by now. Third, the law also explicitly authorizes the State to confer any of the three categories of citizenship on any person “in the interests of the State”.

“479. In reality, however, the law has been implemented in a discriminatory and arbitrary manner.....”

The key phrase here, to which the Mission Report should in my view have drawn particular attention but did not, is that “third generation offspring would have been full citizens by now”. What this in fact means is that, were it not for the chicanery, inertia and downright obstructionism of local Rakhine officials and central government, by 2020 most Rohingya would be full citizens already, since the initial qualification for both associate and naturalised citizenship goes back to 1948 and some applications for citizenship (in some cases only confirmation of a statutory right to citizenship) have now been outstanding since the 1950s. As General Ne Win put it in his speech of 8 October 1982:

“Although there are three types of citizens at present - *eh-naing-ngan-tha* [associate], *naingngan-tha-pyu-khwint-ya-thu* [naturalised] and pure [by birth] citizens, the grand children of *eh-naingngan-tha* and *naing-ngan-tha-pyu-khwintya-thu* will become full citizens. Then there will be only one type of citizen.”

Given the significance of this statement of intent by General Ne Win, I attach at Annex B the full verbatim extract of the section of his speech where he repeatedly made clear the transitional nature of the new citizenship law. This was also overlooked in the August 2017 Final Report of the Kofi Annan Advisory Commission which did not mention associate citizenship at all, an important feature of the 1982 law.

While it is true that most Arakan Muslims have “lived in Myanmar for generations”, they did not describe their ethnicity as “Rohingya” until some years after independence. [The migration of Bengali Muslims to Arakan during British rule](#) accounted for the greater majority of today’s Rohingya, though they were certainly not “Rohingya” (that is, “Arakaners”) when they first arrived. Indeed, at the time of the 1931, 1953 and 1973 Censuses, the designation did not exist and Arakan Muslims were known and enumerated by other designations, which they accepted willingly. Some designations were indigenous, others not.³⁴

One of our main questions concerning the Mission Report must surely be this: some of the inaccuracies and untruths are so blatant that we must ask whether it really is credible that the members of the Mission did not know. My answer, based on my 90 years’ personal experience of the human race, is quite simply that they did not know because they did not want to know. They did not bother to look at the text of the Panglong Agreement because they did not know what they might find. They did not ask to see the dossier at UN HQ in New York about the Du Chee Yar Tan affair because they were not interested in taking the heat off the Myanmar Government. They did not bother to read the statement of former President Thein Sein, which I had drawn to the attention of the Mission team, because they had already found a damning quotation from another source. They were, in short, conditioned by their determination to put the Myanmar Government in the worst possible light in relation to every incident and situation, cherry-picking only the materials which suited their agenda and ignoring the rest. The hall-mark of denialism.

³⁴ The issue is explored in depth in my article at <http://www.networkmyanmar.org/ESW/Files/Exploring-the-Issue-of-Citizenship-updated.pdf>

As a result the Mission Report is, with respect to the historical background presented in the Report, a travesty of any pretence of alleged “independence”. For this the Mission Members, and they alone, must be held responsible.

How this affects the truth and credibility of the dossier of 1,227 interviews handed over to the Independent Investigative Mission for Myanmar as a foundation for potential prosecution cases is open to debate. Some may argue that the rectification of these historical errors would be a largely academic exercise not in any way affecting the Mission’s conclusions in paragraph 1671 of their Report “on reasonable grounds” that:

“gross human rights violations and serious violations of international humanitarian law have been committed in Myanmar since 2011 and that many of these violations undoubtedly amount to the gravest crimes under international law.”

The issue though is not whether we disagree with this conclusion, because most of us do not. But the international community in general, and the Independent Investigative Mission for Myanmar in particular, must ask themselves to what extent can they accept uncritically evidence collected by members of a Mission who have shown themselves to be less than honest in presenting the minimal but essential historical background to their enquiries.

The Fact-Finding Mission a Victim of its own Hubris and of erratic UN Practice

The Fact-Finding Mission was established by the Human Rights Council by Resolution A/HRC/RES/34/22 of 24 March 2017. Its mandate was:

“to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State, 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, with a view to ensuring full accountability for perpetrators and justice for victims.....*”

In contrast to Commissions of Inquiry which are often mandated to make recommendations, the Fact-Finding Mission on Myanmar was not specifically asked to do so. However, current Guidance and Practice to Commissions of Inquiry and Fact-Finding Missions on international human rights and humanitarian law ³⁵ do provide, even for Missions not specifically mandated, to make recommendations, although most of the examples quoted in the Guidance to illustrate this provision relate to Commissions of Inquiry and those few Fact-Finding Missions mentioned made what would seem to be responsible recommendations

³⁵ https://www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf Geneva 2015

well within the terms of their mandates. The Mission on Myanmar, however, went overboard in making recommendations to all and sundry, *urbi et orbi* as it were - notably to the Government of Myanmar which they knew would be rejected out of hand as Myanmar had refused to have anything to do with the Mission, as well as to the Security Council and General Assembly, some of whose Members made a ritual genuflection of support, but failed to show much interest in any of the recommendations made. It was a classic case of hubris on the part of the Mission. But it was the Security Council, the General Assembly and the Human Rights Council which mischievously encouraged them in their hubristic endeavours.

The Guidance issued states that:

“The recommendations contained in a commission/mission report should be **carefully worded**, taking into consideration the mandate, the human rights situation, the actors to whom they are addressed, their relevance to effect the necessary changes to improve the human rights situation, and other issues, such **as available resources and feasibility of implementation.**”

There was little likelihood that the recommendations made by the Mission in their detailed and subsequent reports, which ventured into the minefield of economic sanctions, would be adopted by any of the UN Member States, UN bodies and other organisations to whom they were addressed. To that extent, the Mission devoted much time and effort which was frankly a waste of resources.

Mission Reports are normally presented to the mandating authority, in this case the Human Rights Council, but this Report was first presented in an unprecedented move to the Security Council at the request of nine of its members, for their own mainly domestic political reasons, despite opposition from China and Russia who were not able to exercise their veto on what was a procedural matter, namely approval of the agenda.³⁶ The Security Council is of course its own master, and can do what it likes, but in forcing this agenda on to the Security Council, the promoters have ensured that any subsequent Security Council action would almost certainly be vetoed. A Pyrrhic victory, but the benefit of a short-term political splash was judged to be more important than effective longer-term action.

As a result, “The Situation in Myanmar”, on which there was previously even in the Security Council a modest measure of cooperation, has been kicked into the long grass from where the ball has only recently been retrieved for informal but inconclusive “Consultations” among

³⁶ [Record of 8381st Meeting of the Security Council held on 24 October 2018](#)

Security Council members. Effective action in the Council itself is now most unlikely for the foreseeable future.



Derek Tonkin

Annex A

ပြည်ထောင်စုသမ္မတမြန်မာနိုင်ငံတော်

နိုင်ငံတော်သမ္မတဦးသိန်းစိန် ကုလသမဂ္ဂဒုက္ခသည်များဆိုင်ရာ

မဟာမင်းကြီး Mr. Antonio Guterres ဦးဆောင်သော

ကိုယ်စားလှယ်အဖွဲ့အား လက်ခံတွေ့ဆုံ

နေပြည်တော် ဇူလိုင် ၁၁

ပြည်ထောင်စုသမ္မတမြန်မာနိုင်ငံတော် နိုင်ငံတော်သမ္မတဦးသိန်းစိန်သည် နေပြည်တော်၌ ရောက်ရှိနေသော ကုလသမဂ္ဂ ဒုက္ခသည်များဆိုင်ရာ မဟာမင်းကြီး Mr. Antonio Guterres ဦးဆောင်သော ကိုယ်စားလှယ်အဖွဲ့အား ယနေ့နံနက် (၁၁) နာရီတွင် နေပြည်တော်ရှိ နိုင်ငံတော်သမ္မတအိမ်တော် သံတမန်ဆောင် ဧည့်ခန်းမ၌ လက်ခံ တွေ့ဆုံသည်။

ထိုသို့တွေ့ဆုံရာတွင် ကချင်ပြည်နယ်ရှိ စစ်ဘေးသင့်ပြည်သူများ အရေးကိစ္စ၊ ကရင်ပြည်နယ်ရှိ ရွှေ့ပြောင်းပြည်သူများ မိမိဆန္ဒအလျောက် ပြန်လာရေးကိစ္စနှင့် ရခိုင်ပြည်နယ် အရေးကိစ္စတို့ကို ဆွေးနွေးခဲ့ကြသည်။ နိုင်ငံတော်သမ္မတကြီးက သမိုင်းကြောင်းအရ ဘင်္ဂါလီများ ဝင်ရောက်လာသည်မှာ (၁၉၄၈) ခုနှစ်၊ လွတ်လပ်ရေးမရခင် အင်္ဂလိပ်နယ်ချဲ့များက လယ်ယာ လုပ်ကိုင်ရန် ခေါ်သွင်းလာခြင်းဖြစ်ကြောင်း၊ ထိုစဉ်က အလုပ်အကိုင် ကောင်းမွန်သဖြင့် မပြန်တော့ဘဲ အခြေချနေထိုင်သူများလည်းရှိကြောင်း၊ မိမိတို့ ဥပဒေအရ (၁၉၄၈) ခုနှစ်မတိုင်မီ မြန်မာနိုင်ငံသို့ ရောက်ရှိသူ မိဘနှစ်ပါးက မွေးဖွားသူ တတိယမျိုးဆက် (Third Generation) မြေးအဆင့်ကိုသာ နိုင်ငံသားအဖြစ် လက်ခံမည်ဟူသော ဥပဒေရှိကြောင်း၊ ရခိုင်ပြည်နယ်ကို လေ့လာကြည့်လျှင် (၁၉၄၈) ခုနှစ် မတိုင်မီ ဘင်္ဂါလီများက ပေါက်ဖွားလာသူများ၊ နောက်ပိုင်းတွင် ရိုဟင်ဂျာအမည်ခံ၍ ခိုးဝင်လာသူများ စသည်ဖြင့် ရှုပ်ထွေးလျက်ရှိကြောင်း၊ နိုင်ငံတည်ငြိမ်အေးချမ်းမှုကိုပါ ခြိမ်းခြောက်လာကြောင်း၊ ဤကိစ္စကို ကိုင်တွယ်ရန် အလေးအနက်ထား စဉ်းစားလျက်ရှိပါကြောင်း၊ မိမိတိုင်းရင်းသား များကို တာဝန်ယူမည် ဖြစ်ကြောင်း၊ တိုင်းရင်းသားမဟုတ်ဘဲ ခိုးဝင်လာသည့် ရိုဟင်ဂျာများကို လက်ခံရန် မည်သို့မျှ မဖြစ်နိုင်ကြောင်း၊ နောက်ဆုံးဖြေရှင်းသည့် နည်းလမ်းမှာ ခိုးဝင်လာသည့် ရိုဟင်ဂျာများကို UNHCR သို့ အပ်နှံပြီး ဒုက္ခသည် စခန်းအဖြစ် ထားရှိရန်ဖြစ်ကြောင်း၊ UNHCR က ကျွေးမွေးစောင့်ရှောက်ပေးရန် ဖြစ်ကြောင်း၊ တတိယနိုင်ငံက လက်ခံမည်ဆိုလျှင်

ပို့ပေးမည်ဖြစ်ကြောင်း၊ ဤသည်မှာ ပြဿနာဖြေရှင်းနည်းကို စဉ်းစားနေခြင်းဖြစ်ကြောင်း၊ နယ်စပ်ရေးရာဝန်ကြီးအားလည်း ရခိုင်ပြည်နယ်ရှိ ကုလသမဂ္ဂ အဖွဲ့အစည်းများနှင့် တိုင်ပင်ညှိနှိုင်းလျက် ရှိပါကြောင်း ရှင်းလင်းပြောကြားသည်။

နိုင်ငံတော်သမ္မတ ဦးသိန်းစိန်နှင့်အတူ ပြည်ထဲရေးဝန်ကြီးဌာန ပြည်ထောင်စုဝန်ကြီး၊ နယ်စပ်ရေးရာဝန်ကြီးဌာနနှင့် မြန်မာ့စက်မှုဖွံ့ဖြိုးရေး ဝန်ကြီးဌာန ပြည်ထောင်စုဝန်ကြီး၊ သမ္မတရုံးဝန်ကြီးဌာန(၁) ပြည်ထောင်စုဝန်ကြီး၊ အလုပ်သမားဝန်ကြီးဌာနနှင့် လူမှုဝန်ထမ်း၊ ကယ်ဆယ်ရေးနှင့်ပြန်လည်နေရာချထားရေး ဝန်ကြီးဌာန ပြည်ထောင်စုဝန်ကြီး၊ နိုင်ငံခြားရေးဝန်ကြီးဌာန ဒုတိယဝန်ကြီးနှင့် ဌာနဆိုင်ရာအကြီးအကဲများ တက်ရောက်ကြသည်။

Thursday, July 12, 2012 - 14:15

Unofficial Translation

President of the Republic of the Union of Myanmar U Thein Sein meets a Delegation led by Antonio Guterres

Nay Pyi Taw, 11 July 2012

This morning President U Thein Sein met a Delegation led by Antonio Guterres, UN High Commissioner for Refugees, at the Credentials Hall of the Presidential Palace in Nay Pyi Taw.

Matters discussed at the meeting included refugees from the fighting in Kachin State, the return of Kayin (Karen) migrant workers who wished to return home voluntarily and the situation in Rakhine State.

The President said that Bengalis came to Myanmar because the British colonialists invited them in prior to 1948, when Myanmar gained independence from Britain, to work in the agricultural sector. Some Bengalis settled here because it was convenient for them to do so, and according to Myanmar law, the third generation of those who arrived before 1948 can be granted Myanmar citizenship. He added that, if we look at the situation in Rakhine State, some people are the younger generation of Bengalis who arrived before 1948, but some are illegal immigrants claiming to be Rohingyas and this threatens the stability of the State. The Government has been looking seriously for a solution to this problem. The country will take responsibility for its native people, but it cannot accept illegal immigrant Rohingya in any way. So in the end the solution to the problem is to set up refugee camps for them so that UNHCR can look after them. If a third country accepts them, we will send them there. He added that the Minister for Border Affairs has been negotiating with UN organizations in Rakhine State.

Present at the meeting were: President U Thein Sein, the Union Ministers for Home Affairs, Border Affairs, Development, Labour and Social Welfare, and Relief and Resettlement, as well as the Deputy Minister for Foreign Affairs and departmental heads.

Annex B

This verbatim extract from **General Ne Win's speech of 8 October 1982** highlights **in red** the repeated assurances given in the speech that the arrangements for associate and naturalised citizenship were transitional and would be phased out over two generations, so that with the third generation there would be only one, full citizenship to which all citizens would be entitled.

“There are three types of citizens at present as said earlier. **There will be only one type in our country at some time in the future; that is there will be only citizens.** What is known [as] eh-naing-ngan-tha [“associate citizens”] and naing-ngan-tha-pyu-khwint-ya-thu [“naturalised citizens”] will gradually disappear. How? A person classified as an eh-naing-ngan-tha at present if qualifications, I said earlier, are met. We cannot trust them fully. That is why one is called eh-naing-ngan-tha.

“If the descendants of eh-naing-ngan-tha continue to be regarded as eh-naing-ngan-tha, they will never be in a position to enjoy the rights of citizens. I said earlier, that in view of what is happening at present, this eh-naing-ngan-tha is not trustworthy at present. As I said earlier one lives in Burma, one in Hong-Kong, and one lives in England and are engaged in bad business. However, this blood relation will more or less cease to exist at the time of his or her grandchildren. **When the grandchild is given citizenship, he will, just like any other citizen, become a full citizen.** Similarly, with the children, grandchildren and greatgrandchildren of a naing-ngan-tha-pyukhwint-ya-thu continue to be a naing-ngan-tha-pyu-khwint-ya-thu? Will a naing-ngan-tha-pyu-khwint-ya-thu not be able to enjoy full rights? As I said earlier, his grandchildren will be given citizenship. Although there are three types of citizens at present eh-naing-ngan-tha, naingngan-tha-pyu-khwint-ya-thu and pure citizens, **the grand children of eh-naing-ngan-tha and naing-ngan-tha-pyu-khwintya-thu will become full citizens. Then there will be only one type of citizen.**

“If the grandchildren of eh-naing-ngan-tha or a naing-ngan-tha-pyu-khwint-ya-thu are to become full citizens, the eh-naing-ngan-tha or naing-ngan-tha-pyu-khwint-ya-thu himself or herself, and his or her children and their children must live in our country correctly and must not misbehave. **Only then can his or her grandchildren become citizens.** As to action to be taken against them for misbehaviour, time limits, etc., are to be prescribed in Rules.

“This is the first time we are taking action to enable those who have been in our country since before Independence to escape from a life of uncertainty about their own nationality. If necessary qualifications are met, they can live in our country; if they live correctly and properly, **their grandchildren will become full citizens.** What I would like to tell such persons

is that, in recognition of what we have done to enable them to be certain of their own nationalities, they should live correctly and properly. I would also like to tell our true citizens, the Burmese, that they should not treat such persons arrogantly, saying they came from abroad or they are guests, but should realise **that one day they will become one with us and all will be travelling in the same boat.**”