

**Topic:** The Prosecutor v. Min Aung Hlaing

**Brief Description of the Case:**

In November 2024, the chief prosecutor of the International Criminal Court (ICC), Karim Khan, requested an arrest warrant for Myanmar's acting ruler and former military commander, Senior General Min Aung Hlaing. The warrant, presented before Pre-Trial Chamber I, cites his alleged responsibility for crimes against humanity against the Rohingya minority. The ICC investigation, launched on 14 November 2019, examined incidents of violence between the duration of 2016–2017 in Rakhine State and the subsequent exodus of Rohingya to Bangladesh, and culminated in an arrest warrant. This marks the ICC's first effort to prosecute a senior Myanmar official for such crimes.

Min Aung Hlaing became commander-in-chief of Myanmar's military in 2011 and was promoted to senior general in 2013. On February 1, 2021, he led a military coup and assumed power, later taking the roles of Prime Minister and, in July 2024, President. Under his authority, Myanmar's military is accused of committing severe crimes against the Rohingya minority both in Myanmar and in part in Bangladesh.

The charges include deportation, persecution on ethnic and religious grounds, inhumane acts (such as torture and sexual violence), murder, and unlawful imprisonment. These constitute violations of Article 7 of the Rome Statute, which defines crimes against humanity as widespread or systematic attacks on civilians with knowledge of the attack. Given this legal framework, the ICC has jurisdiction to act.

**History of the Case:**

The Rohingya are a predominantly Muslim ethnic minority in Myanmar's Rakhine State. Despite centuries of residence, they are not recognized among Myanmar's official ethnic groups. The 1982 Citizenship Law effectively denied them citizenship, restricting rights such as access to education, healthcare, and freedom of movement. These discriminatory policies laid the groundwork for the violence of 2016–2017.

As senior general by 2013, Min Aung Hlaing became one of the most powerful figures in the country. Myanmar has long struggled with ethnic insurgencies, and his inability to maintain internal security was spotlighted by the military-led violence occurring between 25 August and 31 December 2017, involving Myanmar's armed forces (Tatmadaw), national police, and non-Rohingya civilians. This wave of violence followed attacks by the Arakan Rohingya Salvation Army (ARSA), a Rohingya militant group, on October 9, 2016, and August 25, 2017.

ARSA launched coordinated attacks on police and military posts, killing officers and prompting the Myanmar military's retaliatory "clearance operations." Human rights organizations documented mass rapes, extrajudicial killings, arbitrary arrests, and village burnings. The August 25, 2017, attack triggered the second and most devastating clearance campaign, allegedly involving massacres, sexual violence, and the forced displacement of over 740,000 Rohingya into Bangladesh.

Chief Prosecutor Karim Khan opened an investigation into these events on 14 November 2019. The investigation concluded with the ICC issuing an arrest warrant on 27 November 2024 against Min Aung Hlaing for his alleged responsibility in the violence.

### **Facts of the Case:**

The facts which must be established and shared by the prosecution and defense range from the historical context which reinforced tensions between the Rohingya minority and Myanmar military, the appropriate Myanmar legislation which pertains to the issue at hand, the Rome statute which grants/motivates jurisdiction over the case, general context and information over the involved parties, objective information relating to the case, and the various ethnic groups present within the country.

### **Possible Arguments for Prosecution:**

One possible argument is that Min Aung Hlaing, as senior general and commander-in-chief, held full authority over military operations between October 9, 2016, and August 25, 2017. Therefore, he is directly responsible for the crimes committed by the armed forces, police, and supporting civilians, mass killings, sexual violence, forced displacement, and destruction of

Rohingya villages. These acts clearly fall under Article 7 of the Rome Statute, granting the ICC full authority to prosecute him.

Another prosecution argument relies on Article 28 of the Rome Statute, which holds military commanders criminally liable for crimes committed by subordinates if they knew or should have known and failed to prevent them or initiate accountability. Min Aung Hlaing failed to take credible action to stop the atrocities, making him legally responsible and subject to ICC prosecution.

### **Possible Arguments for Defense:**

The defense may argue that the military operations from August to December 2017 were legitimate counterterrorism responses to ARSA attacks, not campaigns targeting civilians. These actions, labeled “clearance operations” by the government, aimed to eliminate armed threats and restore national stability, not to commit crimes against humanity.

Another argument could challenge ICC jurisdiction. Since Myanmar is not a party to the Rome Statute, the ICC allegedly has no legal authority over its internal affairs or leaders. The alleged crimes occurred within Myanmar, and without Myanmar’s consent, the defense could argue that this prosecution overreaches the ICC’s legitimate mandate and undermines principles of state sovereignty.

### **Conclusion:**

This case encapsulates the complexities of international criminal law and the tensions between justice, sovereignty, and accountability. It reflects the 2025 conference theme, “deliberate to liberate,” by urging participants to deeply analyze legal, historical, and ethical facets of the case. Only through careful deliberation can a verdict be reached that upholds justice without violating international legal norms.