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# Combating Atrocities

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The EU's Conduct in Myanmar during the Rohingya Crisis

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## Abstract

In light of WTO trade rules that made it impossible for the EU to uphold its trade preference system with many least developed countries, among which are several (former) colonies of EU Member States, the EU developed the 'Everything But Arms' trade preference program, unilaterally liberalizing trade with these countries. Currently, there are two criteria to benefit from the EBA scheme. Firstly, the country must be listed as a 'Least Developed Country' by the UN Committee for Development Policy, and secondly, these preferences can be withdrawn if the respective country ceases to adhere to fundamental human rights and certain labor rights. In light of Myanmar's violence against the Rohingya people in Rakhine State described by the UN as 'a textbook definition of ethnic cleansing,' the question over what factors determine the EU's decision to keep Myanmar in the EBA program arise. This thesis unveils processes in the Council that led to adopting this particular foreign policy decision by systematically analyzing insights from EU policy documents and by interviewing EU representatives, answering the question as to why the EU chose to keep Myanmar in the EBA program.

## List of Abbreviations

ASEAN	Association of Southeast Asian Nations
ARSA	Arakan Rohingya Salvation Army
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
EBA	Everything but Arms
EEAS	European External Action Service
EU	European Union
ERC	European Rohingya Council
FAC	Foreign Affairs Council
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
HR	High Representative of the Union for Foreign Affairs and Security Policy
HRC	UN Human Rights Council
ICJ	International Court of Justice
IDP	Internally Displaced Persons
MPE	Market Power Europe
TEU	Treaty on (the) European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
US	United States
USD	United States Dollar
WHO	World Health Organization
WTO	World Trade Organization

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# 1. Introduction

## 1.1 Problem Description

### *A History of Ethnic Tensions in Myanmar – Justification of Research Agenda*

The Rohingya are a predominantly Muslim population of 1.5 – 2 million people living for generations in Southeast Asia. Although a substantial number of Rohingya have been present on the territory of today's Myanmar, none of them is considered a citizen of the country today. Prior to 2015, approximately 1.3 – 1.5 million Rohingya were living on the territory of Myanmar. In March 2018, the UNHCR estimated that close to 400.000 Rohingya are living in Myanmar ("Rohingya Refugee Emergency at a Glance," 2020). As this section shows, the described population decrease can be traced back to violent actions Myanmar's military undertook against the Rohingya. Such a drastic population decrease occurring over a short period caused by state actors opens up accusations of ethnic cleansing and genocide. In light of the described developments, several countries and international organizations, among them the EU, adopted measures to coerce Myanmar to halt the violence against the Rohingya. These measures, particularly the EU's response, are elaborated in much more detail in the subsequent sections. Nevertheless, it appears crucial to mention already at this point that the reaction by the EU consists of restrictive measures against Myanmar that include weapons embargos, export bans, and targeted sanctions against 14 individuals that committed 'serious violations of human rights' (Commission, 2020). The focus of this thesis lies on the EU's reaction to the violence and ethnic cleansing that escalated in 2017, particularly on the question over why Myanmar continues to benefit from the EBA trade preferences despite its severe human rights violations in Rakhine State. The case at hand is Myanmar since it remains until today a beneficiary of the EU's unilateral trade liberalization program enjoying substantial trade preferences with the EU. However, under the EBA program, the EU unilaterally waives all custom duties for states fulfilling two criteria: (1) they must be listed as a Least Developed Country by the UN Committee for Development Policy and (2) these preferences can be withdrawn if the respective country ceases to adhere to fundamental human rights and certain labor rights. Furthermore, no other country against which accusations of ethnic cleansing or genocide are formulated enjoys EU trade preferences (Faber & Orbie, 2009). Therefore, the question of why the EU keeps Myanmar inside the EBA program requires a particular explanation.

To obtain a better understanding of the complex causes for the drastic population changes of the Rohingya, it is necessary to dedicate some space to shed light on Rohingya related developments in Myanmar in the 20<sup>th</sup> and 21<sup>st</sup> centuries. This section does not give a full historical picture; rather, it seeks to highlight some of the most important developments. Although the presence of an Islamic population in the region of Rakhine, which is a part of today's Myanmar, is dating back centuries, most of the scholars estimate that the vast majority of the Rohingya arrived in Rakhine with the British colonialists around the late 19<sup>th</sup> century. The presence of the Rohingya as a Muslim minority in Rakhine and the circumstances of their arrival with the British colonialists are considered one of the major forces fueling Burmese grassroots nationalist movements during the 1930s. Already at that point, the Rohingya were estranged in the sense that they were not understood as an integral part of the yet to build Burmese society but rather a foreign body that was associated with the presence of the British colonialists. The Second World War further polarized the region when in the course of the Japanese invasion of the Rakhine region, the Rohingya were backing British forces, and the ethnic Rakhines supported the Japanese, dividing the ethnicities among combatant lines. The inter-communal violence spread around the country and led to thousands of Muslims fleeing predominantly Buddhist parts of the country to northern Rakhine. At this point, it is important to mention that although both sides perpetrated violence in the context of the Second World War, the Buddhists used the Japanese army's advancement to implement harsh anti-Muslim measures involving expropriation, violence and mass killings. As a result of the inter-communal violence, the vast majority of Rohingya in Myanmar live today in Rakhine State. (Chan, 2005; Christie, 2000; Yegar, 2002)

After Burma's independence in 1948, the various governments and military juntas that held power in the country violently cracked down on the Rohingya population and systematically discriminated against them. The discrimination occurred persistently and amounts to a systemic phenomenon for the reason that regardless of the party holding power in Myanmar, the Rohingya were denied basic rights to the extent that today's government does not recognize their existence as a people and refers to them as 'Bengalis,' marking them as a foreign body in the country and denying them basic civil rights. The political discrimination peaked in 1982 when the Burmese military junta passed the 'Citizenship Law' stripping the Rohingya population of their citizenship and effectively making them stateless. In 1991, after the Burmese military started their

crackdown on the political opposition, it also began a campaign in Rakhine State and targeted the Rohingya population. The military's actions against the Rohingya included forced labor, rape, the confiscation of houses, land and farm animals, the destruction of mosques, a ban on religious activities, and the harassment of religious figures, triggering a refugee crisis in which around 250,000 Rohingya crossed into Bangladesh. At that time, the EU withdrew Burma from the EBA program, justifying that step *inter alia* on the grounds of the described events. (Habib, Jubb, Ahmad, Rahman, & Pallard, 2018)

There are various narratives regarding the root causes of the current tensions. Regardless of these narratives, it is safe to say that in autumn 2016, the Rohingya militant group ARSA committed attacks against several security outposts, killing ten police officers and seven soldiers. Myanmar's military started a 'clearing operation' in August 2017 using the aforementioned attacks as a justification. On the 25th of August, the activities escalated drastically when the military began to murder a substantial number of Rohingya, brutalizing thousands and driving several thousand out of the country into neighboring Bangladesh while their villages were burned. The military nevertheless insists that their activities were exclusively assaults on rebels connected to ARSA. Be that as it may, reports from various organizations have demonstrated that the military activities were far-reaching unprecedented assaults on the Rohingya populace to cleanse northern Rakhine of Rohingya. In 2018, a study estimated that the military executed more than 24,000 Rohingya since the beginning of the operation on the 25th of August 2017. The investigation additionally estimated that 18,000+ female Rohingya Muslims were assaulted, 116,000 Rohingya were beaten, 36,000 Rohingya were killed by being tossed into the fire. As a result of the campaign, a mass migration movement from Myanmar to Bangladesh occurred and led to the previously described radical population shift. (Hoque, Azad, Dasgupta, & Rahim, 2018; *Report of the Independent International Fact-Finding Mission on Myanmar*, 2018; Sullivan, 2019)

## 1.2 Research Question and Hypotheses

The previous introduction leads to the following research question:

“Why has the EU’s response to Myanmar’s human rights violations in relation to the Rohingya not included stripping it from its trade preferences under the EBA program?”

## 2. State of the Academic Debate – Literature Review

The focus of this thesis lies explicitly not on the particular events occurring in Rakhine State but instead on the reaction of the EU toward a situation which is classified by the vast majority of scholars and international actors as 'ethnic cleansing' and is classified by some as a 'genocide' (Holmes, 2019; Lee, 2019; Moore, 2019). Hence, the literature review focuses precisely on the academic debate concerning the EU's reaction to the violence in Myanmar and on the debate over why the EU adopted the briefly presented measures against Myanmar and withstood excluding Myanmar from the EBA program. When scanning through the available literature, one can find that much of the available academic debate on the matter occurred in 2017 and 2018 right after the recent outbreak of a new wave of violence against the Rohingya, focusing on the immediate response by the EU and other international actors and suggesting potential policy trajectories to coerce Myanmar to stop their human rights violations vis à vis the Rohingya. Furthermore, there is an observable pattern in the academic debate with a strong tendency toward academically justifying adopting targeted sanctions and an internationally coordinated approach, arguing that nation-wide economic sanctions will adversely affect the civilian parts of Myanmar's economy (Heiduk, 2018; Khin, 2017; Marchi, 2017).

Myanmar's economy can roughly be divided into the civilly run economy and the military-run economy, dominated by several state-owned conglomerates. In line with the aforementioned pattern, Marchi (2017) delivered an assessment, analyzing trajectories of EU action and its potential impact on the calculations of Myanmar's state actors regarding their conduct in Rakhine State. She argues that the withdrawal of the EBA trade preferences is unlikely to coerce Myanmar to stop its human rights violations since the civil textile sector is the primary beneficiary of the trade preferences. Furthermore, the EU should utilize its strength as a proponent of multilateralism and get



involved jointly with ASEAN. In her assessment, she relies on the theoretical construct of ‘Normative Power Europe’ by Manners (2001), arguing that the EU’s position as a normative actor gives it leverage over Myanmar to the extent that the EU can exert influence over it in the current crisis. Heiduk (2018) delivers an analysis concerning possible EU action trajectories and their potential impact on the calculations of Myanmar's military. He argues that the withdrawal of EBA trade preferences is unlikely to coerce Myanmar to stop its human rights violations because the civil textile sector is the primary beneficiary of EBA trade preferences. Since the military-run parts of the economy do not target the EU market, withdrawing trade preferences is unlikely to alter Myanmar's behavior. He suggests that the EU should focus on targeted sanctions, travel bans, bank account freezes of military actors, and diplomatic efforts inside the framework of the UN. The article was written in 2018; meanwhile, the EU adopted almost all the measures suggested in the article to no avail, and it became apparent that China is determined to block any action in the UN Security Council, rendering Marchi’s (2017) policy suggestions obsolete (Peng, 2018). Khin (2017) delivers an in-depth description of the initial outbreak of the ethnic cleansing in 2017 and concludes that internationally coordinated measures are to be taken at a global level. Furthermore, he suggests targeted sanctions shall be adopted against Myanmar, arguing that these can have a considerable impact on the military sector of the economy without unfolding substantially adverse effects on the civilian sector. Montera (2013) deals with the readmission of Myanmar to the EBA program after its participation was suspended in 1997 over severe human rights violations. She outlines the incoherence of EU foreign policy in terms of EU’s foreign policy priorities flowing from Article 21(1) TEU, arguing that readmitting Myanmar to the EBA program was primarily a political decision not based on the values of ‘democracy, the rule of law [...] human rights and fundamental freedoms,’ Article 21(1) TEU *inter alia* mandates the EU to attain whenever conducting foreign policy. Additionally, she postulates that Myanmar's readmission to the EBA program left the EU with little leverage over Myanmar to address human rights issues that were already pressing in 2013.

As mentioned above, most of the articles on the issue were written before 2020; meanwhile, the EU adopted almost all the measures proposed in the academic debate on the issue to no avail. Hence, this thesis' contribution lies in demonstrating the potential impact of withdrawing EBA trade preferences and elaborating on why the EU, despite calls to withdraw the trade preferences in light of the severe human rights violations, did

not do so until today (*Interviewee ERC*, 2020). Unlike the article by Heiduk (2018), which focuses on the effects of the sanctions on the calculations of Myanmar's state actors, the thesis focuses on the underlying processes on the side of the EU by analyzing the factors leading to its response. Furthermore, Heiduk (2018) does not consider the effects of the suggested measures and the developments after their introduction. The thesis considers the deliberations in the EU after realizing that diplomatic measures and targeted sanction unfolded only a limited effect on Myanmar without coercing it to stop its human rights violations. While Marchi (2017) argues that the withdrawal of Myanmar's trade preferences is unlikely to affect the military's calculations, the contribution of the thesis lies precisely in the analysis of the potential impact of the EU departing from its current approach that leaves Myanmar in the EBA program, discussing to what extent the EU can potentially capitalize on its market power and the resulting leverage from it. The thesis seeks to contribute to the academic debate by sharpening its focus, in contrast to a rather broad perspective present in the work of Khin (2017). It explicitly looks at the conduct of the EU, its motives, and analyzes what the EU, being a humanitarian actor and a market power, can do to stop the violence without focusing too much on the details of the violence against the Rohingya. Furthermore, the thesis focuses precisely on the contemporary outcomes predicted by Montera (2013) concerning the EU losing its leverage over Myanmar when readmitting it to the EBA program, analyzing to what extent the current economic power imbalance between the EU and Myanmar potentially can make up for this loss of leverage. It demonstrates what strategic options the EU has and analyzes their potential impact on Myanmar. Furthermore, the thesis creates new data on the topic by conducting expert interviews with EU representatives, NGOs, and diplomats from Myanmar and Bangladesh, basing its conclusions on firsthand insides from primary sources.

In sum, the thesis contributes to the academic debate by adding actuality to a debate that flattened around 2018, assessing the EU's approach in a critical light. Additionally, the thesis sheds light on the mostly secretive deliberations in the Council when deciding what measures shall be prioritized, reacting to contemporary crises, unveiling the underlying factors that lead to the adoption of a particular measure over the other. It aims at answering the question as to why the EU did not deploy all available measures in light of what the UN has called 'a textbook example of ethnic cleansing' ("UN human rights chief points to 'textbook example of ethnic cleansing' in Myanmar," 2017). By subsequently recommending policies that potentially can coerce Myanmar to

stop its human rights violations against the Rohingya, the thesis explicitly also aims at enabling the relevant actors to respond to the discussed crisis, attempting to root the debate in empiric facts, bridging academia and politics.

### 3. Theoretical Framework

This section establishes the theoretical framework in which the thesis operates by discussing existing concepts and theories upon which the thesis relies. The theories discussed in this chapter serve as a guide to the thesis' analysis and put its findings in the framework of previously established concepts. The theories relevant to the thesis can roughly be categorized among the lines of the grand theoretical debates of international relations. To answer the research question, this thesis introduces hypotheses concerning the possible factors behind the EU leaving Myanmar in the EBA program. The hypotheses flow from the theories presented in this chapter.

#### 3.1 Market Power Europe

The theory of MPE by Damro (2010) is one of the underlying theories, informing the general research agenda. The concept can be understood as an answer to Manners (2001) concept of 'Normative Power Europe.' Damro (2010) focuses mainly on the phenomenon of the EU exercising power when it externalizes its own economic and social market-related policies and regulatory measures. A development of the thought wrought here entails that the EU is not only a purely normative actor but, in fact, indulges in classical power politics, calculating the power resources and the leverage it holds over other actors. It is ready to utilize these resources, particularly its market power, to persuade or coerce another party to do or stop a certain behavior. The EU can also use the exclusion of access to its market as a threat to coerce third states to follow up on EU demands. In the case at hand, that means we can expect the EU to use its power resources stemming from its highly lucrative Single Market to stop Myanmar from committing ethnic cleansing and other atrocities against the Rohingya people. Under the MPE concept, the EU departs from its normative persuasion driven approach toward promoting a liberal world order and dives into the realm of power politics, utilizing arguably its most significant power resource, its Single Market. Hence, the presented development of the theory contributes to the thesis by outlining that the EU has strategic options in place, here the exclusion from access to its Single Market, to

deal with atrocities committed in third states. Conditionality applied in many EU economic agreements and particularly in its EBA program, demonstrate that the EU intends to utilize its dominant economic position to exercise power over third states by actively influencing their behavior. Arguably, it is enshrined into the EU's DNA to influence third parties to adhere to democratic principles, international law, and basic humanitarian principles. This assumption is substantiated by the fact that the EU explicitly aims at externalizing various internal policies, a conduct that is at the core of the presented theory. That is reflected in Article 21(1) TEU, commanding the EU to pursue the goals and principles that underline its own creation whenever it conducts foreign policy. In light of the fact that economically there is little to lose for the EU in the case of excluding Myanmar from the EBA program, under this theoretical assumption the question over why the EU did not utilize its powers to pursue the goals in Article 21(1) TEU that would mandate the EU to use all its resources against countries that commit atrocities against domestic minorities, such as Myanmar, arises. From these elaborations flows the first hypothesis of this thesis.

H1: “The EU did not revoke Myanmar’s privileged market access yet because it wants to keep leverage over Myanmar to continue promoting its geostrategic and normative goals there.”

H1 is also rooted in realist international relations theories, stressing states' desire to accumulate power resources vis à vis other states (Waltz, 2000). For our purposes, it is also applicable to the EU being, to some extent, a state like entity acting on the international scene. This hypothesis assumes that the EU is a rational actor operating in an anarchic system in which all actors seek to maximize their absolute power. Economic relations are understood as a source of power that can potentially be used to coerce or incentives Myanmar to follow up on the EU's demands. Hence, excluding Myanmar from the EBA program now, minimizes the EU's power resources vis à vis Myanmar in the future. The fact that the EU claims to promote primarily normative goals does not undermine the realist undertone of this hypothesis since, as the subsequent chapters show, the EU also pursues geostrategic interests when engaging with Myanmar.

### 3.2 Liberalism

The second pillar of the theoretical framework for this thesis relies on liberal approaches to international relations. Liberal approaches cannot be ignored when trying to explain the EU's behavior on the international scene since the EU commits to that particular notion of international relations. As a theory of international relations, Liberalism rejects the emphasis on power politics and absolute gains when explaining international developments, postulated by realism. Instead, it focuses on mutual benefits and relative gains arising from international cooperation. In liberal approaches, international organizations and non-governmental actors shape state preferences and internal policy choices. International institutions that develop and disseminate their norms represent one of the central pillars explaining policy choices. Another pillar of Liberalism in international relations relies on the expansionist notion of spreading western liberal democracy and values relating to that political system since western liberal democracies historically do not go to war with each other. Consequently, some states and international organizations have a direct interest in promoting democratic developments in third states and keeping them inside a multilateral framework. This notion can be applied to the EU as well. After all, Article 21(1) TEU mandates the EU to pursue and hence disseminate democracy and the rule of law whenever acting on the international scene. Coming back to the research topic, one can find that Myanmar is transitioning toward a more democratic system. Hence, the EU leaders might not want to impede this transition by alienating Myanmar when excluding it from preferential market access. These elaborations lead us to H2 that is inspired by adopting a liberal perspective toward the research agenda. (Croissant & Lorenz, 2018; Schlütter, 2010)

H2: “The EU keeps Myanmar in the EBA program to not endanger the country’s transition to a democratic system that is integrated into a multilateral framework. “

Liberal theories of international relations inspire H2. It assumes that states are concerned with relative gains that they can obtain by virtue of their membership in an international system characterized by a web of norms, rules, and institutions. Today, these norms expressly include a commitment to human rights and a strong opposition to genocide and ethnic cleansing. The EU and the UN particularly subscribe to a liberal approach to international relations, seeking to keep states inside the framework of mutual institutions that can potentially influence also their internal behavior. Transitioning to a western

democracy entails regularly integration into the multilateral international framework. Being one of the leading proponents of a liberal approach to international relations, the EU wants to keep states like Myanmar, undergoing a transition to democracy, inside the described international framework of institutions to retain a degree of control over them potentially. The hypothesis further assumes that the EU, as a liberal international actor, has a particular interest in other states becoming democracies. As such, it supports Myanmar in its transition to a democratic system and will endeavor not to adopt measures that might threaten this process. (Keohane & Martin, 1995; Schimmelfennig, 2001)

### 3.3 Intergovernmentalism and Functional Explanations

Intergovernmentalism regards state actors as primary decision-makers in international politics. The main focus when explaining foreign affairs policies lies on the actions of state actors like heads of states and governments, as well as ministers representing their respective governments. This theoretical approach informs the thesis because it takes due regard of the importance of institutions when shaping international relations. In the case at hand, the relevant institutions are the European Council and the Council. The explanatory power of the theory in the context of this thesis unfolds in particular when understanding that foreign policy in the EU is shaped by Chapter II of the TEU, establishing the Common Foreign and Security Policy and firmly anchoring its mechanisms in intergovernmental procedures. Hence, regarding the research agenda at hand from the lenses of intergovernmentalism can inform it for the reason that this theory explains the rules that shape CFSP decisions. Furthermore, functional approaches focus on the intergovernmental nature of the EU and inform the H3 directly. A functional explanation focuses on the high threshold of consensus necessary to take CFSP decisions or to withdraw Myanmar from the EBA. Hence, functional approaches in conjunction with intergovernmentalism can explain the inaction of the EU in the given case by duly taking regard of the fact that it is the heads of states and governments primarily shaping the relevant decisions in EU foreign policy, that procedural questions potentially determine the outcome of foreign affairs policy deliberations also by setting a high threshold to withdraw a particular country from the EBA program. The presented theoretical perspectives directly inform the thesis by considering that if heads of states and governments, as well as foreign ministers in the FAC, do not perceive that removing Myanmar from the EBA program to be an effective measure, such a measure will not be

adopted. If there is simply no majority in the Council, we can expect that the EU will be inactive for the reason that it legally cannot act without a mandate by the Council. Therefore, the final hypothesis of this thesis incorporates both intergovernmental and functional explanatory models.

H3: “The Council members perceive that the removal of Myanmar from the EBA program is unlikely to alter the political calculations of Myanmar’s military actors when it comes to the Rohingya Crisis since such a step is likely to primarily hurt female workers employed in the textile industry and not the military-owned conglomerates that run substantial parts of Myanmar's economy.”

This hypothesis incorporates the fact that Myanmar's economy can be divided into the privately-run sector and the military-run sector. Myanmar's military controls several conglomerates that are economically active in the country. Nevertheless, it is primarily the country's textile sector that benefits from the trade preferences under the EBA program. Withdrawing these trade benefits will not harm the economic interests of the military to a sufficient extent. The careful reader might argue now that the textile sector is contributing to Myanmar's tax revenue, and therefore targeting that sector still appears as a viable option to alter Myanmar's course of action regarding the Rohingya. Indeed, that is a legitimate argument. Nevertheless, the argument ignores the fact that although being part of the state, the military enjoys a high degree of independence from the government. In fact, it is the military that has overthrown Myanmar's government in the past, holding until today unchallenged systemic key positions of power. For instance, a substantial number of parliament seats are not assigned by the electorate because they are permanently reserved for military representatives. Hence, a decreased level of tax revenues is unlikely to affect the military's budget or the personal incomes of military leaders perpetrating the violence against the Rohingya. Furthermore, H3 focuses on the perception of EU heads of states and governments who ultimately set the course of the EU's foreign policy and the form and depth of potential sanctions. The hypothesis assumes that if the EU leaders are not convinced that the removal of Myanmar from the EBA program will alter Myanmar's government or military actors calculations to the extent that they will stop the human rights violations, then the removal of EBA trade preferences will not have unanimous support in the Council. After all, if the EU leaders perceive that the removal of Myanmar from the EBA program is not likely to lead to the

envisaged outcome, then its removal will not only be perceived as an ineffective measure but rather as a counterproductive measure that leaves the EU and its Member States with less leverage over the country and might potentially damage its process of democratic transition. (Heiduk, 2018)

## 4. Methodology

### 4.1 Research Design

The thesis aims to explain the phenomenon that in light of accusations of ethnic cleansing and genocide against Myanmar and in light of unambiguous proof of violence committed by Myanmar's military against the Rohingya people, the EU did not remove the country from its EBA program. The inherent question regarding the described phenomenon concerns the *raison d'Être* of the EU's approach. Thus, the research aims at explaining why the EU chose the deployed approach to be more precise, why it keeps Myanmar in the EBA program in light of severe human rights deficits in Myanmar. The data necessary to explain the phenomenon comprises, on the one hand, of policy documents discussing the EU's approach, as well as press statements justifying the EU's approach to the crisis and, on the other hand, expert interviews with representatives of the Council, the Commission, the EEAS, Myanmar, Bangladesh and interviews with victims interest groups.

The research conducted for the thesis can be categorized as an explanatory single case study with a deductive character, conducting a content analysis (Elo & Kyngäs, 2008). The research's deductive nature is accommodating to the fact that the research consists of initially formulated hypotheses grounded in certain theories, potentially explaining the EU's behavior. It draws inferences from analyzing interviews that were conducted explicitly for the thesis and from analyzing relevant documents. The approach appears to be suitable to answer the research question since testing the formulated hypotheses leads to conclusions that directly answer the research question. The interviews conducted for the research target, on the one hand, EU actors that are in the position to elaborate the *raison d'Être* of the Union's approach to the crisis, and on the other hand deliver information on the impact of potential EU measures in Myanmar by interviewing diplomatic staff of the country. The analysis of documents is the second leg of the research design. In the case of policy documents, a document analysis can give information on measures adopted by the Council and on deliberations in the



Parliament regarding this issue. Furthermore, an analysis of press statements by EU institutions can shed light on the factors leading to the EU's approach since press statements address a broad audience and often include justifications for a particular policy. Hence, an explanatory single case study comprised of conducting qualitative interviews and a document analysis, performing a content analysis, is appropriate to answer the given research question.

### Case Selection

Before discussing the reasons for selecting the case at hand, it is necessary to outline the unit of analysis. As established above, the adopted approach is a single-case study. The unit of analysis is the EU's approach, to be more precise, the concrete policies the EU adopted in response to the violence conducted by Myanmar's military against the Rohingya people. The setting of the analysis is Myanmar and Bangladesh in the timeframe commencing in 2017 and continuing until today. The setting includes both Myanmar and Bangladesh since firstly, it is Myanmar's military that commits the violence against the Rohingya people. Secondly, another part of the analysis sheds light on policies Myanmar adopts regarding the Rohingya in the realm of the refugees returning to Myanmar from Bangladesh and concerning property restitution. Bangladesh is part of the case's setting since the vast majority of Rohingya refugees found asylum in Bangladesh, and therefore the country is directly involved in the crisis at hand. When discussing the EU's approach to the crisis, it is insufficient to merely look at EU policies that were adopted to halt the violence against the Rohingya; in order to provide a fuller picture, it is necessary to take regard of the further EU efforts in the context of the crisis taking regard of the support the EU provides to the refugees and also the EU's involvement in drafting and implementing a roadmap to facilitate the return and property restitution of the Rohingya people. The chosen timeframe for the analysis commences in 2017 and ends with the date of writing this thesis for the reason that the still ongoing violence against the Rohingya constitutes the focus of the analysis at hand.

Furthermore, it is necessary to justify the case selection explicitly. The elements that must be justified concerning the case selection comprise of the reasons for selecting the EU's reaction toward the given crisis and the reasons for selecting the Rohingya crisis as part of the case. Firstly, although international crises occur quite frequently and comprise a regular agenda item in Council meetings, a crisis such as the Rohingya crisis with violence amounting to ethnic cleansing and potentially to genocide is quite rare. In

light of the described violence, one might expect that the EU will revoke Myanmar's trade benefits. That is the case because one of the legal bases for withdrawing the trade benefits under the EBA program is not adhering to fundamental human rights. In light of documented accusations of ethnic cleansing and potentially genocide, it is safe to say that Myanmar is fulfilling this criterion, giving the EU a legal justification for withdrawing it from the EBA program. Furthermore, no other country against which accusations of ethnic cleansing or genocide are formulated enjoys EU trade preferences. Therefore, the question of why the EU keeps Myanmar inside the EBA program requires a particular explanation. The very foundation myth of the EU comprises of it being a response to the Shoah, the genocide of the Jewish People on European soil. Consequently, the Treaties enshrine the statement 'Never Again' by mandating it Article 21(1) TEU to conduct foreign policy in such a manner as to contribute to a world characterized by international peace in which there is no room for violence amounting to ethnic cleansing and potentially even to genocide. Insomuch, it appears puzzling that in the case at hand, the EU so far did not exhaust all of its possibilities to stop the violence when it did not remove Myanmar from the EBA program. Furthermore, a single-case study enables the thesis to take a more in-depth look at the contemporary processes inside the Council regarding decision-making in light of ethnic cleansing that are usually shed from the public. The case, comprising of the factors behind the EU's approach toward Myanmar during the Rohingya was also selected to unveil the activities in the Council when it is confronted with an urgent international crisis that demands a swift response of the EU to ease human suffering. Moreover, the explanatory power of the thesis is enhanced by the fact that the thesis' subject, namely the EU's reaction to severe violence against the Rohingya, is a clearly marked-out phenomenon that so far, as the literature review demonstrated, was not open to many academic deliberations after the EU incorporated many suggestions originating in academia. Especially, when taking into account that after the restructuring of the CFSP in the context of the Lisbon Treaty, the case at hand, namely the EU's response to a violent conflict amounting to ethnic cleansing and potentially to genocide is under-researched for the reason that such conflicts occur relatively rarely. Consequently, the thesis studies explicitly the factors present on the side of the EU that led to the adopted EU reaction toward the crisis.

## 4.2 Data Collection and Analysis

### Sources

When discussing the sources, the question over what sources to choose and how to deal with them arises. This thesis's sources consist mainly of primary sources, namely interviews conducted for the thesis, EU policy documents, and related press statements. In light of an ongoing process at the ICJ against Myanmar, a written answer by an embassy, addressing the questions that were formulated for the interviews, is accepted as a substitute for an actual interview. The further documents were collected from public sources such as the Council website, the Commission website, the EEAS website, and EUR-lex. The interview partners were selected by looking at the research question and the hypotheses, selecting partners that can provide answers to the questions stemming from the research question, and that can assess the validity of the hypotheses. To approach the interviews systematically, an Excel database of EU representatives, representatives of Myanmar and Bangladesh, as well as representatives of NGOs and victims groups, containing the relevant interview partners and their contact details as well as a commentary section where the results of the contact attempts are documented, was generated. These parties were expected to be able to give detailed and informed answers addressing the research agenda. Notably, the interview partners include an EEAS representative, a Council representative, a Commission representative, a Bangladeshi diplomat, a Myanmarese diplomat, and a representative of the European Rohingya Council. The interview with Myanmar's representative shed light on the validity of considerations on the EU's side concerning the effects a potential removal of Myanmar from the EBA program might have on it and on what developments in Myanmar falling in line with EU demands in the crisis can be ascribed to measures the EU adopted during the crisis. The interviews with the EU representatives shed light on the factors leading to the EU's response from different institutional angles. The interview with the victims' group gives insights into the current human rights situation of the Rohingya. The interview with the Bangladeshi diplomat delivers an assessment concerning the validity of the hypotheses from the perspective of the country receiving most of the Rohingya refugees, being a direct neighbor to Myanmar. The limited triangulation of data sources is counterbalanced by a diversity of documents that informed the thesis. Namely, EU policy documents, related press statements that particularly include justifications for the EU's approach toward the case at hand, reports by NGOs and victims groups on the matter, reports by the UNHCR and HRC

resolutions, as well as reports by the EU Parliament. The document selection was systematized by developing a keyword scheme that consists of three different content levels. Only documents containing keywords from these three levels were selected: (1) at least one out of a list of keywords on a thematic level (e.g., EU response to Rohingya Crisis, Myanmar's violence toward Rohingya, UNHCR report on Rohingya crisis); (2) a second category is established by a list of keywords on a procedural or legal level (objectives, competencies, means of EU to intervene in crises); (3) and finally each selected document has to refer explicitly to at least the EU, its programs and its response to the Rohingya crisis, its Member States and their relationship to the crisis, Myanmar, Bangladesh, or Myanmar state actors.

### Data Analysis

The thesis conducts a content analysis of the collected data stemming from the sources described above. For the analysis, the collected documents' content was scanned for information directly relating to answering the research question and the hypotheses. The documents were grouped corresponding to their relationship with each thematic element of the research agenda. The information collected from the documents was then grouped into categories that correspond to the thematic outline and expressly corresponding to the formulated hypotheses. The interviews are semi-structured expert-interviews. During the interviews, notes were taken as the interviewees did not consent to audiotaping. Subsequently, the interviews' notes were categorized similarly as the analyzed documents. An element of the data analysis strategy consists of keeping a case study database in the form of an Excel document that includes: the date of the source; the type (e.g. 'press statement'); the occasion or context (e.g. 'EU Foreign Affairs Council Meeting 32/2018'); the author or speaker (e.g. 'HR/VP Federica Mogherini'); how the source had been retrieved (e.g. 'EEAS Task Force Myanmar → Press Material'); the hyperlink to the source; the data fragment; potentially notes made concerning the data fragment; and the date the source was accessed. The case study database serves the purpose of enabling the researcher to keep track of the described aspects of the collected data and to enable a systematic approach toward dealing with a somewhat more extensive data set comprising of various types of documents and interviews.

When choosing a particular research design, it is necessary to clarify the threats and benefits of the deployed approach. The strength of a document analysis conducted

in the described fashion lies in the minimal costs involved in obtaining the documents as the documents used for this thesis are freely available to the public. Furthermore, documents are non-reactive data; hence they can be reread and reviewed and are unresponsive to the researcher's influence. The disadvantages concerning the document analysis are that particularly in light of the sensitivity of the issue at hand, crucial documents might be classified and not publicly available. Furthermore, the available documents, especially when analyzing EU press statements, might be formulated in a fashion that puts the EU's action in a positive light, embellishing or downplaying certain aspects of decisions as the documents address the public. The method to deal with these threats lies in collecting documents from a variety of sources, especially when it comes to press statements, considering patterns of inconsistencies in these documents, and checking the validity of the information provided by discussing the findings from the document analysis with the interviewees.

The advantages of semi-structured interviews lie in, on the one hand, the opportunity to receive answers to questions arising from the research agenda and, on the other hand, in giving the interviewee the space to draw the researcher's attention to other possibly relevant issues. Furthermore, semi-structured interviews are useful to obtain detailed information about a given topic and the perceptions on it by the interviewees. Ambiguities can be directly clarified, incomplete answers can be followed-up and the questions' wording can be tailored to the respondent. The precise meaning of the questions can be clarified, and the interviewees are not influenced by other people in the group, decreasing the risk of providing socially desirable answers. The disadvantage of interviews is that this method is very time consuming, considering that the interview partners must be found, in some cases convinced to take part, the interviews must be processed and adequately analyzed. Particularly in the process of analyzing the interviews, the issue of subjectivity arises. This issue is tackled by systematically ordering the data generated by the interviews, deploying the presented framework that contributes to a transparent approach to the data analysis. Furthermore, the researcher interviews civil servants and members of the EU's diplomatic corps, and a state perpetrating severe violations of human rights as well as NGOs. These groups of people are trained to express the positions of their affiliated state or organization diplomatically, promoting their respective agenda. They might choose to downplay or overemphasize certain issues if it is in the interest of their state or organization. This issue is addressed by taking the interviewees' professional background into account and explicitly

interpreting the insights from the interviews accordingly and by confronting the interview partners with findings from the document analysis and previous interviews, addressing potential inconsistencies. (Bergen & Labonté, 2020; Bowen, 2009; Kendall, 2014; Roulston, 2014)

## 5. Analysis

### 5.1 EU's Competences and Instruments to Stop the Violence in Myanmar

Whenever an EU actor becomes active, she must first check if the EU is competent to act and what procedures apply. Based on the principle of conferral, flowing from Article 5 TEU, the Union can, in principle, only act if a competence is explicitly conferred upon it. Article 21(1) TEU, in conjunction with Article 3(5) TEU establishes firstly, that the EU itself has a Common Foreign and Security Policy and that whenever acting externally, it must refer back to the foreign policy aims that are listed in Articles 3(5) and 21(1) TEU. These values reflect the normative fundament of the EU's creation and center broadly around promoting peace, democracy, and upholding human rights. The idea to link concrete policies back to specific goals flows *inter alia* from the German constitutional tradition of the *Staatszielbestimmungen* and is enshrined in the EU's current Treaty framework (Kimmel, 1992). When legally assessing the EU's competence, one must consider the nature of the competence, namely if it is shared or exclusive and the scope of the competence.

The Treaties did not specify if CFSP/CSDP is an exclusive competence (Article 3 TFEU), shared competence (Article 4 TFEU), or competence to support, coordinate, or supplement the actions of the Member States (Art. 5 and 6 TFEU). Instead, the Treaties merely specify that such a competence exists. In the academic debate, there are good arguments for both assumptions, e.g., CFSP is a shared competence because it allows both the EU and its Member States to become active. Nevertheless, it is hard to justify that if the EU becomes active that this does not bind the Member States (Wessel & den Hertog, 2013). That is an argument for CFSP being a shared competence with pre-emption. If CFSP happens to be an exclusive competence, then the Member States certainly cannot act after the EU acted. The main argument for CFSP being an exclusive competence relies on the wording of Article 3(2) TFEU allowing the EU to conclude international agreements and act externally when necessary to realize a particular goal established by a legislative act. The issue over when the Member States can act after the

EU acted in the framework of CFSP is discussed further below. For now, it suffices to establish that CFSP is best described as a competence *sui generis* with its own procedures and the exclusion of CJEU jurisdiction. These unique features of CFSP flow *inter alia* from Article 40 TEU.

Due to the intergovernmental nature of CFSP/CSDP, the European Council and the Council are the most salient actors when it comes to adopting measures in our case. The measures may include decisions (Article 25 TEU), constituting a mandate for concrete actions by EU bodies. The Council can adopt conclusions, outlining the EU's stance concerning a given issue and potentially providing a legal base for action by other EU bodies. Furthermore, the Council can adopt restrictive measures. These are measures that the EU can impose on representatives of particular non-EU countries' governments, states, enterprises, and other legal and natural subjects (Portela, 2012). These measures must be adopted in the framework of CFSP provisions, and they must be justified based on CFSP objectives listed in Article 24 TEU. The Council may also adopt statements and declarations; these are measures that have mainly a singling effect and are not followed up by concrete measures. Moreover, the HR may issue statements on her behalf, which becomes particularly relevant if there is no agreement in the Council. Article 33 TEU provides for establishing Special Representatives that are mandated to deal with a specific foreign policy portfolio. Currently, eight Special Representatives are dealing with a particular country or region, among them the Middle East or Kosovo and one Special Representative with a policy area portfolio, namely human rights. It is remarkable that in light of the documented violence in Rakhine state, there is currently no EU Special Representative dealing explicitly with Myanmar. That is not to say that the Special Representative for Human Rights does not deal with the crisis; remarkable is that a Special Representative is dealing with 'The Belgrade-Pristina Dialogue' explicitly; however, no Special Representative is dealing explicitly with Myanmar in light of the violence committed against the Rohingya ("EU Special Representatives," 2019; Wessels & Bopp, 2008).

Be it as it may, when the EU acts externally, to unfold maximal effects of EU foreign policy decisions, questions over coherence and consistency arise. One dominant narrative in EU foreign policy is that the EU must speak with one voice to achieve that goal. This narrative and alternatives to it are discussed in the subsequent chapter. Albeit, it is crucial to mention at this point that specific measures, once adopted by the Member States collectively in the Council, limit the Member States in their foreign policy options

by unfolding mandatory force on them. In the context of restrictive measures, this means that the Council must adopt a decision based on Article 29 TEU. The measures explicitly listed in the decision are implemented either by the EU, by the Member States, or by both, depending on their nature. Sanctions can include measures such as arms embargoes, restrictions on the admission of listed persons, freezing of assets, and economic sanctions. When economic issues are concerned, the Council based on a proposal of the HR or the Commission acts based on Article 215 TFEU, voting unanimously. Restrictive measures should be designed in light of the EU's obligation to promote and respect fundamental rights, flowing from Article 6(3) TEU, meaning that if a party is merely not living up to the values that inspired the EU's creation, flowing from Articles 3(5) and 21 TEU, this alone does not suffice to be a reason for sanctions. The legal bar for sanctions is higher; a certain actor must be in breach of fundamental rights in an egregious fashion to such an extent that it gives ground for the EU to act restrictively to stop this breach, flowing from its mandate to uphold fundamental rights under Article 6(3) TEU. Albeit, the wording of the relevant Treaty provisions, notably of Article 6(3) and 29 TEU as well as 215 TFEU does not provide for any automatism and gives extensive leeway for political deliberations. (Börzel & Van Hüllen, 2014; da Conceição-Heldt & Meunier, 2014; Macaj & Nicolaïdis, 2014)

## 5.2 EU Policies in Myanmar

### Mapping EU Myanmar Relations

Before analyzing the concrete measures the EU adopted as a response to the violence against the Rohingya, it is necessary to map the relations between the EU and Myanmar with the current crisis in mind.

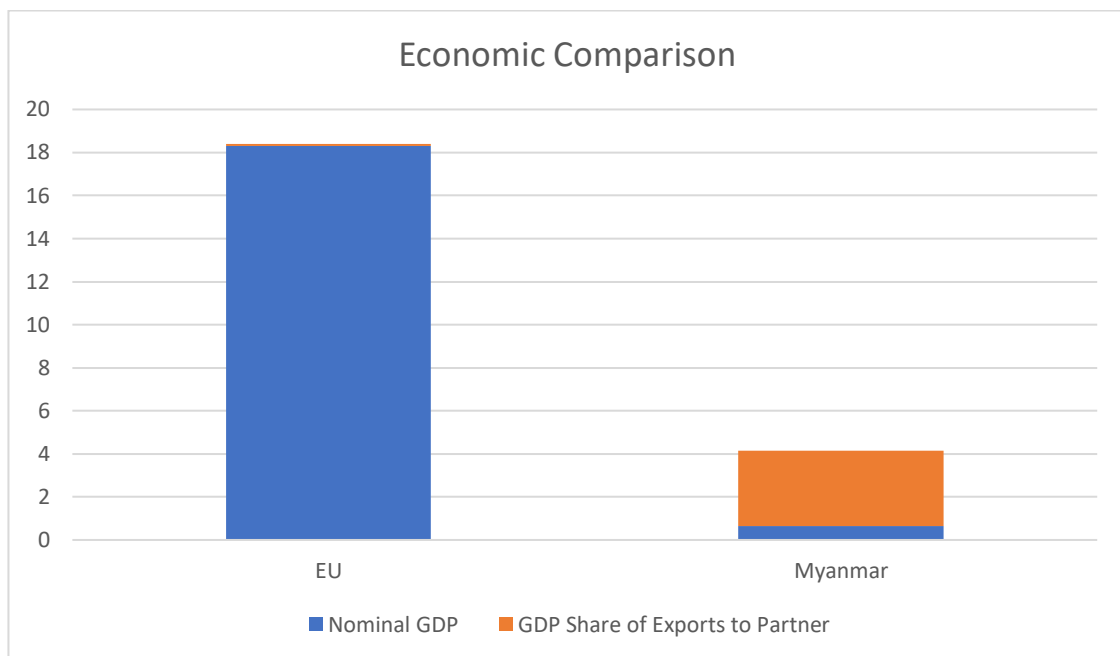
The EU and Myanmar have had a somewhat turbulent relationship. During the military junta, the EU supported the democratic opposition led by Aung San Suu Kyi and it supported the country in its transition to democracy after she became the *de facto* head of government when assuming the role of 'State Counsellor of Myanmar (*Joint EU Strategy for Myanmar 2014-16*, 2013). Today, 'the West' in general and the EU, in particular, are still held in high regard by some branches of the government and by a majority of the population in Myanmar, precisely because 'the West' supports Myanmar's transition to democracy (Htun, 2020). When the EU establishes relations with a particular third state, it regularly adopts 'Action Plans.' It is remarkable that, as the subsequent sections show, although the EU is quite intensely involved in Myanmar,



particularly when it comes to humanitarian aid, there is no EU-Myanmar Action Plan. There is an ‘EU-ASEAN Action Plan’ that also covers Myanmar. In light of the EU’s rather intensive involvement in Myanmar and the threat the Rohingya Crisis poses to the democratic transition process's achievements, it is striking that there is no particular EU-Myanmar Action Plan.

### *Economy*

Firstly, when analyzing the structures of the relations between the EU and Myanmar, it is essential to consider the economic power structures between them, with particular regard to economic power imbalances.



	<b>EU</b>	<b>Myanmar</b>
<b>Nominal GDP (in Trillion USD)</b>	18.3	0.66
<b>GDP Share Exports to Partner (in %)</b>	0.1	3.5

*(EU Trade with Myanmar, 2020)*

For our purposes, when discussing economic power in light of potential sanctions, it is necessary to compare the size of the respective GDP and assess share of exports to the respective partner in the GDP. Furthermore, it is necessary to look at the FDI shares. The size of the EU's nominal GDP was 18.3 trillion USD in 2019. The nominal GDP of Myanmar was 65.9 Billion USD in 2019. The share of exports to Myanmar in the EU's GDP is a little below 0.1%; meanwhile, the share of exports to the EU in Myanmar's GDP was estimated at 2.3 billion USD in 2018, which represents roughly 3.5% of the country's GDP. Nevertheless, the EU is Myanmar's 4th largest export partner, with 9% of all its exports destined to the EU. Albeit, Myanmar's exports go mainly to the East-Asia and Pacific region. Although Myanmar is a member of ASEAN, its leading single export destination in 2017 was China, with 42.13 % of its exports going to China. The small share of EU exports in Myanmar's GDP can be further contextualized when looking at the total volume of Myanmar's exports in goods and services. In 2017, the total share of exports had a volume of 19.96% of Myanmar's GDP. Agriculture, forestry, and fishing products for domestic consumption together constitute the largest sector in Myanmar's economy. They amount to nearly 50% of the country's GDP. In terms of FDI, the EU was the 10th largest foreign investor in Myanmar in 2019. Nearly 170 EU firms are investing in Myanmar, with a combined total of 7 billion USD. (*EU Trade with Myanmar, 2020; World Economic Outlook Database, 2019*)

Additionally, Myanmar is strategically located next to the Indian Ocean. Being the only hub of land transport connecting East Asia, Southeast Asia, and South Asia. Myanmar's location — being of geostrategic importance — means that the country becomes the focal point of concern for some countries, including China, the US, India, Japan, and the European Union.

In sum, when looking at the EU's economic leverage over Myanmar, it is fair to say that it is limited. The fact that Myanmar's foreign and external economic relations revolve around its integration into the Asian and Southeast-Asian economic structure, by virtue of its membership in ASEAN and because of the structure of its export flows, limit the EU's leverage over the country furthermore.

### *Development*

The EU supports Myanmar in its democratic transition process. Part of this support comprises of the readmission of Myanmar to the EBA program. Formally, the readmission was justified in 2013 on the grounds of Myanmar's efforts in combating

forced labor, recognized by the International Labour Organisation. An 'EU-Myanmar Task Force' was established for bilateral dialogue to support the democratic transition process, part of the task force's work includes coordinating investment into Myanmar to spur development. In 2015, the EU signed the 'Nationwide Ceasefire Agreement' as an international witness. That is an agreement between the government of Myanmar and representatives of different ethnic insurgent groups, among them armed Rohingya groups. The purpose of the agreement was also to pacify the violence in Rakhine State. The EU sent an 'Election Observation Mission' staffed with 100 observers to the 2015 general elections and deployed an 'Election Expert Mission' in 2017. There is the Joint Communication 'Elements for an EU strategy vis a vis Myanmar/Burma: A Special Partnership for Democracy, Peace and Prosperity' that is grounded in Council Conclusions of June 2016. The Communication focuses on various measures regarding Myanmar with a focus on support in six primary areas: 1) democracy, the rule of law and good governance; 2) the peace process; 3) human rights; 4) poverty reduction and sustainable development; 5) economic engagement; 6) working together with Myanmar in ASEAN and the region. (*Joint EU Strategy for Myanmar 2014-16*, 2013; Montera, 2013; *Nationwide Ceasefire Agreement*, 2015)

### *Political Dialogue*

Myanmar and the EU are also in a process of political dialogue. Since 2014 they engage in a 'Human Rights Dialogue' that focuses on the protection of human rights of ethnic and religious minorities in Myanmar, particularly on the human rights of the Rohingya. In the framework of the political dialogue, the EU addressed various condemnations regarding the recent waves of violence in Rakhine State directly to political and military actors in Myanmar. The EU also insisted on a formal bilateral agreement with Bangladesh on the return of refugees. Moreover, it insists on implementing the recommendations of the final report of the 'Advisory Commission on Rakhine State,' dealing with the return of the refugees. As a result, an initial arrangement on the return of displaced persons from Rakhine State was signed in November 2017, followed by the 'Terms of Reference' for the Joint Working Group on the repatriation of displaced Myanmar residents from Bangladesh in December 2017 and the 'Physical Agreement of Implementation' in 2018 dealing with the same issue. In the interview with a Bangladeshi diplomat that was conducted for this thesis, he stressed that despite these agreements, Myanmar refuses to take back Rohingya refugees and resettle them in

Rakhine State. (Interviewee Bangladesh Diplomat, 2020; "EU-Myanmar relations," 2018; *Final Report*, 2017; *Framework Agreement Bangladesh-Myanmar*, 2017)

#### *Multilateral & Regional Fora*

Regarding the EU's engagement with Myanmar in multilateral and regional fora, one can find that the EU sponsored an HRC Resolution to establish an independent Fact-Finding Mission in March 2017 and maintains contacts in Myanmar through ASEAN's 'Regional Forum' and in the 'Asia-Europe Meeting.' The EU also indicated development aid for Myanmar, amounting to 688 million Euros in the 'Multiannual Indicative Program 2014-2020.' Additional 40 million Euros are dedicated to ongoing programs. Concerning the EU's humanitarian efforts, one can find that the EU spent 51 million Euros on immediate relief support in 2017 when the violence escalated drastically. Additionally, it spends 40 million Euros to support the Refugees in Bangladesh's Refugee Camps. The money is used for food, nutritional support, clean water, and sanitation facilities, access to health care services. (*Multiannual Indicative Programme 2014-2020 Myanmar*, 2014; *Resolution 39/2*, 2018)

#### *Restrictive Measures*

Measures such as sponsoring the HRC resolution are complemented by hard sanctions, or 'Restrictive Measures' in EU jargon aiming at coercing Myanmar to stop its violence in Rakhine State. After initially suspending all sanctions in 2013, the EU reinstated some in April 2018 as a response to the violence *inter alia* in Rakhine State and introduced targeted measures against individuals from Myanmar that can be held accountable for the violence, among them military and political figures. Currently, there are 14 individuals on the list. The restrictions include the freeze of all assets these individuals hold in the EU and a restriction on admission to the EU, also known as a 'travel ban.' Furthermore, sanctions currently include export embargos on arms and dual-use equipment for use by the military or border guard police and on equipment that can be explicitly used for internal repression. Some restrictions do not amount to an outright embargo. That is the case when it comes to the export of equipment for monitoring communication. Here, the Member States may authorize the sale, supply, transfer or export of this equipment if they have reasonable grounds to determine that the equipment, technology or software would not be used for internal repression by Myanmar state actors, after notifying the other Member States and the Commission.

Furthermore, the EU introduced a prohibition on military training and military cooperation with the Myanmar Armed Forces, the Tatmadaw. Moreover, the negotiations on the 'EU-Myanmar Investment Protection Agreement' have been paused since 2017 as a response to the violence in Rakhine State. (Commission, 2020; *Council Decision*, 2013; "EU-Myanmar relations," 2018)

### 5.3 Effectiveness of EU Restrictive Measures against Myanmar

Assessing the effectiveness of sanctions, in general, is a challenging endeavor. Although the economic development of a particular target might be declining, and FDI might be stagnating, it is still difficult to pinpoint if these developments are caused by the introduced measures or simply correlate. As this section will show, in the case at hand, providing an economic assessment of the effectiveness of EU restrictive measures against Myanmar is ineffective for various reasons.

Firstly, before determining the effectiveness of specific measures, one must establish the purpose of these measures to determine to what extent the stated purpose was subsequently achieved. The purpose of EU restrictive measures in Myanmar is explicitly to end the violence against the Rohingya people, to ensure that Myanmar will readmit the refugees from Bangladesh and reinstate their property that was destroyed when Myanmar's state actors burned villages in Myanmar that were primarily populated by Rohingya and to ensure accountability for the internal violence (*Council conclusions on Myanmar/Burma*, 2018). Speaking more broadly, sanctions can have a coercive dimension, a constraining dimension, and a signaling dimension. In the case at hand, the EU aims at constraining effects when it introduces targeted sanctions against individuals in Myanmar's military and political system (Borlini & Silingardi, 2018). The aim here is to target decision-makers and introduce a personal toll on them for their actions, hoping that their personal financial interests will be threatened on the one hand and that they will be constrained in their personal and professional life when they are unable to participate in international fora and summits since they are restricted from entering the EU on the other hand (*Interviewee EEAS*, 2020). The signaling dimension is another dominant part of the sanctions package. The EU attempts to capitalize on its good international reputation and tries to signal to third-states and international partners that Myanmar puts itself outside the framework of human rights and western democratic standards with its conduct in Rakhine State. The EU wants to single out the unlawful actions of Myanmar's state actors and deter other actors from engaging with Myanmar

on a normal level (*Interviewee EEAS*, 2020). The coercive dimension of sanctions attempts to trigger an endogenous political effect when trying to coerce a certain actor to follow up on the sanctioner's demands (Giumelli, 2013).

Since the EU currently has no economic sanctions against Myanmar on a national level, the economic impact of the adopted sanctions is almost impossible to assess. Taking a look at the development of the trade between the EU and Myanmar is ineffective since Myanmar remains part of the EBA program. Analyzing the development of FDI flows into Myanmar appears to be ineffective as well since the described restrictive measures are not aiming at reducing FDI. As described above, the EU currently invests itself in Myanmar in the form of development aid. In light of this, even a look at Myanmar's GDP development is ineffective. In sum, analyzing the effectiveness of EU sanctions against Myanmar in economic terms is ineffective. Another possibility lies in analyzing political developments in Myanmar that are at least capable of achieving the EU's goals and determine to what extent these developments can be ascribed to the EU.

In the next step, the EU's involvement in these developments can serve as an indicator of the sanctions' effectiveness. However, the demer that it is difficult to pinpoint if these developments occurred precisely because of the adopted restrictive measures is undoubtedly appropriate. Nevertheless, visible participation by the EU in these developments serves for our purposes as an indicator that the developments can be traced back to the introduced measures. This indicator is substantiated by the findings from the interviews in which the interviewees were asked explicitly to provide their expert opinion on the linkage between developments contributing to attaining the stated EU goals in the conflict and the measures the EU introduced. A 'Central Committee' headed by State Counsellor to deal with the refugee crisis that resulted from the violence in Rakhine State was established. An 'Advisory Commission' complements it. Additionally, the Government of Myanmar established an 'Independent Commission of Inquiry' to ensure accountability for the human rights violations in Burma. These developments can be traced back to the EU and potentially to the adopted restrictive measures since the EU demands from Myanmar to demonstrate effective state mechanisms that can ensure accountability concerning the alleged violations of human rights, and that can ease the human suffering of the refugees (*Council conclusions on Myanmar/Burma*, 2018). The government also committed itself to implement recommendations by the 'Advisory Commission.' In late 2018 the government started

to work on five priority issues set out by the Commission: citizenship, freedom of movement, closure of IDP camps, education, and health (Htun, 2020). Furthermore, the three bilateral repatriation agreements with Bangladesh were one of the EU's core demands, and their conclusion can also be ascribed to the EU since concluding these agreements is one of the most salient points when reviewing the sanctions by the EU (Mogherini, 2017). The interviewed EEAS diplomat confirmed that the formulation of this core demand by the EU most likely contributed to the conclusion of these agreements. The Myanmar diplomat confirmed that they took regard of EU demands when agreeing to conclude the agreements. Furthermore, the establishment of 'The Ministry of Social Welfare, Relief and Resettlement' to explicitly deal with Rohingya resettlement and crisis relief for the ongoing refugee crisis is another benchmark for the ongoing review of the EU's restrictive measures because one of the EU demands is precisely the establishment of effective state mechanism to deal with the crisis. Moreover, Myanmar set up a 'Joint Working Group' staffed with representatives from both countries to implement the agreements. Myanmar also signed a Memorandum of Understanding with UNDP and UNHCR facilitating 75 'Quick Impact Projects,' of which 41 have been implemented (*MoU Myanmar-UNHCR/UNDP*, 2018). Myanmar's cooperation and efforts to resolve the crisis in the framework of multilateral organizations is a key priority, formulated as such by the EU and is another benchmark in the ongoing sanctions review process (*Interviewee EEAS*, 2020). Nevertheless, the repatriation efforts have been minimal; so far, only 350 refugees have returned to Myanmar (Htun, 2020). Furthermore, the interviewee representing the ERC confirmed that these developments could partly be attributed to EU efforts when he stressed that these efforts must be stepped up in light of the marginal number of refugees that returned to Myanmar. The ongoing 'Human Rights Dialogue' with the EU further encouraged Myanmar to investigate human rights violations that the EU tabled in that forum. Nevertheless, although Myanmar views EU support in general positively, it harshly criticizes the EU for sponsoring the HRC Resolution establishing a Fact-Finding Mission (Htun, 2020). The Myanmar representative answering the questions for the thesis expressed that Myanmar is more eager to investigate human rights issues tabled in the framework of the 'Human Rights Dialogue.' The cooperation through the MyPol program is a balancing act between not training Myanmar's police agents, as this would breach EU sanctions on the one hand but educate them about conduct that is human rights compliant, on the other hand. An 'EU-Myanmar Senior Officials Meeting' in

Brussels held in May 2019 and the EU leaving Myanmar inside the EBA program is perceived on Myanmar's part as a signal that the EU is a partner that is interested in Myanmar's progress and boosted the legitimacy of EU involvement in the country in general, making Myanmar more receptive to EU demands (Htun, 2020). One of the most interesting developments is the military's announcement of a ceasefire starting on the 10th of May 2020, ending on the 31st of August 2020. The EU, as well as merely all other international actors, demanded explicitly such a step. In light of the COVID-19 crisis, combined with intense pressure from the EU and other international actors, one might not be able to trace such a step back directly to the EU or other international actors. Nevertheless, it is safe to say that by introducing such a measure, Myanmar followed up on one of the EU's core demands that were formulated when implementing the restrictive measures (*Interviewee Council*, 2020). On the 28th of March 2020, an Action Plan for the control of the COVID-19 crisis in DP camps in Myanmar was drafted; it includes various measures concerning health and infection prevention (*COVID-19 Action Plan*, 2020). Its implementation happens under the participation of multilateral actors such as UN agencies and the EU. Finally, on the 3rd of May 2020, internet access in Maungdaw Town in Rakhine State was restored after it has been suspended as part of Myanmar's measures to combat ethnic minority insurgent groups (Htun, 2020). Although such a measure falls broadly into the demands the EU formulated when adopting its sanctions, there are not enough indications to trace that development directly back to the sanctions.

#### 5.4 Hypotheses-Analysis – ‘Why did the EU not withdraw Myanmar’s Trade Preferences?’

The question of why the EU did not withdraw Myanmar from the EBA programs is at the core of the research agenda of this thesis. That is the case because one of the legal bases for withdrawing the trade benefits under the EBA program is not adhering to fundamental human rights. In light of documented accusations of ethnic cleansing and potentially genocide, it is safe to say that Myanmar is fulfilling this criterion, giving the EU a legal justification for withdrawing it from the EBA program. Furthermore, no other country against which accusations of ethnic cleansing or genocide are formulated enjoys EU trade preferences. Therefore, the aforementioned requires a particular explanation. To answer that question systematically, we will proceed with evaluating each hypothesis formulated at the beginning of the thesis since the hypotheses explicitly aim at



explaining why the EU keeps Myanmar in the EBA program. (Commission, 2020; Faber & Orbie, 2009)

Concerning H1, the hypothesis does not hold. Although it appears logical that the EU does not immediately deploy all available measures in order to be ready to introduce even harder measures once the situation deteriorates and although the representative of the Commission stated that the Commission justifies Myanmar's remaining in the EBA program *inter alia* on the ground of not using all its leverage yet, this statement must be put into perspective (*Interviewee Commission*, 2020). Firstly, taking a closer look at the economic data reveals that the exports to the EU make up roughly 3.5% of Myanmar's GDP; the EU is also merely the 10<sup>th</sup> biggest foreign investor in Myanmar. Hence, the economic effects of removing Myanmar from the EBA might not be strong enough to coerce it into stopping the violence. Therefore, the removal of Myanmar from the EBA program or other economic sanctions do not constitute leverage that can seriously damage Myanmar's economy and unfold coercive powers on the country's state actors. Additionally, when it comes to removing a country from the EBA program, the Commission relies on the Member States' firm commitment. They must advise the Commission to take such a step via the comitologies. The Commission must subsequently act on the basis of a delegated act, which requires the Council's approval (*Interviewee Commission*, 2020). Furthermore, the interviewee representing the Council explicitly stated that during the discussions in the Council, considerations over Myanmar's geostrategic position were taken regard of (*Interviewee Council*, 2020). However, he elaborated that these considerations were not the determining factor behind the EU's approach. The main line of argumentation leading to the Council's course of action regarding keeping Myanmar in the EBA program focused on the adverse consequences the removal of EBA trade preferences would unfold on the civilian textile industry, particularly taking regard of the issue that hurting the civilian sector of the economy appears to be unsuitable for coercing Myanmar's state actors into compliance with EU demands. The interviewee representing the Commission confirmed this notion; both interviewees elaborated that the EU goals in Myanmar consist of stopping the violence against ethnic minorities in the country on the one hand and supporting the country in its democratic transition on the other hand. Hence, removing it from the EBA program is not merely unlikely to achieve the EU goal of stopping the violence against ethnic minorities, in fact, such a step is perceived both by the Council as well as by the Commission as being likely to hamper the country's transition to a democratic system

and potentially even trigger a reorientation of Myanmar's foreign policy priorities toward China.

H2 is confirmed, particularly by the interviews with the Council and the EEAS representatives (*Interviewee Council*, 2020; *Interview EEAS*, 2020). In the interviews, the representatives expressed the concern that removing Myanmar from the EBA program might contribute to its alienation from western values and deter participation in multilateral institutions such as the HRC that can potentially influence Myanmar's internal conduct positively. Moreover, removing Myanmar from the EBA program can trigger a reorientation toward China, as China is already arguably Myanmar's most relevant trading partner and an ally in multilateral fora like the UN. Furthermore, the interviewed diplomat from Myanmar confirmed that the EBA program, as such, contributes to the positive perception of the EU in Myanmar and helps the country with its transition to a democratic system because it gives women, that are currently economically disadvantaged, income opportunities stabilizing their overall economic situation (Htun, 2020). As elaborated above, the EU pursues several goals in Myanmar, including stopping the violence against the Rohingya but also supporting the country in its transition to a democratic system that is integrated into a multilateral framework. These goals are multi-layered and require a multi-layered approach by the EU, in which it introduces targeted measures against individuals complicit in the violence against the Rohingya, however, with an eye to avoid hampering the country's democratic transition process. The interviewee representing the Council elaborated that removing Myanmar from the EBA program appears likely to hamper the country's democratic transition process since it will alienate not only the country itself from the EU but also contribute to a hostile attitude in Myanmar's population toward it. The interviewee also explained that the Council members perceive that the above-described alienation processes are in themselves capable of triggering a process of reorientation toward China. Such a process, in turn, is likely to stagnate Myanmar's democratic transition process since China, when cooperation with other countries internationally, does not deploy conditionality aiming at facilitating an approximation to human rights and a western democratic system (Li, 2017). Thus, putting the findings in light of the data referenced for H1, it becomes clear that although removing Myanmar from the EBA program is unlikely to coerce the country to follow up on the EU's demands, it nevertheless has, as the Myanmar diplomat confirmed, the potential to trigger the country's reorientation away from the EU, meaning that this step might unfold effects that are detrimental to

the EU's goals in the conflict and the EU's geopolitical interests in the region. Nevertheless, these findings must be contextualized. For strategic reasons, Myanmar's diplomat, in the framework of an interview with such a thematic outline, will certainly stress such a potential development to protect the country's privileged market access and deter tighter EU sanctions.

H3 can be confirmed. This assessment is based on multiple momenta in the data. Firstly, as elaborated above, the removal of Myanmar's privileged market access is unlikely to unfold starkly detrimental effects on the country as a whole. Secondly, the interviewees representing the Council and the Commission both confirmed that the factors formulated in H3 were explicitly considered by the Council members and by the Commission and are, among others, the main reasons for not removing Myanmar from the EBA program yet. The economic data about Myanmar reveals that the country's economy can be roughly divided into an economy run by the military conglomerates and the private sector economy. The military-run part of the economy does not export any goods to Europe and, as such, is not a beneficiary of the EBA (*Interviewee Commission, 2020*). However, the textile sector makes up more than 72% of Myanmar's exports to the EU (*EU Trade with Myanmar, 2020*). Myanmar's textile sector employs almost exclusively female workers that are already in a precarious economic situation. Removing Myanmar from the EBA program is likely to disproportionately hit the textile sector and worsen the female workers' economic situation. These considerations were evidently present when drafting an EU response to the crisis (*Interviewee Commission, 2020; Interviewee Council, 2020*).

In sum, when analyzing the factors behind the EU not removing Myanmar from the EBA program, although the country targets parts of its population with violence that amounts to ethnic cleansing and potentially even genocide, the answer is manifold. Firstly, there is consensus in various EU institutions that removing Myanmar from the EBA program is unlikely to alter Myanmar's state actors' calculation regarding the ongoing crisis. Moreover, the economic data reveals that the measure will disproportionately target the civilian sector of the country's economy, and more precisely, such a step will mostly hurt female workers employed in the country's textile sector. Secondly, there are geopolitical considerations. Although the interviewee representing the Council stated that these considerations were not the primary factor for the EU's approach toward Myanmar, one nevertheless cannot ignore their presence as they were discussed in the Council and the EEAS (*Interviewee Council, 2020*;

*Interviewee EEAS, 2020*). As elaborated above, Myanmar's geographic position makes it a geopolitical asset for various international actors, including the EU, the US, and China. These countries compete for influence in Myanmar and try to avoid alienating the country. In a simple cost-benefit analysis, the EU leaders appear likely to conclude that the potentially stark disbenefits arising from removing Myanmar from the EBA program severely outweigh the marginal economic effects on the country. These disbenefits consist of the country's potential reorientation toward China and the fact that removing the trade preferences will primarily hurt the textile sector that provides the main sources of income for economically disadvantaged women. Additionally, the EU pursues multi-layered goals in Myanmar, ranging from stopping the violence against ethnic minorities to supporting the country in its democratic transition. The achievement of multi-layered goals makes a multi-layered approach consisting of targeted sanctions, on the one hand, and granting trade preferences to the civilian part of the economy, on the other hand, necessary.

In conclusion, the EU did not remove Myanmar from the EBA program because it appears unlikely that such a step will alter in any way Myanmar's state actors' calculations regarding the current crisis as it will not affect their financial interests directly and might alienate the country from the EU, making it less receptive to EU demands in the given crisis. Furthermore, it appears possible that such a step will contribute to Myanmar's reorientation toward China, potentially hampering the positive developments in the current crisis and the country's democratic transition process.

## 6. Discussion and Conclusion

This chapter concludes the thesis by discussing some policy suggestions to enhance the achievement of the above discussed EU goals in the current crisis and by reflecting on the strengths and weaknesses of the thesis.

Firstly, the EU should appoint a Special Representative dealing explicitly with Myanmar. Such a step signals credibly that the issue is a priority for the EU. Moreover, a Special Representative can enhance the coherence and overall strength of the EU's response to the crisis by coordinating the efforts of various EU institutions and giving the EU a face in the crisis. Furthermore, the EU should adopt a twofold strategy. On the one hand, it should reward further positive developments in Myanmar some of which are already occurring as a result of international efforts, on the other hand, it should

express to Myanmar's government its willingness to deploy its good international reputation and its further resources if the situation deteriorates or if Myanmar is not following up on its international obligations arising from the three bilateral agreements with Bangladesh to repatriate the refugees. The announcement to motion action in multilateral fora like the HRC constitutes a credible threat to Myanmar and is a contagious issue in its internal political discourse (Htun, 2020). Other measures could include targeting more Myanmar state actors with individual-level sanctions or introducing an outright embargo on the export of communication equipment; currently, only restrictions with exemption possibilities apply. Although currently, a consensus concerning the policy priorities exists in the Council, the EU should utilize the diversity of its Member States in an 'orchestrated approach' to pursue Myanmar into following up on its demands also through third-parties (Macaj & Nicolaïdis, 2014). For instance, Portugal and Italy are countries that established close relations to China on a bilateral level (Albert, 2019); China, in turn, is a crucial partner for Myanmar. The EU could use Portugal's and Italy's close bilateral relations to persuade China to influence Myanmar. In light of the severe humanitarian crisis that Myanmar's military caused, the EU should cut or substantially reduce the development aid that it currently provides to Myanmar and redirect these funds to provide humanitarian aid to the Rohingya. This particular measure has symbolic value and provides immediate relief for the victims. Further development aid and the participation in the EBA program should be conditioned on the effective implementation of the three bilateral agreements with Bangladesh as these agreements can potentially end the current refugee crisis. If the situation does not improve drastically, the EU should remove Myanmar from the EBA program and consider banning trade with Myanmar. In light of the atrocities committed by Myanmar state actors, Myanmar provides the EU with legal and moral justifications to do so. Furthermore, as confirmed by the Myanmar diplomat, such a step is a sensitive issue in the internal discourse in Myanmar and will signal to the wider world the clear commitment of the EU to not cooperate with countries involved in ethnic cleansing. It can also contribute to the deterrence of FDI into Myanmar, as the EU will revoke the veil of credibility that it awards to countries when it cooperates with them closely. Although recently, EU exports only made up 3.5% of Myanmar's GDP, this percentage still amounts to 2.3 billion USD that will be missing in the countries budget if it cannot export to the EU anymore.

Concerning the strengths and weaknesses of this thesis, no doubt, the limited number of interviews constrain the general explanatory power of the research. The single-case study design of the research limits the possibilities for broader inferences based on the research. A remedy might be to adopt a comparative research design and compare the EU's approach in other international conflicts, particularly considering the effectiveness of various types of sanctions in different international settings. Furthermore, triangulation could have been applied to enhance the validity of the findings methodologically. Albeit, the research has some strengths. The validity of the research is enhanced by combining various data sources, including a document review of primary EU sources and expert interviews. Notably, the interviews generate data that is usually unavailable to the public. In turn, the generated data may be used for further research in this area. In general, as this study questioned members of the diplomatic corps of various countries, EU senior civil servants, and representatives of victims' groups, it provides future researches a comprehensive data set that can be used for projects dealing with the *raison d'Être* of EU sanctions. Finally, I would like to warn the reader to draw conclusions beyond the scope of the research. As outlined above, the thesis has certain limitations and must be regarded in the light of them. The thesis addresses a very particular issue and can merely serve as a starting point for further research. Future research could take a look on the EU's interaction with third-parties when being active in a multilateral framework or analyze the precise ways the EU can utilize the diversity of its Member States and their various configurations of international partnerships to enhance a common foreign policy goal without the necessity of investing resources on finding a consensus in the Council based on the smallest common denominator. Future research can also focus on the EU's potential role in international crisis mediation in light of the current trend of American isolationism.

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