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Dilemmas of Human Rights Advocacy:
Limits and Opportunities of Principled Engagement as an Alternative
Strategy in Dealing with the Rohingya Crisis

HUMR5200

Master Thesis in the Theory and Practice of Human Rights



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List of Abbreviations

ASEAN	Association of Southeast Asian Nations
ARSA	Arakan Rohingya Salvation Army
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
ICJ	International Court of Justice
IGO	Intergovernmental Organization
IIFMM	International Independent Fact-Finding Mission on Myanmar
ILO	International Labour Organization
INGO	International Non-Governmental Organization
MNHRC	Myanmar National Human Rights Commission
NGO	Non-Governmental Organization
NLD	National League for Democracy
OIC	Organization of Islamic Cooperation
UNAIDS	The Joint United Nations Programme on HIV/AIDS
UN	United Nations
UNCT	United Nations Country Team
UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees
UNRC	United Nations Resident Coordinator
US	United States
USDP	Union Solidarity and Development Party

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1 Introduction

If truth is the first casualty of war, human rights is probably the second

- unknown

For the values that we defend to truly prevail, we need to show that we understand people's anxieties, fears and concerns. We need to address the root causes that lead people to feel marooned in our rapidly changing world.

Antonio Guterres, UNSG

1.1 Background

The tragedy in Rakhine State in Myanmar in 2017 was described by then United Nations High Commissioner for Human Rights Prince Zeid bin Ra'ad Zeid al-Hussein as “a textbook case of ethnic cleansing”¹. Myanmar’s army’s violent response to armed group attacks in Rakhine State caused nearly a million people from the Rohingya ethnic group to be expelled from their homes and lands, amidst accusations that they had suffered torture, rape and other abuses, becoming internally displaced persons or refugees in neighbouring Bangladesh². The United Nations was accused of failing to save the Rohingya, and its top official for the country at the time, Renata Lok-Dessallien, was recalled, accused of “suppressing internal discussion on Rohingya Muslims”³, and of downplaying the importance of human rights in her engagement with the government⁴. Although the UN was born out of the international community’s effort

¹ “UN human rights chief points to ‘textbook example of ethnic cleansing’ in Myanmar,” *UN News*, September 11, 2017, <https://news.un.org/en/story/2017/09/564622-un-human-rights-chief-points-textbook-example-ethnic-cleansing-myanmar> (accessed January 28, 2020)

² Hannah Ellis-Petersen, “Myanmar's military accused of genocide in damning UN report,” *The Guardian*, March 27, 2018, <https://www.theguardian.com/world/2018/aug/27/myanmars-military-accused-of-genocide-by-damning-un-report> (accessed January 28, 2020)

³ “Myanmar Rohingya: UN recalls top official Lok-Dessallien,” *BBC*, October 11, 2017 <https://www.bbc.com/news/world-asia-41580599> (accessed January 28, 2020)

⁴ Jonah Fisher, “UN failures on Rohingya revealed,” *BBC*, September 28, 2017 <https://www.bbc.com/news/world-asia-41420973> (accessed January 28, 2020)

to consolidate human rights as a supreme cause, the organization was criticized for failing to prioritize it.

Over a year after leaving the country, Lok-Dessallien published a paper in which she aims at connecting the facts that led to this tragedy⁵. Lok-Dessallien considered the country's complex context, the UN's own internal dynamics, and her own role as Resident Coordinator during part of the country's turbulent transition to democracy, up to the August 2017 crisis. Lok-Dessallien argues that the UN's failure to deal with the problem in Myanmar was due to tensions among member states, flaws in the UN decision-making nodes, and coordination problems among the different agencies. Above all, Lok-Dessallien identifies a seemingly irreconcilable dilemma between the elements of the UN which favor an absolutist approach to human rights, and those which concentrate on the UN's solutions-focused peace and development goals. In a "brief and independent inquiry into the involvement of the United Nations in Myanmar from 2010 to 2018", Gert Rosenthal describes the systemic chasm within the UN, which he argues ultimately led to the organization's "systemic failure" in dealing with the Rohingya crisis in 2017⁶. According to Rosenthal's report, while the agencies without a political mandate would work to maintain good relations with and influence inside the government, those agencies with a narrower human rights mandate had no choice but to voice their concerns over human rights violations. The lack of coordination between these two spheres, in what was a complex scenario, led inevitably to disconcerted actions. This lack of coordination complicated the performance of the organization vis-à-vis the challenges presented in August 2017.⁷

Critics of the UN's approach during the Rohingya Crisis generally assume an 'absolutist tone', pointing out that the UN Country Team and its Resident Coordinator were too lenient with the norm-violating government and that, had they given priority to human rights, the

⁵ Renata Lok-Dessallien "Upholding UN Principles and Values while Helping to Resolve Complex Crises: Reflections on how the UN could do both better," *UNDP Oslo Government Centre*, April 1, 2019 <https://www.undp.org/content/oslo-governance-centre/en/home/library/upholding-un-principles-and-values-while-helping-to-resolve-comp.html> (accessed January 29, 2020)

⁶ Gert Rosenthal, 'A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018,' *United Nations Digital Library*, May 29, 2019, <https://digitallibrary.un.org/record/3809543?ln=en>. (accessed January 29, 2020)

⁷ Both Rosenthal (ibid, p.17) and Lok-Dessallien (in Renata Lok-Dessallien, "A Principled Approach with Constructive Engagement": Application and Challenges for the UN in Myanmar (2012–2017)' (2019) Internal paper, UNDP Oslo Governance Centre) stress the fact that the government in Myanmar has a history of suspicion towards foreign interference.

tragedy of 2017, resultant of a long escalating conflict, could have been avoided⁸. The counter argument posits that as Myanmar has a history of mistrust of external influence, the strategy in Myanmar should lean towards pragmatism, with a higher degree of dialogue and flexibility, aiming at structural and long-term changes. In spite of significant criticism, the conditions in Rakhine State do not seem to have improved as of the end of 2019.⁹ This situation makes it necessary to reassess those “irreconcilable dilemmas” within Human Rights and think of alternative approaches to the practice. Ron Dudai argues that the dilemmas which afflict human rights practice, such as absolutism versus pragmatism, short versus long term change or radical versus gradual changes, have not yet been documented properly¹⁰. The Rohingya Crisis will then be used in this study as background to examine these fundamental problems.

It is also important to consider the current status of Human Rights in the international community. In a lecture by UN’s Assistant Secretary General for Human Rights, Andrew Gilmour, he discusses whether the world might be experiencing a backlash against human rights.¹¹ One of his starting points, however, is that it is “besides the point” to determine whether *there is* a backlash or not, and that it should be left to the academia to figure out the nature of the backlash, because “we” have work to do.¹² But what if it is precisely this work what is causing the backlash, wouldn’t it be valuable to the work of human rights to understand the causes behind the backlash against it? Some authors have already pointed out the

⁸ Among such critics is the BBC investigation, which accused the UN team of trying to curtail human rights advocate’s work and of downplaying human rights in the hope that development would reduce tensions and solve the problem (Fisher, ‘UN failures...’).

⁹ See, for example, Elise Thomas, Nathan Ruser and Mali Walker, ‘Mapping conditions in Rakhine State,’ *Australian Strategy Policy Institute*, July 24, 2019, <https://www.aspi.org.au/report/mapping-conditions-rakhine-state> (accessed 28 January 2020); ‘Two Years On: Rohingya Deserve Justice,’ *Save the Children*, August 21, 2019 <https://www.savethechildren.net/news/two-years-rohingya-deserve-justice>. (accessed January 28, 2020); and ‘Genocide threat for Myanmar’s Rohingya greater than ever, investigators warn Human Rights Council,’ *UN News*, September 16, 2019, <https://news.un.org/en/story/2019/09/1046442>. (accessed 28 January 2020)

¹⁰ Ron Dudai, “Introduction—Rights Choices: Dilemmas of Human Rights Practice,” *Journal of Human Rights Practice* 6, no.3 (November 2014): p.390

¹¹ Andrew Gilmour, ‘The Global Backlash Against Human Rights,’ Edited text of a lecture by Andrew Gilmour, United Nations Assistant Secretary-General for Human Rights, University of California, Berkeley and McGeorge School of Law, Sacramento, *UNOHCHR*, March 12 and 13, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23202&LangID=E>. (accessed January 28, 2020). This backlash would be identified, he says, in the fight against terrorism, increased fundamentalisms in the Middle East, the financial crisis, populism and majoritarian movements, double standards, as well as a response to the many advances brought by human rights, or against its defenders themselves.

¹² – and by “we” I understand the UN, or the humanitarian community as a whole

negative effects generated by human rights promoters¹³. Other explore further aspects of this backlash, such as the rise of populism and majoritarianism¹⁴, the discontent with human rights due to its minimalist proposals to change the world,¹⁵ human rights' absolutism and lack of flexibility,¹⁶ or the changed international scenario, which sees the decline of Western moral influence and increased pushback against its hypocrisy, as well as new rising powers, authoritarian backlash and the persistence of competing social norms¹⁷. There are still those who see human rights as a wasteful strategy that, at best, has been innocuous¹⁸. Dustin Sharp concludes that this scenario demands rethinking into how to be more pragmatic and multidimensional, including legal, as well as moral and political aspects of human rights approach.¹⁹

By the end of his speech, Gilmour acknowledges the way in which the argument for human rights is framed can have an important impact when dealing with this backlash, and that there are different strategies besides the naming and shaming defended by the 'absolutists', which play a fundamental role in protecting human rights, such as constructive engagement and quiet diplomacy, more typically found in the pragmatic field. This thesis will focus on one strategy which contributes to a framing of the human rights argument particularly relevant for antagonistic contexts towards mainstream human rights advocacy: Principled Engagement. This strategy sets out to be a long-term commitment to incremental improvement through context-sensitive strategies that promote the development of strong institutions. It establishes a strong commitment to principles, while vowing to cause no harm and to respect victims, being transparent and accountable, and comprising of systematic monitoring and evaluation methods. This theory will be interpreted with Myanmar and the Rohingya crisis as background, aiming at understanding its applicability, advantages and shortcomings.

¹³ See for example Elizabeth Shakman Hurd, 'Governing Religion as Right', in *Human Rights Futures*, eds. Stephen Hopgood, Jack Snyder and Leslie Vinjamuri (Cambridge University Press, 2017)

¹⁴ Kenneth Roth, 'We Are on the Verge of Darkness,' *Foreign Policy*, January 12, 2017, <https://foreignpolicy.com/2017/01/12/we-are-on-the-verge-of-darkness-populism-human-rights-democracy/> (accessed January 29, 2020)

¹⁵ Samuel Moyn, 'The Future of Human Rights', *SUR - International Journal On Human Rights* 11, no.20 (Jun./Dec. 2014). Moyn emphasizes how human rights, for not being realistic enough, fail to effect change in power politics.

¹⁶ Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca; London: Cornell University Press, 2013), pp.ix-x

¹⁷ Stephen Hopgood, 'Challenges to the Global Human Rights Regime: Are Human Rights Still an Effective Language for Social Change?' *SUR - International Journal On Human Rights* 11, no.20 (Jun./Dec. 2014).

¹⁸ See for example Eric Posner, *The Twilight of Human Rights*, (New York: Oxford University Press, 2014).

¹⁹ Dustin N. Sharp, "Pragmatism and Multidimensionality in Human Rights Advocacy." *Human Rights Quarterly* 40, no. 3 (2018): 501

1.2 Research Questions and Objectives of the study

Given the current scenario of human rights backlash, in which human rights is seen more as an obstacle than as an asset, it is useful to think of less adversarial approaches to human rights. It is necessary to move beyond criticism and towards propositions which consider “conflicting values, principles and considerations involved in human rights work”²⁰. As stated by Hopgood, “In a Chinese-American world, the language of international norms will need to be transformed into one more tolerable to Beijing than that of human rights”.²¹ Paul Gready and Wouter Vandenhoe, in their book *Human Rights and Development in the New Millennium* argue that human rights lacks a theory of change. Because of that, action is guided by the idea that “change is implicitly thought to come about through some taken-for-granted conventional wisdom”²². Finally, there is a gap in the literature regarding viable strategies for those countries which lack the pre-conditions which mainstream human rights advocacy demand to be effective.²³ The human rights advocacy in these countries, the so-called “hard cases”, could benefit from strategies which take into account their particular hardships and complexities.

In light of this scenario, this study will look at Principled Engagement as an alternative strategy for dealing with human rights in Myanmar in light of the Rohingya crisis. It does so by looking at the theory on Principled Engagement, the context in Myanmar which led to the August 2017 Crisis, and by considering the strategy in the context presented. The main research question is therefore:

- ✚ Having Myanmar and the 2017 Rohingya Crisis as background, to what extent can Principled Engagement be considered as a suitable strategy for human rights advocacy in the so-called ‘hard cases’?

This question is supported by the following:

- ✚ How do Myanmar’s particularities make the country a case where mainstream human rights approaches, namely Ostracism or Business as Usual,²⁴ do not work?

²⁰ Dudai, “Introduction...”, 390

²¹ Hopgood, ‘Challenges to the Global...’, 71

²² Paul Gready and Wouter Vandenhoe, ‘What Are We Trying to Change,’ in *Human Rights and Development in the New Millennium*, eds. Paul Gready and Wouter Vandenhoe (New York, Routledge, 2014), 1

²³ Further discussed in section 2.1 and 2.2

²⁴ Further discussed in sections 2.1 and 2.2

- ✚ How has Principled Engagement worked in Myanmar, and how can it be used as a tool for human rights promotion in a context sensitive way?

These questions will guide this study as it analyses different methods of social action aimed at changing countries' behavior towards human rights. It focuses on general patterns utilized by the international community in international advocacy targeting states and their behavior towards human rights. This study does not single out actors in the international community, but considers approaches to human rights as a whole, such as those theorized in the Spiral Model.²⁵ The goal is to make sense of international strategies carried out mostly by intergovernmental organizations, such as the United Nations, and states.

1.3 Theoretical Approach

I observed during research for this thesis that there is very little literature which explores "Principled Engagement", especially in the sense addressed by this study. The theory used in this study will be based primarily on the work developed by Morten Pedersen and David Kinley, "Principled Engagement: Negotiating Human Rights in Repressive States".²⁶ This anthology outlines their concept of Principled Engagement in opposition to what they consider to be two opposing mainstream theories to human rights promotion, namely Ostracism and Business as Usual. The role of ostracism and sanctions in Myanmar has also been further explored by Pedersen, in "Promoting Human Rights in Burma: A Critique of Western Sanctions".²⁷ Pedersen and Morten's main argument is that both Ostracism and Business as Usual are inadequate strategies, especially when dealing with repressive states. They argue that because both can have negative side effects, there needs to be an alternative, safer strategy.

The existing literature on human rights change corroborates this perspective. One of the main studies which schematizes human rights change, the Spiral Model, developed by Risse, Ropp and Sikkink in "The Power of Human Rights",²⁸ and reviewed in "The Persistent Power of

²⁵ Further discussed in section 2

²⁶ Morten B. Pedersen and David Kinley, *Principled Engagement: Negotiating Human Rights in Repressive States* (Surrey, Ashgate Publishing Limited, 2013)

²⁷ Morten Pedersen, *Promoting Human Rights in Burma: A Critique of Western Sanctions Policy* (Maryland, Rowman & Littlefield Publishers, Inc., 2008)

²⁸ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge; New York: Cambridge University Press, 1999)

Human Rights”²⁹, acknowledges that there is little that can be done towards inciting human rights change for those countries which do not reach a certain level of mobilization. My goal, therefore, is to contribute to the literature which aims at elaborating a theory of change for human rights, i.e., to observe and evaluate the effects of different strategies for different scenarios and build upon existing literature in order to find new approaches which can contribute to human rights advocacy.

1.4 Methodology

The methodology in this study will consist of literature review, for the theoretical part, building upon the Principled Engagement theory of Pedersen and Kinley, and a case study, which aims at contextualizing particular factors in Myanmar’s history, politics and society which contribute to their perception of human rights, democracy and the societal position of the Rohingya. The study consists mainly of qualitative analysis of secondary sources, which make up the theoretical part, complemented by primary sources, such as NGO and UN reports, which along with the literature will contribute to outline the scenario in Myanmar. This is by no means an exhaustive analysis of the country and the motivations behind the Rohingya Crisis, but an attempt to understand the inefficacy of human rights advocacy in the country, along with the unforeseeable and unintentional results of “mainstream” advocacy strategies.

Sub-question 1 will be addressed in the first part of chapter four, where I analyze the effects of policies here called Ostracism and Business as Usual in Myanmar, having as background the country analysis of chapter three. I look mainly at the undesired side-effects that these strategies have generated, arguing that they fail at addressing the particular challenges presented in the dynamics of the country. Sub-question 2 will be addressed in the second part of chapter four, where I analyze how Principled Engagement has worked in Myanmar as well as this strategy’s potential positive effects and shortcomings.

1.5 Thesis Overview

In chapter two I will look at two mainstream theories of human rights advocacy: Ostracism, which sees human rights as a by-product of democracy, achieved through sanctions and isola-

²⁹ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge: Cambridge University Press, 2013)

tion of norm-violating countries; and Business as Usual, which sees human rights as a by-product of development, achieved through free trade and investment. I will then present the alternative theory studied in this thesis: Principled Engagement, and how it can be a suitable strategy for countries which lack the pre-requisites necessary for the mainstream strategies to work. In chapter three I will examine the context in Myanmar, focusing on the events and attributes which relate to the discrimination against the Rohingya, such as politics, historical narratives and cultural perspectives. In chapter four I will test the country's context against the theory, looking both at past and recent events, to understand how both mainstream strategies have influenced the country's behavior towards human rights, and how Principled Engagement has had positive impacts in the past, in spite of the apparent failure in what led to the 2017 crisis. Finally, I will conclude in chapter five that, in spite its perceived failure, which stresses some of the strategy's main weaknesses, there is reason to believe that Principled Engagement might be a better strategy moving forward than the alternatives, both for Myanmar, as well as for many countries where engaging with human rights is a challenge.

2 Mechanisms of Social Action: Principled Engagement and competing strategies

Like all 'critical' approaches, the argument for Principled Engagement starts from a dissatisfaction with existing or mainstream ways of looking at and doing things.³⁰

There is a lot of discussion and contradictory results on what methods work best for promoting human rights. Such contradictions, argue the authors of *Human Rights Futures*, Hopgood, Snyder and Vinjamuri, are due to a lack of distinction between “easy cases”, where many favourable conditions conducive to human rights promotion are present, and “hard cases”, often authoritarian states that score at the bottom of most human rights indexes for which “mainstream methods rarely work and alternative methods are not well conceptualized or studied.”³¹ Different ways of addressing human rights as a duty of the international community have already been discussed. This discussion has been informed both by realist/rationalist concerns, based on the logic of consequences (utility-maximizing egoistic actors moved by cost-benefit calculations), as well as by constructive theories, which emphasise logic of appropriateness (actors moved by a norm-guided behaviour).³²

The Spiral Model, developed by Risse and Sikkink, is one such theory which elaborates on the impact of international norms on domestic politics.³³ It proposes five steps which countries go through: repression, denial, tactical concessions, prescriptive status and rule-consistent behaviour.³⁴ Risse and Ropp, in their review of the Spiral Model, identified roughly four methods for human rights promotion, or mechanisms of social action, which are used to influence states towards a rule-consistent behaviour. They are coercion, incentives, persuasion, and capacity building. According to these authors, coercion is characterized by the use of force, for example through the doctrine of “responsibility to protect”, and by legal en-

³⁰ Pedersen and Kinley, ‘Principled Engagement’, 32

³¹ Stephen Hopgood, Jack Snyder, and Leslie Vinjamuri, ‘Introduction: Human Rights Past, Present and Future’ in *Human Rights Futures*, eds. Stephen Hopgood, Jack Snyder and Leslie Vinjamuri (Cambridge University Press, 2017) 17-8

³² Risse et al., *The Persistent Power...*, 13

³³ Risse et al., *The Power of Human Rights...*, 2

³⁴ *Ibid.*, 17-35

forcement in the case of pre-established contracts or agreements.³⁵ Because these two strategies are regulated through norms, we shall not investigate them in detail in this paper. It suffices to say that the use of force is regulated by the Security Council,³⁶ and legal enforcement for obligations tied to international agreements depends on the mechanisms of each treaty.

The alternative method we will investigate in this study, Principled Engagement, proposes an alternative to traditional strategies of human rights promotion, especially for the “hard cases”. Traditionally, the strategies used in these cases, they argue, entail either sanctions and isolation, which relates bad human rights records to the ill-will of leaders, and aims at forcing them to comply with human rights by depleting the resources used to run their authoritarian governments, and by focusing on political freedoms; or, alternatively, free economic trade and investment, which sees violations as a result of underdevelopment and isolation, and seeks to foster development and the creation of a middle class capable of pressuring the government from within towards improving human rights in the long term. Pedersen and Kinley have called these strategies Ostracism and Business as Usual, respectively.

Strategies in Ostracism correlate roughly with what Risse and Ropp classified as incentives, or inducement: change a state’s behaviour by demonstrating there will be negative consequences if they do not comply, and positive support in case they do. Sanctions are one type of material inducement, while “naming and shaming”³⁷ can be considered social inducement. These strategies have proven to be effective in certain circumstances – although not without caveats – such as the emblematic case of apartheid in South Africa.³⁸ However, the development of “new democracies” has generated a “twilight zone” of weak governance which was not able to improve the overall human rights situation in some countries. In Chile, for example, the creation of a middle class can hardly be correlated to an improvement in human rights overall.³⁹ On the other side of the spectrum, Business as Usual goes beyond Risse and Ropp’s

³⁵ Risse et al., ‘*The Persistent Power...*’, 12-16

³⁶ ‘Responsibility to Protect’, *United Nations Office on Genocide Prevention and the Responsibility to Protect*, <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml> (accessed January 29, 2020)

³⁷ “the activity of saying publicly that a person, company, etc. has behaved in a bad or illegal way”, *Cambridge Business English Dictionary* (Cambridge, Cambridge University Press, 2011), s.v. “naming and shaming.”

³⁸ Studies have pointed out, however, that “The expected pressure by business on government as a result of sanctions has not occurred. In fact, sanctions brought business and government closer together in the patriotic cause of circumventing foreign interference” (Adam and Moodley 1993: 57; cited in Ryan Goodman and Derek Jinks, “Social mechanisms to promote international human rights: complementary or contradictory?” in Risse et al., ‘*The Persistent Power...*’, 113).

³⁹ Stephen C. Ropp and Kathryn Sikkink, ‘International norms and domestic politics in Chile and Guatemala’, in Risse et al., ‘*The Persistent Power...*’, 201-2. In fact, Ropp and Sikkink argue that the middle class in Chile,

characterisation of capacity building in the sense that it is less targeted at building necessary institutions, but may have similar effects: that human rights will be a natural outcome of development. Pursued alone these strategies do not guarantee that human rights are present during the process, nor that it ranks in the main desired outcomes. One classic example is China, which has incomparably improved the lives of millions of Chinese through development and openness to international trade and investments, but whose records of civil and political freedoms remains dire.⁴⁰

One additional element which aims at explaining human rights change is what Goodman and Jinks called “acculturation”⁴¹. The authors emphasize the influence that the institutional environment has over organizations such as states, more specifically over their human rights behavior. Goodman and Jinks define acculturation as “the general process by which actors adopt the beliefs and behavioral patterns of the surrounding culture.” The authors argue that states are driven by cognitive and social pressure to assimilate to surrounding cultures – which can be respectful of human rights or not, which also explains how “bad behavior” in human rights can influence other states.⁴²

In the next sections I will analyse two strategies for human rights change, Ostracism and Business as Usual, along with their advantages and disadvantages, and in which scenarios they have better chances of success. I will then turn to Principled Engagement as a possible alternative to human rights advocacy better suited to face the backlash against human rights characteristic of the 21st century.

2.1 OSTRACISM

2.1.1 What is Ostracism

Coercing states into complying with international norms often involves some kind of value restriction, be that one of economic sanctions, which can be generalized against a state, or the so called “smart sanctions” against individuals or assets; reputational damage through naming

which resulted from economic development, sought the military for the implementation of **an exclusionary economic modernization model**.

⁴⁰ Pedersen and Kinley, “*Principled Engagement*”, 2-5

⁴¹ Ryan Goodman and Derek Jinks, “*Socializing States: Promoting Human Rights Through International Law*” (Oxford Scholarship Online, September 2013), 41-2

⁴² Ibid.

and shaming; exclusion from the international community or multilateral institutions; and imposed conditionalities in exchange for foreign aid as a “positive incentive”. According to Pedersen and Kinley, Ostracism sees bad rulers as the cause for human rights violations, who should be defeated to give way to democracy. The restrictions are imposed with the goal of raising the costs for the maintenance of repressive rulers to the extent that these costs are higher than the benefits of remaining in power. In this strategy, the international community would assume the role of a supranational authority with punitive power over violating states. Ostracism would condemn *any* kind of engagement with non-democratic governments once it legitimizes the power structure responsible for violations of human rights. “Proponents of Ostracism” thus “seek to force their will on uncooperative targets”.⁴³

The argument for Ostracism generally follows a logic of consequences, according to which states are self-interested rational actors.⁴⁴ Goodman and Jinks argue that “states and institutions change the behaviour of other states not by reorienting their preferences but by changing the cost-benefit calculations of the target state.” This is done through exerting pressure, for which they say, “there is strong evidence to suggest that social pressure is superior to material pressure in promoting or preserving intrinsic motivation.” They also point to the value of using pressure in an early stage of human rights engagement, for example, to “force” a state to join an organization and, once that is achieved, subject said state to different kinds of pressure and incentives inside the organization.⁴⁵

Pedersen and Kinley point out that sanctions are more likely to work when: they impose higher costs; there’s geographical proximity between sender and target states; there’s no alternative partner; the target regime is more democratic and open to external influence; the sanctions objectives are more limited; the goals of the sanctions reinforce internal pressure for change; and when there’s a high “social and economic interdependence between the senders and the target”⁴⁶. Additionally, Goodman and Jinks point out that strongly motivated senders are another precondition for the efficiency of material inducements,⁴⁷ and Ann Marie Clark argues that “naming and shaming” works best when states have already officially committed

⁴³ Pedersen and Kinley, “*Principled Engagement*,” 2-5

⁴⁴ Risse et al., “*The Persistent Power...*,” 10

⁴⁵ Goodman and Jinks, “Social mechanisms to...,” 113-7

⁴⁶ Pedersen and Kinley, “*Principled Engagement*,” 14-6

⁴⁷ Goodman and Jinks, “Social mechanisms to...,” 117

to human rights norms.⁴⁸ As a result, the scope of states which would fulfil these preconditions is considerably narrow.

2.1.2 How it works

The two premises of ostracism are summarized by Pedersen and Kinley as follows:

1. External pressure can induce authoritarian leaders to democratize.
2. Democratization leads to broad improvements in human rights.

Already in the first premise, the authors encounter a number of problems. First, there is no international consensus on democracy so the tendency in human rights advocacy to focus on civil and political rights and democracy “implementation” through coercive means can be seen as neo-imperialism for many non-Western states. This first problem, however, is a point of contention. General Comment No. 3 on Article 2 paragraph 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) claims to be *neutral* in relation to economic and political system, “*provided that it is democratic* [my emphasis] and that all human rights are thereby respected.”⁴⁹ The second problem Pedersen and Kinley find is that, in authoritarian states, the burden of economic sanctions can be diverted towards the most vulnerable. Since authoritarian governments are seldom held accountable for their actions, do not rely on the provision of services to remain in power, but rather on the support of small elites and the repression of the masses, they can exploit scarcity to benefit the elites. Thirdly, they argue that the high costs for authoritarian leaders to comply with democracy means that the only possible way out is regime change. One last important conclusion from the experience with sanctions is that domestic factors are crucial when it comes to political change, and if they are not present, pressure might prove ineffective.

On the second premise, Pedersen and Kinley found that, in spite of evidence pointing to a positive correlation between democracy, civil and political rights, physical integrity rights, and social and economic rights, this correlation is much weaker for newer democracies which have weaker governance – connecting governance more positively with human rights than democracy. Since the development of democracies does not seem to follow a linear logic, the

⁴⁸ Ann Marie Clark, “The normative context of human rights criticism”, in Risse et al., “*The Persistent Power...*,”

⁴⁹ UN Human Rights Committee (HRC), CCPR General Comment No. 3: Article 2 (Implementation at the National Level), July 29, 1981, <https://www.refworld.org/docid/453883fe0.html> (accessed January 29, 2020)

authors have found that democracy imposed from abroad does not correlate positively with human rights. Risse and Ropp explain that the lack of actual human rights respect, even in spite of the positive trends up to the 1990s, is due to what they have called “norm resonance”. They argue that insincere norm compliance did not contribute to a move towards norm-consistent behavior⁵⁰. Pedersen and Kinley conclude that, although promoting democracy is not wrong, it may not be the priority focus of international engagement if long-lasting change is to be obtained. Once Ostracism fails to propose strategies sensitive to the domestic context in which it is being targeted, it ends up addressing only the symptoms and not the causes of violations.⁵¹

2.1.3 Limitations

On top of misguided assumptions regarding democracy, many authors have argued for the negative, or at least controversial, results of Ostracism. According to Sharp, the moral-legal focus of the practice of human rights might have lost the genuine “people power” found outside elite circles, having become professionalized, legalist and expertise driven, through “asserting moral and legal principles and shaming those who do not adhere to them”. Hopgood *et al* found in qualitative studies that, for authoritarian states, those “hard cases” which lack facilitating conditions for human rights change, strategies focused on the establishment of legal and moral standards and on the shaming and coercion of violators can be ineffective and counterproductive.⁵² Pedersen and Kinley have identified some of these counter-productive effects to be reactance (leaders turn resistance against sanctions into a matter of national pride); “rallying around the flag” (repression justified on national security); defensive violations (to secure the regime); collateral damage (economic distress that affects especially the most vulnerable); and domestic opposition cost (delegitimization of human rights by association with external interference). Such downsides can also be applied to smart, or targeted, sanctions, once authoritarian leaders can divert the consequences of sanctions towards the people.⁵³

⁵⁰ Thomas Risse and Stephen C. Ropp, “International human rights norms and domestic change: conclusion,” in Risse et al., *The Power of Human Rights*, 272

⁵¹ Pedersen and Kinley, *Principled Engagement*, 14-7

⁵² Hopgood et al., “Introduction...,” 12

⁵³ Pedersen and Kinley, *Principled Engagement*, 18-23

One example of the negative effects of international pressure against violations is illustrated by Asifa Quraishi-Landes in a study devoted to understanding why direct condemnation of Islam and Sharia Law has done more harm than good for the plight of women in Islamic countries.⁵⁴ She studies the case of Baryia Ibrahim Magazu, a 17-year-old Nigerian girl sentenced to 100 lashes for getting pregnant out of wedlock after being raped by three men. Although the penalty was appealed and the sentence postponed, the sentence ended up being executed before the appeal could be processed. A case Pedersen and Kinley would classify as reactance to the international pressure against this condemnation: although the majority of the Islamic community would probably agree that the penalty was unjustified and disproportional, international criticism did not focus on the injustice of the penalty itself, but proceeded to condemn Islamic Law as “barbaric and incompatible with contemporary human rights norms”, turning the matter into one of personal autonomy and sexual freedom rather than one of injustice. The resistance then became an act of national pride. Quraishi-Landes concludes that the matter could have had a better outcome had it been discussed in a context-sensitive manner.⁵⁵

Externally, Ostracism can also damage potential alternative strategies. First, due to its adversarial nature, which increases the discontent and resentment of the norm-violating state towards international interference, and might lead to an overall disengagement with said state. Second, because the objectives become “moral commitments”, and changing them at a later stage can be seen as “backing down”, a weakness of the sender that the target can benefit from and use to bargain.⁵⁶ Third, the same weakness can be felt by norm-violating states as the result of sending positive signs as a response to pressure: once they comply with demands, they risk being seen as yielding to pressure, and as having an innate desire to comply.⁵⁷ Kinzelbach argues that China might have followed this logic when it refused to commit to human rights improvements once this could be seen as yielding to foreign pressure, especially from the United States; in what Goodman and Jinks calls overjustification effect.⁵⁸

⁵⁴ Asifa Quraishi-Landes, “What if Sharia Weren't the Enemy: Rethinking International Women's Rights Advocacy on Islamic Law”, *Columbia Journal of Gender and Law* 25, No.5 (2011): 177-89

⁵⁵ *Ibid.*

⁵⁶ Pedersen and Kinley, *Principled Engagement*, 5

⁵⁷ Goodman and Jinks, “Social mechanisms to...,” 109

⁵⁸ *Ibid.*, 108

2.2 BUSINESS AS USUAL

2.2.1 What is Business as Usual

Business as Usual understands that human rights violations lie not in ill-will, but in weak state capacity, underdevelopment and isolation. The theory proposes that economic growth fosters human development and the creation of a middle class capable of leading the domestic human rights movement. This model does not advocate for diplomatic interference, and maintains that the role of the international community is to promote development through foreign aid, free market and investments, and to seek for the “normalisation” of economic relations.⁵⁹ Globalization should be supported once it leads to values convergency, which in turn is positive for human rights. “For many nations, economic openness – and the resulting trade in ideas – creates pressures for political openness and the satisfaction of civil and political rights.”⁶⁰

On elaborating whether this theory was compatible with human rights, Paul Gready and Wouter Vandenhoe propose a critical question: “Is it necessary to exercise certain authoritarian tendencies and suppress certain human rights to address early stage development challenges such as the need for long-term planning rather than the short-termism that can characterize democracies?” The trade-off between development and human rights is clearer when we think of process versus outcomes. While outcome-focused theories see development and human rights in a linear relationship, meaning that the latter would originate as a consequence of the former, process-focused theories claim that the ends do not justify the means, and that seeking development by ignoring human rights violations is never justifiable. Gready and Vandenhoe argue that, “work on economic and social rights has encouraged more constructive engagement with states around policy development and service delivery”, which strengthens the duty-bear’s capacity.⁶¹ Pedersen and Kinley go one step further in affirming that human rights are not necessarily a logical consequence of development.

How it works

According to Pedersen and Kinley, Business as Usual includes three assumption:

⁵⁹ Pedersen and Kinley, *Principled Engagement*, 2-5; 23-5

⁶⁰ Jeffrey L. Dunoff, “Does Globalisation Advance Human Rights?” *Brooklyn Journal of International Law*, 125 (April 1999): 126

⁶¹ Gready and Vandenhoe, “What Are We Trying to Change,” 4-7

1. Foreign trade and investment spur economic growth.
2. Economic growth advances human development (socio-economic rights).
3. Human development generates popular pressure for civil and political rights.

Nonetheless, they argue that this causality is not so straightforward once the elements are dependent on context. For example, the type of industry being invested in can have positive or negative effects in relation to human rights advancement: while privately owned and labour-intensive industries have a positive spill-over effect over larger sectors of the economy, investments in sectors which tend to be monopolized by the state, such as natural resources, are less impactful. Furthermore, a state's willingness and capacity to invest profits in infrastructure and in the wellbeing of the population, as well as the incidence of corruption, are also relevant factors. Pedersen and Kinley point out that studies trying to connect economic development with democratization have brought controversial results, some even showing that the more repressive a country is, the less likely it is that development improves the chances of democratic transformation.⁶²

2.2.2 Limitations

One of the problems with Business as Usual is that the international community ends up supporting the norm violating ruler without holding them accountable for their violations, thus spreading the feeling of impunity. It gives the impression that the ends justify the means, in that human rights violations in the present are justified by an investment in the future. It can also strengthen an authoritarian state which is capable of concentrating the gains of economic growth; encourage authoritarian states to increase repression in order to concentrate these gains; and justify the use of repressive measures such as community displacement and labour law violations to attract foreign investments.⁶³ The gains from economic growth might end up monopolized by the elites, exacerbating economic gaps and hindering the population's access to rights.⁶⁴ Most oil rich countries are clear examples of how unengaged development does not lead to an improvement in human rights.

⁶² Pedersen and Kinley, *Principled Engagement*, 23-5. They mention China, Singapore and Vietnam as countries which "have proven adept at short-circuiting any causal links between economic and political development, using a mix of co-optation and selective repression".

⁶³ Pedersen and Kinley, *Principled Engagement*, 23-6

⁶⁴ Dunoff, "Does Globalization..." 127-9

Risse and Ropp’s conclusion on modernization theory – that “economic growth will be largely determinative of positive or negative outcomes with regard to socio-political changes such as democratization and human rights” – also dismisses the efficacy of Business as Usual. Their research points to the emergence of anti-human rights dictatorships in prominent developing countries with large middle-classes, such as Argentina and Chile. They also identify positive outcomes towards human rights following economic crises, such as in the Philippines and in Czechoslovakia, contrary to the results in countries with sustained periods of economic growth, such as Kenya and Tunisia.⁶⁵

The same effect can be seen in development efforts coming from non-governmental/intergovernmental organizations, since “despite value overlaps, human development interventions may not be based on any rights thinking at all.”⁶⁶

Both strategies tend to focus on the macro-structure, expecting human rights to be the natural outcome of another process – development and democracy. These processes, in spite of being positively correlated with human rights, not only are not sufficient conditions for human right advancement, but also can generate negative results. For the correlation to be positive, a number of conditions must be fulfilled, which are often absent in most states, especially in authoritarian ones, the “hard cases”. In such cases, the strategies will need to be qualified, context sensitive, and focus on the improvement of domestic structures, institutions and governance to ensure that political freedoms and economic development are accompanied by fundamental structural changes positive to human rights. I will now look at how Principled Engagement suggests this should be done.

2.3 PRINCIPLED ENGAGEMENT

2.3.1 What is Principled Engagement

Principled Engagement, as elaborated by Pedersen and Kinley, attempts to overcome the negative side-effects of alternative strategies by appealing to positive motivational influences: “It is in your own best interest to do this. If you have difficulties doing it, we can help.” This

⁶⁵ Risse and Ropp, “International human rights norms...,” 269

⁶⁶ Hans-Otto Sano, “The Drivers of Human Rights Change in Development,” in Gready and Vandenhoe, “*Human Rights and Development...*,” 32

statement translates how the main mechanisms of social action of Principled Engagement, persuasion and capacity building, *together*, aim at generating “*domestic* will and capacity to institutionalise human rights in national law and practice”. The elements constitutive of this strategy involve critical dialogue with those involved in violations; regulation of trade and investments to guarantee they benefit human rights; provision of technical assistance and training in support of a human rights-based approach to development; and encouraging participation of norm-violating states in human rights focused institutions as a means of socialization and persuasion. Principled Engagement exerts normative pressure while maintaining respect for sovereignty.⁶⁷

The argument for socialisation and persuasion has been conceived by different authors. Sharp argues that this strategy might be necessary in order to recover the original values inherent to human rights, related to fostering a sense of shared humanity, lost through a focus on elite-driven strategies.⁶⁸ The practice of persuasion, according to Risse and Ropp, “has an advantage over either coercion or the manipulation of incentive structures in that it induces actors into voluntary compliance with costly rules.”⁶⁹ They further point out that “Persuasion is also more long-lasting as a socialization mechanism than manipulating incentive structures, since the latter leave actors’ interests untouched.”⁷⁰

The provision of technical assistance and training has also been addressed by Risse and Ropp in the reviewed Spiral Model. Capacity building is one of the mechanisms for social action which acknowledges that states are not necessarily unwilling to change, but often (also) unable to change. Capacity-building “refers to a highly institutionalized process of social interaction aiming toward education, training and the building up of administrative capacities to implement and enforce human rights law.”⁷¹ This strategy correlates with human rights-based approaches to development, which combine concerns for both processes (development considering the respect of human rights) and outcomes (by addressing rights in partnership rather than in opposition to governments).⁷²

⁶⁷ Pedersen and Kinley, *Principled Engagement*, 1-33

⁶⁸ Sharp, “Pragmatism and Multidimensionality...,” 12

⁶⁹ Risse et al., *The Persistent Power...*, 12

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, 15-6

⁷² Gready and Vandenhole, “What are we...,” 1-21

2.3.2 How it works

Instead of seeing human rights improvement as a by-product of macro-structural changes, Principled Engagement takes into consideration the intricacies of each situation and the individuals and institutions behind it, and works out strategies sensitive to these particularities. For example, if having elections does not hold rulers accountable, the process might make no difference to the individuals whose human rights are being violated, thus advocating for such ideas can prove unproductive, when not counter-productive. Focusing on governance, on the other hand, can help solve immediate problems by reforming the repressive micro-structures, while building the base for long-term structural changes. It aims at creating an environment conducive to human rights change where otherwise the conditions would have been unfavorable or non-existent.⁷³

The strength of Principled Engagement lies in the fact that it can influence states in a context-sensitive way. As a multi-layered strategy, Principled Engagement considers the underlying causes for violations, not only the violations themselves, and seeks tailored solutions, given that human rights violations happen for many different reasons. It uses mechanisms including incentives, persuasion, socialization, capacity building, and victim empowerment. Finally, this strategy seeks to involve multiple actors in a way that even small, less powerful, and less economically involved countries are able to exert moral authority over the norm violating state. Domestic actors also play an important role often representing the doorway into the system, given their strategic position in the domestic arena, be that as human rights defenders, political opposition, business owners or technocrats. In general, the “soft-liners” inside a government are those international influence can reach in order to target the core of a problem.

2.3.3 Advantages

One of the advantages of Principled Engagement listed by the Pedersen and Kinley is that this strategy helps overcoming collective action problems. As national security and economic interests of senders might overshadow their concern for the human rights of people in foreign lands, Principled Engagement allows for “better calibration of otherwise conflicting objectives and thus facilitates greater policy consistency by governments committed to promoting human rights”. The authors believe that because Principled Engagement does not envision an

⁷³ Pedersen and Kinley, *Principled Engagement*, 27

all-or-nothing strategy of total isolation or complete disregard, it is more easily reconcilable with senders' national interests, allowing for the engagement of those who feel more strongly against criticizing the human rights situation of an important neighbour or ally, for example.⁷⁴

The authors also argue that Principled Engagement is less harmful to sovereignty concerns, such as labelling human rights as neo-imperialism, or as an excuse to promote hidden agendas, as this strategy is explicitly defined on the basis of the human rights outlined by the United Nations and to which most states are committed to, instead of bilaterally selected rights. Principled Engagement is also less adversarial in itself, reducing the impression of neo-imperialism and imposition, and less political in the sense that it does not require regime change, thus weakening initial resistance from authoritarian leaders.⁷⁵ Principled Engagement could also alleviate the concerns of "overjustification" as described by Goodman and Jinks, because it suggests that changes in state behaviour should come from the state's innate willingness to change.

Principled Engagement is a complex but flexible strategy which focuses on agency and governance and seeks to exert normative pressure along with positive support: while it exerts less pressure on leaders than Ostracism, human rights actors on the ground serve to dissuade violators; and while it provides less resource influx than Business as Usual, it offers more aid support. Pedersen and Kinley point out the strategy's speed and agility, and its for victims seeking solutions and redress: "For individuals and communities, receiving help can be a novel and empowering experience, as they come to realize that repression is not natural."⁷⁶ In this sense, Principled Engagement can be characterized as pragmatic. It acknowledges that the norms do not prescribe specific forms of activism, but understands that strategies must be built according to political, social, technical, financial and even personal considerations. Furthermore, it is "conscious of the ideological premise, but mov[es] beyond absolutism and div[es] into context-specific and dynamic reality."⁷⁷

According to Paulo Sérgio Pinheiro, Special Rapporteur in Myanmar in 2001, the discretion with which special rapporteurs must carry out their work allows them to engage in conversations with authorities which are often reluctant to engage with any other human right players.

⁷⁴ Ibid., 28

⁷⁵ Ibid.

⁷⁶ Ibid., 30-1

⁷⁷ Dudai, "Introduction...", 391

This happens because the position demands that constructive criticism always be accompanied by transmission of support, encouragement and concrete gestures of cooperation. He acknowledges however, that there is “an inescapable tension between impartial fact-finding and clear and sound public assessments”, but that “vocal and visible criticism and behind-the-scenes negotiating are complementary and often mutually reinforcing”.⁷⁸ We can see many similarities to Principled Engagement in Pinheiro’s report.

Some authors have identified examples where pragmatic policies for human rights change have been more successful than the aggressive position assumed by many activists in the West. Hopgood writes, based on UNICEF research, that those campaigns against female genital mutilation/cutting (FGM/C) which adopted more subtle, long-term and culturally sensitized approaches in many African countries were more successful than aggressive postures often adopted by the West.⁷⁹ Quraishi describes a process of legal change in Pakistan, which was sparked by discussions on a television show concerning the rigidity of some crimes considered to be specifically addressed in the Quran. The author argues that because the debate happened inside the community, the show managed to bring about significant change to what was then considered “divine law”, making it more compatible with human rights.⁸⁰

Lastly, it is important to consider that Principled Engagement does not close the space for other strategies of human rights promotion. By engaging with norm-violating governments, it functions as a peephole inside the modus operandi, the power dynamics and the capabilities of the target states, allowing for a better assessment of what strategy might work best. The answer might be a combination of strategies working in tandem. As Risse and Ropp point out, the use of persuasion alone in international affairs is rare, but their findings of 1999 were confirmed in 2013: words do matter, and human rights advocacy groups should be aware of that, not only in their power of shaming, but also in the power of persuasion.⁸¹

⁷⁸ Paulo Sérgio Pinheiro, “Musings of a UN Special Rapporteur on Human Rights” *Global Governance* 9, No.1 (2003): 11

⁷⁹ Hopgood, ‘Challenges to the...’, 72

⁸⁰ Quraishi-Landes, “What if Sharia...”, 210-20

⁸¹ Risse et al. *The Persistent Power...*, 12

2.3.4 10 principles for engagement

Based on his experience with the difficult context of human rights advocacy in China, Indonesia and Myanmar, Chris Sidoti has identified ten principles to qualify this type of engagement,⁸² which are:

1. “*Principled Engagement must be principled, directed towards the full enjoyment of all human rights by everyone*”, which requires the clarity of objectives, recognizing human rights’ universality and comprehensiveness, and making sure the target is aware of these values.
2. “*Principled engagement must be engaged, directly involving and challenging state authorities to ensure better compliance with human rights,*” engaging in active dialogue, at times with human rights violators, respectfully and honestly; balancing praise and criticism, and acknowledging that without the first, the latter is easily dismissed as unfair, and that together, praise gives criticism more legitimacy.
3. “*Principled Engagement must be strategic, seeking and pursuing the most effective means of promoting and protecting human rights*”. Meaning sometimes working together with other strategies, such as Ostracism and Business as Usual.
4. “*Principled Engagement must never tolerate human rights violations or deny their occurrence*”. This does not mean taking an adversarial role with the violator, but engaging in sensitive dialogue and raising critical issues.
5. “*Principled Engagement must be respectful of victims of human rights violations and their situations and views.*” Victims of violations often demand that tougher strategies are upheld when dealing with the violators. Their views and rights to justice must be respected, given their experiences and knowledge on the ground situation, but it must also be acknowledged that they might not be the best informed on what strategy might work best to improve human rights overall.
6. “*Principled Engagement must be a long-term commitment to incremental improvement in the enjoyment of human rights*”. This understands that eventual setbacks are possible, but that does not invalidate the strategy to the extent that it must be put on hold.
7. “*Principled Engagement must do no harm.*” It is often argued that engagement means condoning the acts of norm violating governments. It must be acknowledged that risks

⁸² Chris Sidoti, “Ten Principles for Engagement”, in Pedersen and Kinley, “*Principled Engagement,*” 39-55

are a constant feature in human rights, but these risks must be carefully assessed and measured against any positive results the strategy may render, as well as the results of competing or complementary strategies.

8. “*Principled Engagement must be directed towards the development of strong independent institutions that are able to promote and protect human rights effectively*”, that is, strengthening local capacities.
9. “*Principled Engagement must be transparent and accountable.*” It must steer clear from the dichotomy of quiet diplomacy and public confrontation, but use cooperation and confrontation strategically and transparently, to ensure engagement is principled, and allow for the engagement of other actors, especially those involved in violations.
10. “*Principled Engagement must be monitored and evaluated*” by systematic methods, objectives and indicators.

These principles set a high bar for the use of Principled Engagement, which requires a lot of planning and coordination between the actors involved, as well as reality checks wherein expectations are calibrated so as to avoid frustrations and hasty decisions.

2.3.5 Limitations

Some of the limitations of Principled Engagement were raised by Pedersen and Kinley themselves. The first is that “relatively little is known about it, including what it looks like in practice, how it works to influence change and what conditions determine success or failure.”⁸³ This is one of the problems this paper seeks to address, by trying to apply the theory to a particular case. The second problem is that, because Principled Engagement necessitates dialogue and negotiation with norm-violating states, it can be accused of legitimising authoritarian governments. Engaging with these governments entails risks. The conditions that the engagement must be principled, transparent and accountable must be constantly strengthened so that such risks are minimized, especially when they might become beneficial to the norm violating government. The authors argue that “Principled Engagement incorporates criticism where criticism is due (*tempered only by the overriding priority of getting the target to stop such vio-*

⁸³ Pedersen and Kinley, *Principled Engagement*, 6

lations [my emphasis])”⁸⁴. This subjective scale may be hard to calibrate, as we will examine in the case study.

A related problem is a consequence of Principled Engagement’s complexity: coordination. Gready and Vandenhole bring up Galant and Parlevliet’s framework for a human rights theory of change, which resembles Principled Engagement in the sense that it also involves multiple and complex methods⁸⁵. Some of the challenges inherent in such complexity are “prioritization, sequencing, relationship between different kinds of intervention, and appropriate divisions of labour between various actors or professional sectors.”⁸⁶ This is a challenge both for the coordination of actors, such as states, non-governmental, intergovernmental and transnational organizations, and different domestic actors, as it is for the coordination of different strategies. Principled Engagement supports the possibility that more than one strategy can be used at a time. This will have implications for actors with different motivations, and can generate what Goodman and Jinks have called “crowding out effect”, that is, the negative effect of cumulative strategies. They point out, however, that material pressure has a higher potential for crowding out intrinsic motivation than social pressure.⁸⁷

Lastly, Pedersen and Kinley consider the criticism that “efforts to promote reform within existing power structures have little prospect of producing major improvements in human rights.” This problem is one which extends beyond Principled Engagement and relates to the structure of human rights itself. Although, they argue, in absolute terms the changes might not be significant, the relative gains of Principled Engagement when compared to alternative strategies might be the best argument to support this strategy.⁸⁸

The problem with excluding sanctions from the table is that it can signal that there is no strong international support for the norm, and that the international community is not willing to take drastic measures to enforce them.⁸⁹ The current backlash against human rights might be the strongest fuel to this hypothesis. But as neither sanctions nor unengaged trade and investments can avert the backlash, persuasion might still be the best way to go.

⁸⁴ Ibid., 31

⁸⁵ Ghalib Galant and Michelle Parlevliet, “Using Rights to Address Conflict – A Valuable Synergy”, in *Reinventing Development: Translating Rights-based Approaches from Theory into Practice*, eds. Paul Gready and Jonathan Ensor (London: Zed Book, 2005), 108-28

⁸⁶ Gready and Vandenhole, “What are we...,” 17

⁸⁷ Goodman and Jinks, “Social mechanisms to...,” 113

⁸⁸ Pedersen and Kinley, *Principled Engagement*, 31-2

⁸⁹ Goodman and Jinks, “Social mechanisms to...,” 110

3 Context: Myanmar and the Rohingya Crisis

Much criticism has been levied against the different actors involved in human rights promotion in Myanmar, especially since the Rohingya crisis reached its peak in August 2017, when the government's cleansing operations resulted in countless deaths and the mass flight of the Rohingya population to Bangladesh. Following the definition by Bar-Tal, Ware and Laoutides classify the Rohingya conflict as "intractable", a "protracted conflict with violent episodes, in which all sides perceive an existential threat, and with a widespread belief that the interests of different parties are irreconcilable."⁹⁰ The authors argue that to understand what led to the Rohingya crisis, it is necessary to look beyond the events of August 2017, since "Too much international commentary is reductionist, flattening and ignoring other dimensions of the conflict and the legitimate grievances and real existential fears of multiple actors."⁹¹ In this section I will contextualize the political situation in Myanmar, examining the country's relationship with the Rohingya people in order to understand the different dynamics of human rights in the country, as well as the value of Principled Engagement as a viable strategy for human rights promotion. This discussion will not represent an exhaustive examination of the numerous complexities inherent to the situation.

3.1 Context pre-2012

Myanmar was part of the British Empire from 1824, as a province of British India, until its independence in 1948. Prior to British rule, the region of today's Rakhine state was known as the Kingdom of Arakan, in Northwest Myanmar. Because of its geographical position, it was independent from the Burmese empire for most of its history. Its population, despite sharing ethnic and religious ties with the Burmese, was more connected with Bengal in the West than with the Burmese kingdom in the East, and significant Muslim presence dated back to the fifteenth century.⁹² The region has a long history of refugee flows and migration movements, especially between what is today India and Bangladesh. During the dominion of the British

⁹⁰ Anthony Ware and Costas Laoutides, *Myanmar's 'Rohingya' Conflict* (New York, Oxford University Press, September 28, 2018) 72; original definition by Daniel Bar-Tal, *Intractable Conflicts: Socio-psychological Foundations and Dynamics* (Cambridge: Cambridge University Press, 2013).

⁹¹ *Ibid.*, 68

⁹² *Ibid.*, 25-7

Empire, the autonomy granted to the region settled uprisings, and migration inside British India was free.⁹³ The historical migration flows between the region and its neighbors to the West is where we find the roots of the Rohingya's indeterminate status in Myanmar. While Rohingyas claim to be descendent from the Muslims of Rakhine settled in the region for centuries, the Myanmar government claims that the population which calls themselves Rohingya arrived in Rakhine, known as Arakan before 1989, during the British Empire, migration which they consider illegal, terming the Rohingya illegal Bengali immigrants.

During the formation of what is today Myanmar, conflicts between different ethnic minorities took place. During World War II, the populations of Arakan were mobilized by the different occupying forces. While the Rohingya and other minorities sided with the British, the Buddhist majority, including the Arakanese, initially sided with the Japanese, aiming to gain independence from Britain. The ensuing violence drastically segregated the population, pushing the Muslims to the north, and the Buddhists to the south of Arakan.⁹⁴ After the war, during the country's independence and nation-building processes, attempts were made to reconcile with ethnic minorities.⁹⁵ In 1947 the government and multiple ethnic groups signed the Panglong Agreement, which aimed to establish a unified country, providing autonomy to minority groups, and serving as the foundation for independence⁹⁶. From the beginning the Rohingya were excluded from negotiations because the Burmese government did not consider them one of the national minorities, but as a group of illegal migrants.⁹⁷ In 1962, after a little over a decade of democratic government, a coup d'état put the military in control of the government. According to political scientist Nehginpao Kipgen, the coup was a consequence of the deteriorating economy and of concerns at minority groups' discontent over their unaddressed demands for autonomy.⁹⁸ The UN Independent International Fact-Finding Mission on Myanmar (IIFMM) established by the Human Rights Council, reported that the military has used the

⁹³ Human Rights Watch, "Burma/Bangladesh - Burmese Refugees In Bangladesh: Still No Durable Solution" *Human Rights Watch*, Vol 12., No. 3 (C), May 2000, <https://www.hrw.org/reports/2000/burma/burm005-01.htm> (accessed January 29, 2020)

⁹⁴ Ware and Laoutides, *Myanmar's 'Rohingya' Conflict*, 15

⁹⁵ Nehginpao Kipgen, *Myanmar: A Political History* (New Delhi: Oxford University Press, 2016), 9-10

⁹⁶ "Panglong Agreement," conclusion date February 12, 1947, *United Nations Peacemaker Peace Agreements Database* Search, https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_470212_Panglong%20Agreement.pdf (accessed January 29, 2020)

⁹⁷ Human Rights Watch, "Burma/Bangladesh..."

⁹⁸ Kipgen, *Myanmar: A Political History*, 8-20

“ethnic threat” to the country’s sovereignty as a justification for its control over the government ever since the coup.⁹⁹

1978 witnessed the first large exodus of Rohingya into Bangladesh from independent Burma. Human Rights Watch reported that more than 200,000 Rohingyas left the country, according to the government fearing they would be identified as illegal immigrants, while Rohingyas themselves claimed to have run away from army brutality, rape and murder.¹⁰⁰ A few years later, in 1982, the government passed a Citizenship Law establishing that “full citizenship is primarily based on membership of the ‘national races’ which are considered by the State to have settled in Myanmar prior to 1824.”¹⁰¹ According to this law, citizenship is denied to anyone incapable of proving their connection to the territory of Myanmar before 1824. Despite evidence pointing to the existence of a Muslim community in Northern Rakhine before the arrival of Buddhists in the 18th century, which would place the Rohingya as a ‘national race’,¹⁰² the competing narrative maintains that ‘Rohingya’ is a political construct rather than an ethnic identity.¹⁰³ The original Muslim population became mixed with migrants and is therefore not entitled to citizenship. As a consequence, this law renders virtually all Rohingyas stateless and restricts their access to most basic rights.¹⁰⁴ The 1990s were also stage to violence against the Rohingya. Human Rights Watch estimates that over 250,000 Rohingya left for Bangladesh escaping forced labor, rape and religious prosecution committed by the government. They also estimate that the vast majority had returned to Rakhine by the end of the 1990s¹⁰⁵.

The 2000s started to see some steps towards liberalization of the military government. While the United States and the European Union imposed sanctions against Myanmar, the country

⁹⁹ Human Rights Council, Thirty-ninth session, “Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar,” A/HRC/39/CRP.2, September 17, 2018, https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf

¹⁰⁰ Human Rights Watch, “Burma/Bangladesh...”

¹⁰¹ Burmese Rohingya Organization UK, “Myanmar’s 1982 Citizenship Law and Rohingya”, December 2014, <https://burmacampaign.org.uk/media/Myanmar%E2%80%99s-1982-Citizenship-Law-and-Rohingya.pdf> (accessed January 29, 2020)

¹⁰² Ware and Laoutides, “Myanmar’s ‘Rohingya’ Conflict,” 199

¹⁰³ Intiyaz Yusuf, “Nationalist Ethnicities as Religious Identities: Islam, Buddhism and Citizenship in Myanmar,” *The American Journal of Islamic Social Sciences* 34, No.4(4) (November 2017): 108

¹⁰⁴ Ian Holliday, “Addressing Myanmar’s Citizenship Crisis”, *Journal of Contemporary Asia* 44, No.3 (November 2017): 409-12

¹⁰⁵ Human Rights Watch, “Burma/Bangladesh...”

strengthened its relationship with China and neighbors in Southeast Asia.¹⁰⁶ 2002 saw the release of the country's most prominent political prisoner, Aung San Suu Kyi, Nobel Peace Prize laureate and co-founder of the main opposition party, the National League for Democracy (NLD), only to see her brought under house arrest again the next year.¹⁰⁷ 2003 also saw the government establish the "Seven Step Roadmap to Democracy", aiming to establish a new constitution and hold legislative elections.¹⁰⁸ The new constitution, however, was approved in 2008 through a referendum which took place only days after Cyclone Nargis had hit part of the country, in what was registered as the worst natural disaster in recorded history of Myanmar¹⁰⁹. An Elections Monitoring report identified that the officially reported 98% turnout and 92% approval rate, in this context, attests to the referendum's lack of credibility¹¹⁰.

The new constitution consolidated the military's grip over the democratic transition. By reserving a quarter of the seats in Parliament to the military and requiring a minimum of 75% of votes for any reform to the constitution, the military had *de facto* veto power.¹¹¹ It gave immunity to generals' past human rights violations, and established that the ministers of defense, home and border affairs were to be drawn from the military¹¹². It also established that nobody whose spouse or children held a foreign nationality could run for presidency, a rule which targeted Aung San Suu Kyi directly.¹¹³ As a result, "even if the NLD were to capture all the available seats in the by-elections, the military-backed USDP had established a firm control of the government."¹¹⁴ However, in spite of few positive aspects, in regards to acknowledging the rights of the people, the constitution also consolidated the notion of 'national races' as being above that of citizenship. It lists 135 'national races', and 'Rohingya' is still not one of

¹⁰⁶ Kipgen, *Myanmar: A Political History*, 168-9

¹⁰⁷ *Ibid.*, 22-3

¹⁰⁸ Human Rights Watch, "Burma/Bangladesh..."

¹⁰⁹ United Nations Environment Programme, "Learning from Cyclone Nargis Investing in the environment for livelihoods and disaster risk reduction: A Case Study", 2009, 3 https://wedocs.unep.org/bitstream/handle/20.500.11822/14116/myanmar_cyclonenargis_case_study.pdf?sequence=1&isAllowed=y (accessed January 29, 2020)

¹¹⁰ The Public International Law & Policy Group, "The 2010 Burmese Elections: Neither Free Nor Fair," November 8, 2010, 4, <https://www.icj.org/wp-content/uploads/2014/03/Myanmar-PILPG-2010-Burmese-elections-report-2010-eng.pdf>

¹¹¹ Yash Ghai, "The 2008 Myanmar Constitution: Analysis and Assessment," April 9, 2008, 8; 36, https://www.burmalibrary.org/docs6/2008_Myanmar_constitution--analysis_and_assessment-Yash_Ghai.pdf (accessed January 29, 2020)

¹¹² Holliday, "Addressing Myanmar's...", 407

¹¹³ Human Rights Council, "Report of the detailed...", September 17, 2018

¹¹⁴ Kipgen, *Myanmar: A Political History*, 95

them, preventing them from claiming political rights as a group of individuals, or claiming territorial autonomy.¹¹⁵ The Kofi Annan-Led Advisory Commission described this situation as a “hierarchy of different types of citizenship.”¹¹⁶

The elections promised in the Seven Step Roadmap to Democracy took place in 2010, but they were considered neither free nor fair.¹¹⁷ Aung San Suu Kyi was released from house arrest a week after the elections, having spent the majority of the last two decades imprisoned. Although her party boycotted the election and the military party was victorious, a reconciliation process began, with the government allowing the NLD to re-register as a legal political party; the release of political prisoners; ceasefire negotiations with armed ethnic minority groups; eased media censorship; and the creation of a National Human Rights Commission (MNHRC). However, this process was far from perfect: it has been argued that the release of political prisoners was “manipulated ... to improve relations with the Western nations”¹¹⁸; the ceasefire agreement did not put an end to hostilities¹¹⁹; and the MNHRC was accused of being a government tool to promote its human rights image without bringing significant improvements to the human rights situation in the country¹²⁰.

After over a decade of sanctions, the government began to fight for legitimacy and international recognition. Kipgen argues that, “In pursuing these objectives, the immediate goal of Nay Pyi Taw was to convince the collective leadership of ASEAN, and to urge the US government and other Western nations to lift sanctions.” As a consequence of the liberalization, the NLD participated in and won the next two elections, becoming the largest group in the parliament. These steps towards democratization brought relaxation of Western sanctions and investment flows, which contributed to the country’s average economic growth of 7% between 2015 and 2017.¹²¹ Finally, through a bill approved in the NLD dominated parliament,

¹¹⁵ Ware and Laoutides, *Myanmar’s ‘Rohingya’ Conflict*, 23-5

¹¹⁶ “Towards a Peaceful, Fair...”

¹¹⁷ The Public International Law & Policy Group, “The 2010 Burmese Elections...”

¹¹⁸ Kipgen, *Myanmar: A Political History*,” 128

¹¹⁹ “UN Independent International Fact-Finding Mission on Myanmar calls on UN Member States to remain vigilant in the face of the continued threat of genocide,” *UNOHCHR*, October 23, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25197&LangID=E>

¹²⁰ Niki Esse de Lang, “The Establishment and Development of the Myanmar National Human Rights Commission and Its Conformity with International Standards,” *Asia-Pacific Journal on Human Rights and the Law* 13, No.1 (2012): 38

¹²¹ Human Rights Council, “Report of the detailed...”, September 17, 2018

the position of state counsellor was created and assumed by Aung San Suu Kyi, allowing her to rule above the president and become Myanmar's *de facto* political leader.

Christopher Roberts argues that, in spite of the room for optimism, the political changes initiated in 2011 were “designed to deflect international criticism through the provision of a democratic façade.”¹²² The participation of the NLD and minority groups in the elections only gave legitimacy to an allegedly democratic government which was in fact still under the control of the military.¹²³ The concessions made by the military did not ultimately jeopardize their grip on power and it continued to avoid addressing important domestic issues, including the demands of minorities. In 2012 only one year after the supposed liberalization, sectarian violence broke out again. Kipgen argues that if the elections and the release of political prisoners helped ease the pressure from the international community towards Myanmar, “sectarian violence ... jeopardized, if not hampered, the political transition.”¹²⁴

3.2 Rohingya Crisis – 2012 onwards

The current crisis involving the Rohingya and the community in Rakhine erupted in June 2012 when, in retaliation for the brutal rape and murder of a Buddhist woman by three Rohingya men, a group of ten Muslim pilgrims were killed by a Buddhist mob. The communal violence that broke out after this incident was contained until it erupted again in September of the same year. In the meantime, a strong nationalist sentiment was building among Buddhist groups as a response to the perceived pro-Muslim bias of the international community. Ware and Laoutides argue that public statements by these Buddhist groups as well as by the government at this time demonstrated a clear desire for ethnic cleansing. The communal violence which broke out again in September was therefore apparently coordinated against Muslims. The result was the displacement of around 140,000 people, the large majority of them Rohingyas.¹²⁵ The ensuing measures adopted by the government involved segregation and the restriction of mobility and access to services such as health and education, targeting the Rohingya.¹²⁶ Ware and Laoutides argue that, in spite of never having been a radicalized popula-

¹²² Christopher B. Roberts, “Changing Myanmar International Diplomacy and the Futility of Isolation,” *Security Challenges* 7, No.4 (2011): 93

¹²³ Kipgen, *Myanmar: A Political History*, 125

¹²⁴ *Ibid.*, 134

¹²⁵ Ware and Laoutides, *Myanmar's 'Rohingya' Conflict*, 36-41

¹²⁶ *Ibid.*, 64-5

tion, these restrictions sparked unaddressed grievances and served as a justification for the use of violence by the Rohingya. Around 400 Muslims from the Arakan Rohingya Salvation Army (ARSA) expressed this violence through coordinated attacks on three border guard police posts in October 2016, followed by a Jihad call on social media to liberate northern Rakhine. The military responded by carrying out “clearance operations”, the same operations which would lead to the mass exodus of Rohingyas in August 2017, sparked this time by a coordinated attack on 30 border guard police posts by ARSA, apparently with the intention of liberating the township of Maungdaw, in northern Rakhine.¹²⁷ Ware and Laoutides characterize ARSA’s attacks as “classic ethnic insurgency in scope and execution.” The attacks happened hours after the public release of Kofi Annan’s Rakhine Advisory Commission report, whose recommendations were held to be the “best proposals towards peace yet drawn up”.¹²⁸

Many international organizations have reported that the brutal and disproportional “clearance operations” led by the army involved indiscriminate arson, rape, shootings, massacres, which could amount to crimes such as ethnic cleansing, war crimes, crimes against humanity and genocide.¹²⁹ Certain claims point out that the operations were part of an overall terrorizing strategy targeting not only suspected militants but also – and heavily – the civilian population, which fled in large numbers across the border to Bangladesh. Médecins Sans Frontières reported up to 10,000 Rohingya civilian deaths¹³⁰, and the International Organization for Migration has estimated that over one million people have crossed in to Bangladesh.¹³¹ Prince Zeid Ra’ad al-Husseini, then High Commissioner for Human Rights at the United Nations, characterized the situation as a “textbook example of ethnic cleansing”.¹³² The report of the IFFMM concluded that the information obtained was enough to warrant an investigation to determine

¹²⁷ Ibid., 64-7

¹²⁸ Ibid., 51-2

¹²⁹ Human Rights Council, “Report of the detailed...,” September 17, 2018; Human Rights Council, Forty-second session, “Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar,” A/HRC/42/50, August 8, 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/236/74/PDF/G1923674.pdf?OpenElement> (accessed January 29, 2020).

¹³⁰ Médecins Sans Frontières, “No One was Left, Death and Violence Against the Rohingya,” March 9, 2018, <https://www.msf.org/myanmarbangladesh-%E2%80%98no-one-was-left%E2%80%99-death-and-violence-against-rohingya> (accessed January 29, 2020)

¹³¹ Inter Sector Coordination Group, “ISCG Situation Report: Rohingya Refugee Crisis, Cox’s Bazar”, March 25, 2018, <https://reliefweb.int/report/bangladesh/iscg-situation-report-rohingya-refugee-crisis-cox-s-bazar-25-march-2018> (accessed January 29, 2020).

¹³² “UN human rights chief...”

the liability of genocide.¹³³ In November 2019, the International Criminal Court authorized opening an investigation into the situation in Bangladesh and Myanmar,¹³⁴ and The Gambia, representing the Organization of Islamic Cooperation (OIC), instituted proceedings against Myanmar before the International Court of Justice alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide.¹³⁵

3.3 Situation Post-August 2017

Ware and Laoutides defend the need to put the military response to the attacks in August 2017 in context in order to understand the current situation for the Rohingya. Talking about Aung San Suu Kyi and the NLD government, he argues, “Their immense challenges need to be acknowledged, including their struggles with the military and the fact the nation sits on a knife-edge of wider racial violence, even while we demand much more serious and comprehensive action.”¹³⁶

The authors identify five main actors in this conflict. The Rohingya Muslims, segregated, discriminated against and denied citizenship, struggle to be recognized as a minority in order to claim political group rights; the Rakhine Buddhists, a recognized minority group which also fights against the state for autonomy, and fears the Muslim demographic pressure, both from Bangladesh and from the growing Rohingya population; the Tatmadaw, Myanmar’s military, which has a duty to protect territorial integrity and sovereignty; the NLD government, which faces the domestic legitimacy challenge of reassuring the Buddhist majority against the perceived Muslim threat, and external legitimacy challenge of not seeming complicit in the military’s crimes;¹³⁷ and the International Community, which they claim have “weaponiz[ed] pub-

¹³³ Human Rights Council, Thirty-ninth session, “Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar,” A/HRC/39/64, September 12, 2018, 16

¹³⁴ “ICC judges authorise opening of an investigation into the situation in Bangladesh/Myanmar” *International Criminal Court*, press release, November 14, 2019, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1495> (accessed January 29, 2020)

¹³⁵ “The Republic of The Gambia institutes proceedings against the Republic of the Union of Myanmar and asks the Court to indicate provisional measures,” *International Court of Justice*, unofficial press release No. 2019/47, November 11, 2019, <https://www.icj-cij.org/files/case-related/178/178-20191111-PRE-01-00-EN.pdf> (accessed January 29, 2020)

¹³⁶ Ware and Laoutides, *Myanmar’s ‘Rohingya’ Conflict*, 11

¹³⁷ *Ibid.*, 59-60

lic shaming and often politiciz[ed] humanitarian action”, and is seen as partisan in the conflict for not grasping its complexity.¹³⁸

Myanmar has many ethnic minority groups, and many of these groups organize themselves in different forms of resistance, many of them armed. The ARSA is only one of them. Most of these groups fight against the central government, often for autonomy. The fear caused by the violence in Rakhine state in 2016-2017, itself a result of decades, if not centuries-long tensions and fueled by public Jihadist calls by and hate speech against the Rohingyas, demanded that Myanmar’s security forces responded to the attacks. The response, though disproportional, had strong domestic support as the attacks were framed as an external threat to Myanmar. Simply put, they argue, the attacks were a self-fulfilled prophecy: “Fear and suspicion prompted the state to treat the Muslims in ways that have encouraged some to radicalize, the very thing it has long dreaded”. On the other hand, the violent military response to the attacks is likely to increase support for the militants.¹³⁹

The role of the international community is of special importance for this study. While much can be said about how to resolve the conflict domestically, I will now examine the different approaches adopted by the international community to promote human rights in Myanmar, to understand how it influenced, and continues to influence, the other actors in the Rohingya crisis. If it keeps failing to grasp the complexity of the issue, the international community risks losing, at least to the eyes of Burmese, its moral authority and capacity to help resolve the conflict. The next sections will be dedicated to analyzing the international response to the violations in the country, in the form of Ostracism, Business as Usual, and Principled Engagement; how these strategies have worked together or worked against each other; and whether Principled Engagement still has a better chance of having a more positive contribution than other strategies.

¹³⁸ Ibid., 20-1

¹³⁹ Ibid., 47-59

4 ENGAGING WITH MYANMAR

The third stage of the Spiral Model for human rights change, mentioned in chapter two, is characterized by tactical concessions made by the state aiming at appeasing criticism and lessening international pressure. The authors of the Model claim this phase represents the biggest challenge: if the transnational mobilization is capable of driving the state to make tactical concessions (release of prisoners, ease on media censorship, sign international treaties etc), this is the time to focus on activating domestic forces. However, if a repressive regime is still in control of tools for repression, and the domestic opposition is too weak, instead of moving the spiral forward towards a rule-consistent behavior, this phase can also give way to backlash and repression, breaking the spiral. The tipping point will depend on the strength of the transnational network and the vulnerability of the norm-violating government to international pressure.¹⁴⁰

Myanmar, whose government was an authoritarian military dictatorship until the 2000s, can be located in this challenging phase. As it felt the pressure of international sanctions, one of the strategies more commonly used against authoritarian countries, it started to move up the spiral, it released prisoners, eased media censorship, enacted a ceasefire with rebel groups, began a transition to democracy. However, Myanmar is a clear example of how this phase can backfire and, without due care, bring to more violations. That can be explained by the ‘dishonesty’ of the process: the release of prisoners was manipulated, the media censorship was limited, and the democratization process overall was highjacked by the military through a flawed constitution that made the appearances very favorable but that in fact allowed the military to maintain its stranglehold on power. However, while the concessions, along with the return of Aung San Suu Kyi to the public sphere, brought hope that the country would keep on the path of positive changes and contributed to the West’s rejoicing towards Myanmar, the façade character of these changes, gave legitimacy to a government still heavily controlled by the military.

As this was the case, it is important to examine the different strategies used by the international community to try and change Myanmar’s behavior towards human rights, as well as their consequences. As there was hardly any meaningful engagement with the country through

¹⁴⁰ Risse et al., *The Power of Human Rights*, 25-8

Western policies before the democratization, little was known as to the inside dynamics of the military government. Having understood how Principled Engagement works, and having studied the context in Myanmar, I will now argue that Principled Engagement might be a useful strategy to confront human rights challenges in Myanmar. I will first analyze the alternative strategies studied in the second chapter, Ostracism and Business as Usual, in the context of the country, in order to draw comparisons with Principled Engagement, and understand the nature of the current crisis.

4.1 Ostracism

As summarized by Hopgood et al, “The Persistent Power of Human Rights” argues that such methods [the establishment of legal and moral standards, and the shaming and coercion of violators] are less effective in authoritarian regimes, in very weak and very strong states, in issue areas where violations are socially decentralized, and where the rights-abusing state enjoys popular support.”¹⁴¹ As we have seen in the previous chapter, these are all conditions found in Myanmar, which weaken the efficiency of sanctions and isolation for human rights promotion. Ware and Laoutides complement, arguing that, “The sort of high-profile, confrontational public shaming that we have seen to date is unlikely to help resolve the situation, risks moral hazard, entrenches belligerent responses, and tends to sideline moderate voices that may seek an alternative path in a less politicized environment.”¹⁴²

Because the West had little strategic or economic interest in Myanmar, since the aborted elections of 1990, Western countries adopted a posture of ostracism. This posture translated into sanctions, boycotts and the isolation of the military government, under the belief that human rights concerns could only be addressed through increased democratization. As a result, for the last two decades of military dictatorship, Myanmar lived under “one of the strongest U.S. sanctions regimes against any country in the world”; with the European Union and the United Kingdom adopting similar strategies, of both generalized and targeted sanctions.¹⁴³ Pedersen wrote in 2008, while most sanctions were still in place, that, “While the military rulers are certainly affected, annoyed and even concerned about their international pariah status and lack of access to Western trade, investment, and aid, the theories underlying the core strategy ...

¹⁴¹ Hopgood et al., “Introduction...”, 10

¹⁴² Ware and Laoutides, *Myanmar's 'Rohingya' Conflict*, 216-7

¹⁴³ Pedersen, *Promoting Human Rights...*, 22-4

do not take sufficient cognizance of the “psychology of sanctions” ... or of the broader historical, political and economic context for the ongoing struggle for reform.”¹⁴⁴ Myanmar’s generals have even accused Western sanctions of harming their people’s human rights by contributing to unemployment and the consequent deterioration of living standards.¹⁴⁵

Pedersen recognizes that sanctions have had positive effects, possibly intended at improving the country’s international image. Myanmar ratified human rights conventions¹⁴⁶ and invited human rights institutions into the country¹⁴⁷; provided (limited) space to Aung San Suu Kyi and her party NLD; and addressed some human rights issues, such as releasing political prisoners and ending forced labor.¹⁴⁸ However, he argues that the concessions were calculated in order not to threaten the military regime’s own core interests. Furthermore, the absence of a change in sanctions policies after these positive steps added to the military’s frustration with this kind of engagement, as they often received little more than ‘words of appreciation’ for these concessions.¹⁴⁹ Christopher Roberts argues that “Due to increased trade with Myanmar and a rise in its strategic importance for countries such as China and India, attempts to enforce change through isolation have become increasingly futile.”¹⁵⁰

4.1.1 Negative sides

The International Crisis Group identified some of the counterproductive consequences of sanctions: “they have a negative impact on the population and on the prospects for dialogue and reconciliation – and by reinforcing the siege mentality of Myanmar’s leadership, they undermine the chances that the new generation of leaders will break with the isolationist and authoritarian direction of the previous regime.”¹⁵¹ The result of sanctions policies in Myanmar

¹⁴⁴ Ibid., 218

¹⁴⁵ Brigadier General Kyaw Win, interview with Japan Times, 5 February 1999, and Lieutenant General Khin Nyunt, interview with AsiaWeek, 17 December 1999, original citation Pedersen, *Promoting Human Rights...*, 218-9

¹⁴⁶ Today, Myanmar has signed and ratified ICESCR, CEDAW, CRC, CRPD, the Genocide Convention, Convention against Torture, Slavery Convention.

¹⁴⁷ UN special envoy, UN special rapporteur on human rights, UNHCR, ICRC, ILO and Amnesty International

¹⁴⁸ Pedersen, *Promoting Human Rights...*, 218-21

¹⁴⁹ Pedersen, *Promoting Human Rights...*, 223-6.

¹⁵⁰ Roberts, “Changing Myanmar...,” 77

¹⁵¹ International Crisis Group, “Myanmar’s Post-Election Landscape”, briefing 118, Asia, March 7, 2011, <https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-s-post-election-landscape> (accessed January 29, 2020)

was a “nationalistic backlash, heightening the resistance to change, undercutting potential reformers and further discrediting Myanmar democracy groups”, which “caused the government to increase political repression and security spending ... while economic sanctions became a scapegoat for the country’s underdevelopment”.¹⁵²

The negative impact on the population was clearly seen through the dismantling of Myanmar’s textile industry, exemplified by the loss of around 75 thousand jobs overnight,¹⁵³ which affected mainly low paid workers.¹⁵⁴ This, however, has not affected the military’s stranglehold on power, due to its alternative partners, especially China.¹⁵⁵ Besides, there is a consensus among scholars for the inefficiency of sanctions, especially when directed against authoritarian governments. It is harder for economic damage caused by sanctions to translate into political change due to the existing entrenched power structures inherent under authoritarian regimes.¹⁵⁶ The prohibition of Western companies to engage in business in Myanmar also gave way to local companies, limiting the impact of those willing or capable of triggering positive human rights change, or conducting business in accordance with international standards of corporate responsibility.¹⁵⁷

The prospects for dialogue and reconciliation were hampered by the lack of strategic unity adopted by the international community. Western isolationist policies not only moved Myanmar away from potential engagement with and influence from the West,¹⁵⁸ but also threw it into the arms of other authoritarian countries, such as China and North Korea.¹⁵⁹ China itself has mostly refused to engage in sanctioning Myanmar, claiming that human rights are a domestic issue that should not be dealt with through this kind of intervention.¹⁶⁰

When it comes to post-democratization issues, sanctions also seem to have caused negative effects. Because the main focus of Western isolation was to bring about regime change, when democratization finally began, other important issues remained unresolved, such as minori-

¹⁵² Morten B. Pedersen “How to promote human rights in the world’s most repressive states: lessons from Myanmar,” *Australian Journal of International Affairs* 67, No.2 (2013): 192

¹⁵³ *Ibid.*, 192-3

¹⁵⁴ Kipgen, *Myanmar, A Political Story*, 169

¹⁵⁵ Roberts, “Changing Myanmar...,” 90

¹⁵⁶ Pedersen, “How to promote...,” 200, note 2

¹⁵⁷ *Ibid.*, 194

¹⁵⁸ *Ibid.*, 191

¹⁵⁹ Roberts, “Changing Myanmar...,” 90

¹⁶⁰ Pedersen, “How to promote...,” 192

ties' demands for autonomy, or the protracted Rohingya citizenship and disenfranchisement issues.¹⁶¹ Roberts argues that, with democratization, Myanmar no longer reached the level of oppression generally necessary to trigger an international response. Resuming relations with the country after years of sanctions, however, could jeopardize processes such as international criminal investigations, essential part of Western "strong-arm tactics", or "coercive diplomacy". These tactics, he argues, are likely to "generat[e] nationalistic backlashes and exacerbat[e] an already existent sense of paranoia about foreign interference", thus reinforcing the 'siege mentality'.¹⁶²

The role of the international community becomes even more questionable in relation to the Rohingya crisis. Ware and Laoutides argue that, because ARSA's attacks against border police stations in 2016 and 2017 seemed to have very little chance of success, it is speculated whether they were carried out *with the intention* of fostering international support. The authors show that the possibility of the weaker side counting on the support of an international intervention in case they are seen as threatened, might cause this losing side to take 'suicidal' actions to bring attention to their cause and win the favor of the international community. The absence of recommendations in Kofi Annan's interim report, disclosed hours before the attacks, addressing the group rights of the Rohingya supports this theory, as they were one of ARSA's central demands. Furthermore, this logic is corroborated by the impressions that the humanitarian response, since 2012, has been seen by most actors involved, including Rohingya, Rakhine and Burmese government, as biased towards the Rohingya.¹⁶³

Pedersen argues that it was only when the US policy adopted some kind of Engagement *on top* of the sanctions policies, that Myanmar's military regime began to liberalize.¹⁶⁴ He argues that the engagement with the military leaders drew them "out of their shells" by demonstrating the benefits of being part of the international community, instead of stressing the disadvantages of being outside. Kipgen also identifies more positive responses during the engagement under the Obama administration, rather than the sole pursuit of sanctions of his predecessor.¹⁶⁵ Ultimately, Pedersen argues that sanctions and isolation only contributed to weaken

¹⁶¹ Ibid., 193

¹⁶² Roberts, "Changing Myanmar...", 97

¹⁶³ Ware and Laoutides, *Myanmar's 'Rohingya' Conflict*, 214-6

¹⁶⁴ Pedersen, *Promoting Human Rights...*, 198-9

¹⁶⁵ Kipgen, *Myanmar: A Political History*, 101-22

government capacity, hampering the implementation of reforms by the new democratic government.¹⁶⁶

One last argument that must be made about Ostracism is the conclusion raised by Risse and his colleagues to their reviewed version of the Spiral Model. They concluded that one of the reasons for the lack of actual human rights respect, in spite of the positive trends up to the 1990s, was due to what they called “norm resonance”, arguing that insincere norm compliance did not contribute for a move towards norm-consistent behavior¹⁶⁷. Unless an actor is convinced of the validity of a norm, it becomes easier to fall back into old habits. Myanmar, in spite of the democratization process, has not improved in most human rights indicators.¹⁶⁸

Ware and Laoutides arguments against Ostracism can be summarized in the following paragraph:

Attempting to shame Myanmar into action is counterproductive. Any sustainable outcome will rely very heavily on cooperation from both the NLD government and Tatmadaw. There is no potential alternative government with different policies, so contemplation of ‘regime change’ is out of the question ... Public shaming of the people you must later rely upon, often based on selective reports that do not acknowledge their legitimate responsibilities, fears, and constraints, does very little to win such cooperation.¹⁶⁹

Finally, Pedersen concludes that, “These adverse effects of sanctions raise serious questions about an approach that ... was often justified as ‘simply the right thing to do’.”¹⁷⁰

4.2 Business as Usual

It is hard to precise whether trade and economic investments have had any significant impact on Myanmar’s economy after democratization, given the limited timescale and the many variables involved. Despite the difficulty of ascertaining causation, some trends have been noted

¹⁶⁶ Pedersen, *Promoting Human Rights...*, 198-9

¹⁶⁷ Thomas Risse and Stephen C. Ropp, “International human rights norms and domestic change: conclusions” in *The Power of Human Rights*, 272.

¹⁶⁸ “Freedom in the World 2019”, *Freedom House*, <https://freedomhouse.org/report/freedom-world/2019/myanmar> (accessed January 29, 2020)

¹⁶⁹ Ware and Laoutides, *Myanmar’s ‘Rohingya’ Conflict*, 11

¹⁷⁰ Pedersen, “How to promote...,” 193

for the past decades. Kipgen argues that Myanmar's relationship with China and its neighbors in ASEAN have always leaned towards non-interference in domestic issues, such as human rights, and gained particular relevance to Myanmar after Western countries adopted sanctions.¹⁷¹ China was particularly important, since it also helped to deflect Western criticism of human rights in Myanmar given its position inside the UN, especially as member of the Security Council with veto power.¹⁷² At the same time, China did not care about promoting human rights nor a free democracy. In the early stages of democratization, Roberts argued that, "While their [China's] references to stability and development may accurately represent the foreign policy goals of Beijing, their reference to democracy is at best naïve while any preference for reconciliation by China would likely entail a peaceful acceptance of Myanmar's semi-authoritarian model of governance – 'disciplined democracy.'¹⁷³

Although it might have wanted to engage with Myanmar partly to reduce the country's vulnerability to China, ASEAN also avoided getting involved with human rights issues. Despite the group's strategy towards Myanmar being formulated under the tag of "constructive engagement", it did not lead to political developments.¹⁷⁴ ASEAN's Human Rights Declaration, for example, has a broad understanding of the limits of human rights: it accepts constraints based on "national security, public order, public health, public safety, public morality, as well as the general welfare of the people in a democratic society".¹⁷⁵ In spite of the general trend of non-interference, Roberts argues that the violations happening in Myanmar reached such a level that sparked criticism even from within ASEAN. During the 2000s, such criticism led to a state of "mutual disengagement."¹⁷⁶

4.2.1 Negative sides

Despite positive links between modernization and human rights, we have seen in the previous chapter that the conditions under which un-principled engagement would lead to improvement in the human rights conditions are limited. They include the type of industry being invested in, the willingness and capacity to convert profits into wellbeing, and the incidence of corrup-

¹⁷¹ Kipgen, *Myanmar: A Political History*, 166-9

¹⁷² Ibid.

¹⁷³ Roberts, "Changing Myanmar...", 83

¹⁷⁴ Ibid., 87-8

¹⁷⁵ ASEAN's Human Rights Declaration, art. 8

¹⁷⁶ Roberts, "Changing Myanmar...", 90

tion. In Myanmar, Pedersen identified that “the military’s stranglehold on key parts of the economy, compounded by economic mismanagement, corruption and the absence of appropriate mechanisms for redistributing national wealth, stymied growth and increased inequality.”¹⁷⁷ Kipgen argues that the democratic improvements in the country, especially in 2011, were not due to modernization or the advent of a civil society, but rather were guided by interests such as the ASEAN’s chairmanship, the lifting of sanctions, and fear of mass uprisings such as were happening in the Arab World.¹⁷⁸ Furthermore, the positive results from trade and investment achieved at the end of the 2000s, argues Roberts, were connected to investment in companies which lacked the potential to create a rippling effect in the economy benefitting the population. These investments benefited “either State Owned Enterprises (SOEs) or private enterprises owned by the ruling elite – some of which were purchased at below market value just prior to the November 2010 elections.”¹⁷⁹ Finally, foreign investment was often associated with human rights violations and lack of environmental responsibility and accountability to the local communities.¹⁸⁰

The government also lacked the will and capacity to translate gains into increasing the wellbeing of society. The few people who did ascend economically with resumed business with the West were mostly connected with the government, and had much to lose by pursuing deeper reforms.¹⁸¹ Commitments to social rights ended up neglected because Myanmar remained dependent on natural resources, where most of the government spending is targeted.¹⁸² Corruption¹⁸³, child and forced labor¹⁸⁴ also continued to be serious problems, and the economic openness of the country has given rise to criticisms “that workers are frequently exploited as cheap labor in a global supply chain.”¹⁸⁵ Mark Duffield explains how ‘colonial bureaucracy’,

¹⁷⁷ Pedersen, “How to promote....,” 194

¹⁷⁸ Kipgen, *Myanmar: A Political History*, 94-5

¹⁷⁹ Roberts, “Changing Myanmar...,” 78

¹⁸⁰ Pedersen, “How to promote....,” 194

¹⁸¹ *Ibid.*

¹⁸² Holliday, “Addressing Myanmar’s...,” 408

¹⁸³ Transparency International, “Corruption Perceptions Index 2018,” <https://www.transparency.org/cpi2018>

¹⁸⁴ “Freedom in the World 2018” *Freedom House*, August 1, 2018, https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5b7bcc641&skip=0&query=forced%20labor&coi=MMR&search_in=fulltext&sort=date (accessed January 29, 2020); and United States Department of Labor, “Findings on the Worst Forms of Child Labor – Burma”, 20 September 2018, available at: <https://www.refworld.org/docid/5bd05aaf0.html> (accessed January 29, 2020)

¹⁸⁵ Ronan Lee, “The Dark Side of Liberalization: How Myanmar’s Political and Media Freedoms Are Being Used to Limit Muslim Rights,” *Islam and Christian-Muslim Relations* 27, No.2, 196 (March 15, 2016)

inherited by ex-colonies, also contributed to the government's lack of capacity, since it was not installed in order to measure and provide for the wellbeing of the people, but for administrative and security considerations."¹⁸⁶

Together, these two strategies might have contributed to the "crowding out effect", posited by Goodman and Jinks. Sanctions require a coordinated response by the international community. However, because of China's economic and political interests in Myanmar, Roberts argues that "it is impossible to imagine circumstances where China would be willing to join the West in imposing a sanctions regime."¹⁸⁷ The only contribution that could come from China, he argues, is the desire of regional and domestic stability, a status that is both good for business and ensures that China does not share a border with an unstable country. Such stability, however, does not imply respect for human rights. The result of striking opposite approaches, a lack of support from the West and the non-intervention from Myanmar's neighbors resulted in undermining attempts of engagement with the military to address important human rights issues.¹⁸⁸

In 2001, David Steinberg wrote that neither the sanctions adopted by the United States and the European Union,¹⁸⁹ nor the "constructive engagement" adopted by Myanmar's neighbors would serve to put an end to the military dictatorship¹⁹⁰. He explains that, "the military is in command, will likely remain in direct command in some form for the next few years, and in the foreseeable future will effectively control, or minimally have veto power over, any evolving government, political system, or economic regimes".¹⁹¹ Although the country's political system has changed, the military still has effective control over some of the most important business of government, limiting what can be achieved to macro-structural changes.¹⁹²

¹⁸⁶ Mark Duffield, "On the Edge of 'No Man's Land' Chronic Emergency in Myanmar", School of Sociology, Politics, and International Studies, University of Bristol, Working Paper No. 01-08, 8-9

¹⁸⁷ Roberts, "Changing Myanmar...", 87

¹⁸⁸ Pedersen, "How to promote...", 195

¹⁸⁹ David I. Steinberg, *Burma, The State of Myanmar* (Washington, DC: Georgetown University Press, 2001), xxx

¹⁹⁰ *Ibid.*, xxx

¹⁹¹ *Ibid.*, 85

¹⁹² *Ibid.*

I will now turn to Principled Engagement as a strategy that has been attempted in some situations in Myanmar and, in spite of the challenges, can be considered as a viable path out of the current crisis.

4.3 Why Principled Engagement

*Myanmar's longstanding isolation from aid is counterintuitive because one of the greatest obstacles to political liberalisation and stability is poverty.*¹⁹³

As explained in the second chapter, Principled Engagement stands to be an alternative strategy to mainstream human rights advocacy by being culturally sensitive, pragmatic and strategic. In the third chapter, I have explored some of Myanmar's characteristics which make it a challenging arena for human rights, in its historical, political and social aspects. I will now explore some of the challenges present in Myanmar, namely grievances, the role of Buddhism in society, and democratization issues, which hinder human rights promotion, and how Principled Engagement might provide tailored approaches that address deep-seated concerns.

4.3.1 Need to address grievances

As demonstrated in previous chapters, Myanmar's many particularities rule out cookie-cutter solutions and demand a context-sensitive approach when dealing with human rights. The Rohingya crisis is no exception. Imtiyaz Yusuf summarizes the situation: "The case of the Rohingya ... relate to geography and territoriality, precolonial political relations between Arakan and Bengal, race relations in British Burma, the violent legacy of the Burmese independence struggle, and the ethnoreligious violent conflicts in postcolonial Burma."¹⁹⁴ These complexities raise the first issue in order to promote human rights in the country: the need to address grievances.

Ware and Laoutides emphasize the relevance of the psychosocial dimensions of the conflict, since "deep trauma has been suffered by all groups, and acute existential fears have been accentuated within all communities."¹⁹⁵ The labelling of ARSA, the Rohingya armed group which carried out the attacks which triggered the disproportional responses from the government against the Rohingya, as "Islamic terrorists" feeds an existential threat felt by non-

¹⁹³ Roberts, "Changing Myanmar...", 98

¹⁹⁴ Yusuf, "Nationalist Ethnicities as...", 105

¹⁹⁵ Ware and Laoutides, *Myanmar's 'Rohingya' Conflict*, 64

Muslims communities, fueled by the “global paranoia over Islamists extremism.”¹⁹⁶ As Anja Jetschke and Andrea Liese explain, “If the victims belong to a specific group that can be seen as “evil,” i.e. can be portrayed as “terrorists,” as “traitors” that threaten territorial integrity or as Islamists, and when even human rights NGOs can be portrayed as extensions of these movements, then human rights advocacy will surely be less persuasive.”¹⁹⁷

Kipgen argues that one of the main grievances and fundamental problems which afflicts the Rohingya daily is Myanmar’s continuous refusal to provide them equality of rights.¹⁹⁸ Yusuf adds that “there’s no political will on the part of the government and no political mood on the part of Myanmar’s people to grant citizenship rights to the Rohingya as members of the Myanmar nation.”¹⁹⁹ However, the issue of citizenship is fundamental to any solution regarding the Rohingya. The citizenship verification for those who left the country in the past decade is specially challenging since most fled with few possessions or documents, therefore proving their Myanmar origins is virtually impossible.²⁰⁰ Finally, the issue is not likely to be addressed by the Myanmar government if other issues are not addressed as well, such as historical grievances, poverty and underdevelopment, the role of the military in the democratic government and regional autonomy.

The conflict itself, including ARSA’s attacks and the government’s response, needs to be both better explained and better understood. Better explained in the need for further investigations of the crimes and those responsible for violations, including all sides involved in the conflict. Better understood in that the disproportionate response of and violations committed by the government must be seen in context. Both INGOs and the IIFFMM reported on crimes also committed by ARSA.²⁰¹ Ware and Laoutides argue that the government is unlikely to act towards a solution for the country’s oppressed minorities if its interlocutor, especially human rights advocates, does not acknowledge the government’s and the people’s perspectives, fears

¹⁹⁶ Ibid.

¹⁹⁷ Anja Jetschke and Andrea Liese, “The power of human rights a decade after: from euphoria to contestation?” in *The Persistent Power of Human Rights*, 41

¹⁹⁸ Kipgen, *Myanmar: A Political History*, 119

¹⁹⁹ Yusuf, “Nationalist Ethnicities as...,” 113

²⁰⁰ Ware and Laoutides, *Myanmar’s ‘Rohingya’ Conflict*, 204-5

²⁰¹ Amnesty International, “Myanmar: New evidence reveals Rohingya armed group massacred scores in Rakhine State”, May 22, 2018, <https://www.amnesty.org/en/latest/news/2018/05/myanmar-new-evidence-reveals-rohingya-armed-group-massacred-scores-in-rakhine-state/> (accessed January 29, 2020); Human Rights Council, “Report of the detailed...”, September 17, 2018, para 54; Human Rights Council, “Report of the detailed...”, August 8, 2019, para 26.

and anxieties.²⁰² Neither sanctions and isolation nor unprincipled economic engagement have proven viable strategies to address such grievances. Although democracy has begun to sprout in Myanmar, giving voice to people who were disenfranchised, the strong military presence through the constitution and long-held traditions and conceptions impede difficult discussions to be held. The empowerment of local groups which are willing to carry out these discussions is fundamental, and principled engagement can be used as a tool to create space for these discussions and empower these groups.

4.3.2 Buddhism in Myanmar

One of the channels through which the grievances are expressed is Buddhism. One of the important traits in Myanmar which influences how human rights, democracy and external influence is perceived is the role of Buddhism in society, and its relationship with other religions. Yusuf explains that, “In Myanmar, Buddhism has been interpreted in a way designed to Burmanize the country, to construct an “ethnocratic” nation.”²⁰³ Together with the fear that Muslims could ‘overwhelm’ the nation through demographic pressure – fears which, according to Yusuf, are “scientifically false and demographically implausible”²⁰⁴ – Buddhism and nationalism, in the context of the Rohingya conflicts, began to understand any measures to protect Muslims minorities as an existential threat. For that reason, the International Crisis Group (ICG) concluded that “international and domestic views around the status and treatment of Muslims (and the Rohingya in particular) are in many ways irreconcilable.”²⁰⁵ With the end of military rule and the newly acquired freedoms of expressions, the sentiment of Buddhist nationalism emerged as a means to express grievances until then suppressed.²⁰⁶ The changes and consequent uncertainties in society only contributed to the concerns that “secularism and modernity threaten the traditional role of Buddhism.”²⁰⁷

Government efforts to curtail extremist nationalist Buddhist groups, instead of weakening their appeal, has worked to enhance them.²⁰⁸ The fact that the current NLD government hasn’t

²⁰² Ware and Laoutides, *Myanmar’s ‘Rohingya’ Conflict*, 204-5

²⁰³ Yusuf, “Nationalist Ethnicities as...,” 103

²⁰⁴ *Ibid.*, 105

²⁰⁵ International Crisis Group, *Buddhism and State Power...*, 8

²⁰⁶ *Ibid.*, 6

²⁰⁷ *Ibid.*, 26

²⁰⁸ *Ibid.*, i

been able to fix the problems inherited from previous regimes, related to access to basic services, has increased support for Buddhist nationalist groups that work as a substitute for the state in providing these services. One of these groups is MaBaTha, a Buddhist nationalist organization seen by many international analysts as ultranationalist and whose public position against Rohingya Muslims has contributed to fuel anti-Muslim sentiment.²⁰⁹ MaBaTha enjoys broad grassroots support, and this understanding is crucial for any engagement with the group towards addressing human rights issues. “International intervention on the issue of Buddhist nationalism ... risks being ineffective or worse, counterproductive if they fail to account for the complex motivations that drive support for nationalism.”²¹⁰

The relation between Buddhism and Principled Engagement is that this strategy demands extensive use of dialogue and the search for a context-sensitive response to violations, which takes into consideration root-causes, and not violations in isolation. Understanding the grievances expressed through nationalist Buddhism as well as of alternative moral codes which have different concepts of what is political goes in this direction. Matthew J. Walton explains that, although not as strong as it has been in the past, Buddhism in Myanmar has a particular worldview based on a perceived “moral universe”.²¹¹ Although it is not possible to ponder its incidence, this is a worldview which even accommodates an understanding that “holders of high office would commit more immoral acts.”²¹²

It becomes important to align with soft-liners “those with the relevant expertise in order to find the most effective ways to communicate these rights and develop activities to promote them,”²¹³ since different authors have connected the teachings of the Buddha with democratic values and human rights.²¹⁴ According to Walton, the same way as Buddhism needs to be understood in order to grasp the political dynamics in Myanmar, it is important to know that distinct world view also renders different definitions of democracy.²¹⁵

²⁰⁹ Ibid., 26

²¹⁰ Ibid., 27

²¹¹ Matthew J. Walton, *Buddhism, Politics and Political Thought in Myanmar* (Cambridge: Cambridge University Press, 2017), 3-7

²¹² Ibid., 68-9

²¹³ International Crisis Group, *Buddhism and State Power...*, 27

²¹⁴ Walton, *Buddhism, Politics and...*, 175

²¹⁵ Ibid., 163

4.3.3 The role of the democratic government

Myanmar has been called a “democratic dictatorship”, because the military leadership, known as Tatmadaw, “sees itself as what Commander-in-Chief Min Aung Hlaing has called the ‘guardian of democracy’ and protector of the constitution.”²¹⁶ It has also been called a diarchy, a system “where the military retains a significant political role, autonomous control of the security apparatus, and a major influence over the bureaucracy.”²¹⁷ According to Zoltan Barany, the military’s opening up to democracy was only a move to “shed the burden of governance ... They gave up little that was dear to them, and the changes they have permitted remain easily reversible.” As a result, the civil government – the NLD and Aung San Suu Kyi – lacks control over critical areas and the military has continuous stranglehold on power. In other words, the civil government is in a ‘military trap’. In the Rohingya context, Ware and Laoutides note that, “The wrong response to Rakhine could weaken its [Aung San Suu Kyi’s government] ability to confront the military and scrutinize its actions on other matters. It could even potentially backfire into a justification to expand military political power.”²¹⁸ Electoral politics thus made it not only a political suicide to make any concessions for Muslim minorities in a deeply Buddhist and anti-Muslim country, but also risked jeopardizing the democratization process itself.²¹⁹ Any attempt at resolving the conflict, according to Ware and Laoutides, would have to include dialogue and engagement with the democratic government: “Blanket assertions or condemnation is most unhelpful. They [Aung San Suu Kyi and the NLD government] may be complicit, but in many ways their hands are tied by the military’s power and operational freedom, and winning their trust and cooperation is essential to any solution.”²²⁰

In spite of the challenges imposed by the situation, Aung San Suu Kyi and the NLD government, by not living up to their commitments towards the international community, drove this

²¹⁶ Gwen Robinson, “The odd and inspiring politics of Myanmar”, *Asia Nikkei*, May 5, 2016, <https://asia.nikkei.com/Politics/The-odd-and-inspiring-politics-of-Myanmar> (accessed January 29, 2020). The term ‘democratic dictatorship’ has been used by different media channels to refer to the agreement between the civil government and the Tatmadaw based on 2008’s constitution. See; Moe Thuzar, “How long will Myanmar accept its ‘democratic dictatorship’ rule?” *Today Online*, May 16, 2016, <https://www.todayonline.com/world/asia/how-long-will-myanmar-accept-its-democratic-dictatorship-rule> (accessed January 29, 2020).

²¹⁷ Richard Horsey, “The Role of the United Nations in Rakhine State: Recommendations for strategy and Next Steps,” May 8 2017, 4

²¹⁸ Ware and Laoutides, *Myanmar’s ‘Rohingya’ Conflict*, 60

²¹⁹ *Ibid.*, 62

²²⁰ *Ibid.*, 11

support away, resulting in further isolation. It was a bet: had they left the government and refused to be part of the ‘military trap’, they could have risked having the military stepping back to power, while maintaining international support for the democratic and human rights struggle in the country; alternatively, had they remained in power, they would become complicit to the violations and disillusion the international community. After many years of frustrated international attempts to force the military out through sanctions and isolation, which resulted in a military controlled democracy, the apparent choice was to attempt a change from within. The good relations with the international community, including aid modalities, which had been recovered with the credible elections of 2015,²²¹ were again lost, with new sanctions being imposed and the deterioration of relations between Myanmar and the West.²²²

4.3.4 Final considerations: the importance of engaging

Because of the possible negative effects of the international involvement with the Rohingya crisis, Ware and Laoutides argue that “the only way forward is a form of principled engagement that works hard to bring the parties together, around a negotiated solution.”²²³ Principled Engagement has been used in a few instances in trying to engage with Myanmar, through “direct engagement with those responsible for human rights violations, as well as broader groups in society, to address concrete problems and improve the practical framework for human rights protection.”²²⁴ Positive examples include the work of the UNHCR in Rakhine to protect the rights of Rohingya;²²⁵ an UNAIDS program together with Médecins Sans Frontières and Population Services International to improve government health protocols²²⁶; Save the Children’s rights-based approach to promote better public services and capacity building for civil society;²²⁷ and the ILO’s approach to forced labor²²⁸. Socialization with the world allowed the

²²¹ Horsey, “The Role of the...,” 4.

²²² “US imposes sanctions on Myanmar’s military leaders over Rohingya abuses” *The Guardian*, July 27, 2019, <https://www.theguardian.com/world/2019/jul/17/us-imposes-sanctions-on-myanmars-military-leaders-over-rohingya-abuses> (accessed January 29, 2020); and Daphne Psaledakis, “U.S. slaps sanctions on Myanmar military chief over Rohingya atrocities”, *Reuters*, December 10, 2019, <https://www.reuters.com/article/us-usa-myanmar-sanctions/us-slaps-sanctions-on-myanmar-military-chief-over-rohingya-atrocities-idUSKBN1YE1XU>. (accessed January 29, 2020)

²²³ Ware and Laoutides, *Myanmar’s ‘Rohingya’ Conflict*, 216

²²⁴ Pedersen, “How to promote...,” 195

²²⁵ *Ibid.*, 196

²²⁶ *Ibid.*

²²⁷ *Ibid.*, 198

military to gain a new perspective of doing things in a different way, allowing to “reverse the legacy of dysfunctional governance and empower ordinary people.” This is especially critical as any change in the country is likely to depend on the military.²²⁹ Finally, working not only with the government but also with grassroots organizations permitted the development and strengthening of civil society, enhancing bottom-up democratization efforts.²³⁰ In spite of the challenges and setbacks, these examples reinforce the possibility that engagement based on principles might be a good strategy to persuade Myanmar into a conciliation with its minorities, especially the Rohingya, moving towards a human rights consistent behavior.

The critics of Aung San Suu Kyi, often by failing to grasp the complexity of the reality in Myanmar, accuse her of lacking political courage,²³¹ will and capacity²³² to stand up for the country’s minorities. However condemnable any actions which fail to prevent human rights violations are, especially in the hands of higher authorities, authors have argued for the futility of such criticism. First, because political courage involves electoral politics. As we have seen, taking a stand in favor of the Rohingyas could have jeopardized the democratic process and brought the military back to power. Second, because capacity is intrinsically tied to the political structure established by the 2008 Constitution, and to the limited power of the civil leadership, controlled by the military. When it comes to will, it becomes speculation. The speculation based on what has been explored on this study is that, either by utilitarian political calculation, or by moral beliefs, Myanmar’s State Counselor’s actions were constrained by her own understanding of the limitations imposed by the ‘military trap’ in which she and her government find itself in. With the military portraying her as a pawn of foreign influence, or as a foreigner herself, she tried to connect her democratic and human rights values with her Buddhist ideas in order to appease these accusations. Even so, she faced strong opposition from Buddhist nationalists.²³³ As a result, her staying in power was conditional on limited political power and, at the same time, crucial for the stability of the democratic transition. Withdrawing from a government because it was incompatible with international expectations of democracy and human rights would likely have spared Aung San Suu Kyi’s reputation, but the anal-

²²⁸ Richard Horsey, “The ILO and Forced Labour in Myanmar”, in Pedersen and Kinley, *Principled Engagement*, 101-27

²²⁹ Steinberg, *Burma, The State....*, 85

²³⁰ Pedersen, “How to promote...,” 195-7

²³¹ Keith Helper, quoted by Ware and Laoutides, *Myanmar’s ‘Rohingya’ Conflict*, 9

²³² Bill Richardson, quoted by Ware and Laoutides, *Myanmar’s ‘Rohingya’ Conflict*, 10

²³³ Walton, *Buddhism, Politics and....*, 181

ysis suggests that it would have done little for the plight of the Rohingya, or potentially even have aggravated the situation.

A similar criticism is made against the United Nations and its failure to prevent the attacks against the Rohingya. The criticism points to a lack of commitment to human rights from parts of the organization's staff, and their prioritization of other goals.²³⁴ The role of the UN is to strike a very delicate balance between all the actors with whom it works in the country: the government, the civil society, minority groups etc. At times, it also involves engaging with armed groups. This is a complex role which can be further investigated, especially when it comes to the organization's attempts to advance Principled Engagement. For now, it suffices to say that, given the many limitations of the organization, from bureaucratic constraints to the composition of its membership, the UN was ultimately impeded from taking a serious stand to try and prevent the escalation of the conflict in the Rohingya crisis without the approval of the Security Council. Given Myanmar's historic hostility towards international interventions, the team on the ground had to choose between being vocal and risking jeopardizing all fronts of engagement²³⁵, or playing into the game of the government by not speaking out on the violations but continuing to work on different projects and improving the reputation of international engagement within the country, paving the way for further partnerships. It was another gamble, and those who advocate for an absolutist approach to human rights believe the organization should not have pit human rights against other goals.

Rather than pointing to a lack of commitment to human rights, Derek Mitchell, former US Ambassador to Myanmar under the Obama administration, evaluates his attempt to promote Principled Engagement in Myanmar and concludes that he and his colleagues "failed to induce Nay Pyi Taw to act with urgency. We failed to convince the Myanmar government that time was not on its side, and that failure to be proactive in addressing underlying issues of the conflict, such as citizenship, access to livelihoods, and rule of law, would eventually take a toll on the country's security, stability, and national reputation. And we ultimately failed to

²³⁴ Fisher, 'UN failures...'

²³⁵ Myanmar wasn't shy to expel international representatives from the country. See "Myanmar refuses visas to UN team investigating abuse of Rohingya Muslims", *The Guardian*, June 30, 2017, <https://www.theguardian.com/world/2017/jun/30/myanmar-refuses-visas-un-abuse-rohingya-muslims> (accessed January 29, 2020); and "Myanmar to kick out top U.N. official," *Reuters*, November 2, 2007, <https://www.reuters.com/article/us-myanmar-un-idUSN2621598020071102> (accessed January 29, 2020)

prevent expansion of the violence.”²³⁶ Sidoti’s list of principles for engagement²³⁷ could serve as a reference for adapting future Engagement strategies in order to avoid setbacks encountered in the past. The UN, with its many agencies whose varied scope can address root causes of violations, its ability to engage with a broad spectrum of actors, and its large membership giving legitimacy to its strategies, is still well-positioned to pursue a strategy based on Principled Engagement.

The main counterargument against Principled Engagement is, however, the Rohingya crisis itself. Not only did the attempts to engage through Principled Engagement in Myanmar fail, leading to countless deaths, displacements and a number of other abuses, they also demonstrate how delicate this strategy ultimately is. The paper by Lok-Dessallien illustrates well the challenges of attempting a “principled approach” with “constructive engagement”.²³⁸ They affect both the UN’s administration and membership, imposing difficult challenges to the good implementation of the strategy. Unless there is consistent coordination among the actors engaging with a norm violating country, mixed signals and opposing incentives might render the results of any strategy unpredictable, and the efforts, futile. In the current scenario in which human rights suffer backlash from authoritarianism, populism and majoritarianism, achieving international agreement on which strategy is best to pursue might end up just as strenuous as uniting countries around specific values as those in vogue at the end of World War Two. Furthermore, all the limitations which are predicted in theory have been found in practice. Those engaging with Myanmar attempting to promote long-term improvements were accused of playing into the strategy of, and being subservient to, the government; being lenient with its human rights violations; and yielding to its requests of neglecting, at best, and degenerating, at worst, the situation for the Rohingya.²³⁹

²³⁶ Derek Mitchell, foreword to *Myanmar’s ‘Rohingya’ Conflict*, by Anthony Ware and Costas Laoutides (New York, Oxford University Press, September 28, 2018), xiii

²³⁷ Section 2.3.3

²³⁸ Lok-Dessallien, “A Principled Approach...”

²³⁹ Fisher, “UN failures...”

5 Conclusion

The international scenario for human rights might seem dire. Rising populism and extremism, uncontrolled use of social media and mass communication, mass surveillance and intolerance are only some of the challenges in the contemporary society. In this scenario, such morally heavy idea as human rights only gets thinner and thinner, suffering from criticism from friends and foes alike. Ideas that were before taken for granted need again to be justified. The wavering faith in the current dynamics for human rights has led some to seek for alternative strategies which can deliver the transformation for those whose rights are threatened.

There is not a single way to advocate for human rights. Different methods might work best in different contexts, and it takes a lot of study to decide which might work in a given situation. This study has looked at Principled Engagement in this context: as a strategy for human rights advocacy which acknowledges the challenges human rights face and seeks to address the gaps left by ‘mainstream’ strategies. As explained, both Ostracism and Business as Usual fail to address human rights challenges in countries which lack specific prerequisites, and often cause negative side-effects due to their reliance on human rights as a by-product of macro-structural changes. The Spiral Model of human rights change has offered a relevant framework from which new strategies can be generated. This study has positioned Principled Engagement against this background in order to apply to the case study.

Looking at the context in Myanmar, I have also shown that both Western Ostracism and Asian Business as Usual have not contributed to a significant improvement in human rights. Historical grievances, the role of Buddhism and of the democratic government were the three elements explored here which explain the lack of adherence to mainstream strategies. Principled Engagement, on the other hand, has provided small but palpable positive results, through obtaining insights into the regime’s functioning, by establishing close connections on the ground, by trying to avoid counterproductive effects, and by an overall engagement with the context in a strategic manner. This strategy, however, is not infallible, and those elements which failed in the past can be further discussed to refine the strategy. For a consistent theory of change to be developed, tools of measurement need to be made available, as well as better coordination systems among those involved in promoting the strategy to avoid sending inconsistent messages and providing the target with opposing incentives.

It must be emphasized that human rights violations should never be underplayed or justified. Understanding their sources and motivations, on the other hand, will likely help address the root-causes more efficiently than addressing violations alone. Diverting human rights from a law-centered perspective, or giving the legal aspect less emphasis, would consist of a trade-off which must be considered. For example, in spite the ineffable importance of court cases for victims and justice, under a pragmatic perspective, bringing Myanmar to court for the crime of genocide can either relieve the burden of guilt of the country if accusations are dismissed, or drive it further away from socializing with human rights circles if accusations are upheld. It does come as solace that Myanmar's State Counselor would attend the hearings, for it shows, even if only modest, a willingness to engage. Ultimately, a more open and frank dialogue could help address concerns from many perspectives: victims, government, population, international community.

Finally, the need to adapt human rights strategies, perhaps on a pragmatic line, is summarized by Hopgood: "The important conclusion, however, is that this is not capitulation, it is political reality."²⁴⁰

²⁴⁰ Stephen Hopgood, "Challenges to the...", 71

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