

# The U.S. considered denouncing Myanmar for ‘crimes against humanity.’ It didn’t happen.

By **Shibani Mahtani** and **John Hudson**

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YANGON, Myanmar — A memo sent to Secretary of State Mike Pompeo this summer gave the green light for a tough U.S. response to systematic slayings and mass expulsions against Myanmar’s minority Rohingya Muslim population.

Key bureaus inside Foggy Bottom signed off on the memo’s conclusion: Myanmar’s military and its allies committed “crimes against humanity” in a series of actions documented in a State Department report, over a year in the making.

Such a declaration would have been a powerful warning shot to Myanmar’s leaders and military, signaling the United States would side with other nations calling for harsh punishments that could include international prosecution.

It also would have marked a turning point in U.S. policy toward Myanmar, after largely celebrating its gradual steps toward democracy since 2011.

But the recommendations in the August memo did not ultimately become U.S. policy, according to several people familiar with the process. They spoke on the condition of anonymity because they were not authorized to speak to the news media.

There was no determination of crimes against humanity. The State Department assessment was held back, and a summary was quietly released in late September — a month after the United Nations took the lead in calling for possible prosecution against Myanmar's generals.

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Now, months later, major questions persist over Pompeo's handling of the Myanmar report, a \$1.4 million undertaking.

A bipartisan push in Congress seeks to obtain the full version of the report and get explanations on why Pompeo did not follow the memo's recommendation for a crimes-against-humanity designation.

At the State Department, meanwhile, officials initiated a diplomatic security investigation seeking to identify the person who leaked to a Politico reporter details of the deliberations on the crimes-against-humanity label, said the people familiar with the process. A State Department spokesman declined to comment on the leak investigation or the internal memo.

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Myanmar and its de facto leader, Aung San Suu Kyi, faced strong pressure last week at regional summits in Singapore.

Malaysian Prime Minister Mahathir Mohamad on Tuesday took direct aim at Suu Kyi, saying she was trying to “defend the indefensible” over the Rohingya abuses. A day later, Vice President Pence, in a tense meeting with Suu Kyi, said violence against the Rohingya was “without excuse” and pressed her on accountability for those responsible. He was the most senior U.S. official to meet the Myanmar leader since the crisis.

Still, Pence and other officials have shied away from labels that could force the United States to act more strongly — giving Myanmar continued breathing room at a critical time.

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Inside the State Department, meanwhile, regional specialists and human rights experts grimaced at what they viewed as a missed opportunity for the United States to throw its full weight behind growing international denunciations of Myanmar for the abuses, which drove out more than 700,000 Rohingya to refugee camps in neighboring Bangladesh.

The report, packed with damning details, was ready to go Aug. 17, the same day the United States sanctioned Myanmar generals and military units responsible for the atrocities.

Its delay and quiet after-hours release over a month later launched another round of criticism of the Trump administration as unpredictable and erratic on human rights issues on the global stage.

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In late August, a U.N. fact-finding mission found that Myanmar's campaign against the Rohingya bore the hallmarks of genocide and called for military generals to be investigated and prosecuted.

Following the U.N. report, Canada's legislature in September voted unanimously to call the actions there genocide, and the European Union is considering removing Myanmar from a preferential trade status.

The United States, however, has struggled to define its position on Myanmar and decide on action to take in response.

The part of the State Department report made public — a 20-page executive summary released after hours on Sept. 24 — does not hold back.

It noted a “pattern of planning and premeditation,” punching holes in Myanmar's narrative that it was simply responding to attacks by Rohingya militants. Almost half of the Rohingya interviewed witnessed rape, and almost all witnessed killings.

“In some areas, perpetrators used tactics that resulted in mass casualties, for example, locking people in houses to burn them, fencing off entire villages before shooting into the crowd, or sinking boats full of hundreds of fleeing Rohingya,” the report said.

Still, some lawmakers demand to see the full report, not just the summary. Rights groups, meanwhile, complain that it fails to spell out any next steps against Myanmar’s leaders.

“While the facts of the State Department investigation are strong, what’s missing is a clear indication of how the U.S. government intends to respond,” said Sarah Margon, Washington director at Human Rights Watch.

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In a rare bipartisan initiative, Sens. Todd C. Young (R-Ind.) and Robert Menendez (D-N.J.) have taken the lead in calling for more answers from the Trump administration.

In late September, the two senators sent a letter to Pompeo noting that the State Department report “did not specifically define these atrocities as genocide or crimes against humanity.” It went on to request a formal legal determination regarding the “actions of the Burmese military to Congress without delay.”

The State Department has not yet responded to the letter, a committee aide said.

When asked about why the report included no determination on crimes against humanity, Deputy Secretary of State John Sullivan told reporters in September “there weren’t legal judgments expressed in it because that wasn’t the point of the report.”

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“It was basically a forensic examination of what happened,” he said.

Several people familiar with the report, who spoke on the condition of anonymity because they were not authorized to speak to the news media, speculated that Pompeo was upset by a leak of a speech intended to coincide with the report’s planned release in August and that it prompted him to cancel the rollout.

The same day the report was released, the U.S. ambassador to the United Nations, Nikki Haley, announced \$185 million in aid to Rohingya refugees in Bangladesh and those who remain in Myanmar. Haley announced on Oct. 9 that she would be resigning from her post by the end of the year.

Some congressional aides attributed the change of State Department thinking to national security adviser John Bolton's hard-line opposition to the International Criminal Court. The United States is among several dozen nations, including China, India and Israel, that do not recognize the ICC, based in The Hague.

If the United States had formally accused Myanmar of crimes against humanity, Washington would have come under pressure to refer the allegations to the ICC through a U.N. Security Council resolution.

"It would've put the administration in an awkward position, that it's okay for the ICC to go after Burma but not the United States," said a congressional aide, who spoke on the condition of anonymity to discuss government deliberations.

Myanmar is also known as Burma.

A State Department spokesman denied that the United States had stumbled, pointing to Pompeo's call for Myanmar to take "concrete steps" to investigate the human rights abuses chronicled in the U.S. and U.N. reports.


"The United States will continue to work with our allies and partners to help promote . . . justice for victims, and [ensure] that those responsible for mass killings, gang rapes and other atrocities are held accountable," the spokesman said.

*John Hudson reported from Washington.*

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