

CHAPTER 4

UN SECURITY COUNCIL'S ACTION ON BURMA

The United Nations General Assembly and Human Rights Commission combined have adopted twenty-nine resolutions repeatedly calling for change, tri-parties dialogue, freedom of elected representatives and political players and all-inclusive democratization process.⁵⁶ Backed by the mandate of the United Nations General Assembly, the United Nations Secretariat appointed a Special Envoy and the UN Commission on Human Rights appointed a Special Rapporteur, each to investigate and report on the situation in Burma and to facilitate dialogues.⁵⁷

However, according to Havel & Tutu, the Secretary General asserted that the expectations of the United Nations remain unfulfilled.⁵⁸ UN attempts to engage largely in Burma have been ignored and prevented by the SPDC. The government of Burma continues to reject all assertions of human rights abuses and remains very resistant to UN efforts. Thus, UN efforts to date have been based on unenforceable mandates and have been unable to produce any reform. Many view that the UN, if it were to act with binding and forcible authority through the Security Council, could produce positive reform and finally enable democratization in Burma.

The United Nations Charter confers remarkable powers upon the Security Council. The Security Council has primary responsibility for the maintenance of peace and security. In discharging this responsibility, the Council is required to determine the existence of any threat to international peace and security. The Council may impose measures including arms embargoes, financial sanctions, travel bans and

⁵⁶ Burma UN Service Office, June 19, 2006, p. 4.

⁵⁷ Havel and Tutu, p. 34.

⁵⁸ Ibid, p. 35.

the severance of diplomatic relations, or the use of force to maintain and restore international peace and security.⁵⁹

Article 39 of Chapter VII⁶⁰ authorizes the Security Council to intervene in matters within the domestic jurisdiction of a state where a "threat to the peace, breach of the peace, or act of aggression" is occurring. The situation in Burma has reached beyond its borders and has had a clear transnational impact. The protection of humanitarian needs and human rights has become increasingly necessary for maintaining peace and security between nations in this modern age where ongoing civil conflict poses transnational consequences to independent nations.

Over the past ten years, the Security Council has made determinations under Article 39 that a threat to peace and security exists with great frequency, and in a broader range of circumstances, than previously. Political analyst, Simon Chesterman⁶¹, raises the point made by some commentators that, given the difficulty in establishing what substantive meaning should be attributed to a 'threat to international peace and security', such a determination is, increasingly, being treated as a formal rather than substantive hurdle. Chesterman argues that 'a more fundamental difficulty in establishing the limits to this concept is the apparent link between such determinations and the political willingness to take measures in response to particular situations'.⁶²

While the Security Council has not set criteria to define what constitutes a threat of peace, Havel and Tutu gave a useful review of the initial resolutions passed

⁵⁹ Burma UN Service Office, "The Crisis in Burma - An Agenda for the United Nations Security Council?", October 2003.

⁶⁰ The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security, <http://www.un.org/aboutun/charter/chapter7.htm>.

⁶¹ Simon Chesterman is Global Professor and Director of the New York University School of Law Singapore Programme, and an Associate Professor of Law at the National University of Singapore Faculty of Law. From 2004 to 2006 he was Executive Director of NYU's Institute for International Law and Justice, of which he remains a senior fellow.

⁶² Burma UN Service, p. 10.

by the Security Council in response to particular situations in such countries as Sierra Leone, Afghanistan, Haiti, Yemen, Rwanda, Liberia and Cambodia to identify the factors that encompass the Security Council's primary reasons for determining that a threat to peace exists warranting Council action. These determining factors are (1) the overthrow of a democratically-elected government, (2) conflict among governmental bodies and insurgent armies or armed ethnic groups, (3) widespread internal humanitarian/human rights violations, (4) substantial outflow of refugee, and (5) other cross-border problems such as drug trafficking, etc.

It is clearly seen from these determining factors that Burma represents a clear threat to the peace and that Security Council action is both justified and warranted. The situation in Burma exhibits each and every of these determining factors, which threaten the peace and stability of Burma as well as the entire region as large numbers of displaced persons, refugees, and migrants flee into neighboring countries attempting to escape the conflict and extreme poverty.

Besides, Havel and Tutu emphasized on additional distinguishing facts and circumstances exist in Burma that increase the overall magnitude of this threat and make the situation in Burma is more problematic. Those include systematic violation of human rights by the regime including forced labor, forced relocation, the use of child soldiers by the regime's, the government's ineffectiveness at curbing the flow of drugs from its borders, and the government's unwillingness to cooperate with the international community to curb the spread of HIV/AIDS.⁶³ The report concluded that the overall situation in Burma is severe and the Security Council intervention is required to maintain the peace and help Burma return to democratic rule.

Burma has finally arrived on the formal permanent agenda of the UN Security Council as a threat to international peace and security. In September 2006, almost one year after the release of the report commissioned by Havel and Tutu, the Council held its third briefing on the dire human rights in Burma with member states

⁶³ Havel and Tutu, p. 50.

voting 10-4 (with one abstention) to continue the discussion.⁶⁴ It is the culmination of the US's efforts in UN Security Council to include Burma in its permanent agenda. Two efforts the United States made in 2005 failed due to the intense opposition of Russia and China.

Both opponents argued that the case of Burma is the question of human rights and democratization which is in nature, an internal affair of a sovereign state and nothing to do with the mandate of the UNSC. China supports the military government in Rangoon because it fears a re-flaring up of a border conflict, which in the past caused turbulence in South China.⁶⁵ Chinese refer to their relationship with Burma as 'brothers born of the same parents' since Burmese were the first to recognize the PRC in 1949 and signed the Sino-Burmese border treaty in 1960.⁶⁶ Apart from social stability, Burma is attention grabbing due to its natural resources and thus became the largest trading partner with China.⁶⁷

As a result, China has paid little regard to the human rights implications of the internal politics of Burma and generally refrains from public criticism of Burma. China knows that its position on the Security Council is seen by the Rangoon regime as the ultimate guarantee against a UN-sponsored military operation to restore democracy in Burma or the creation of autonomous ethnic states and, in return, feels it can count on Burma's support in other UN debates on such subjects as human rights and arms sales.⁶⁸ A significant reason of the junta's successful evasion of international accountability is the consistent exercise of veto power in the Security Council by

⁶⁴ Brad Adams, "Burma before the Security Council," *The Nations*, Commentary (October 26, 2006).

⁶⁵ Eysink, p. 22.

⁶⁶ A Conference Report on Strategic Rivalries on the Bay of Bengal: The Burma/Myanmar Nexus, Spring 2001, <http://www.burmadebate.org/archives/spring01strategic.html>.

⁶⁷ Eysink, p. 22.

⁶⁸ Selth, p. 54.

China and Russia. The threat of veto (the so-called 'hidden veto') hangs over the Council.⁶⁹

According to the diplomatic sources, such a resistance stemmed from the national interest of Russia and China which have economic and strategic interest in Burma as well as their reluctance to setting a precedent of UN Security Council's intervention in the human rights and democratization matters of a country.⁷⁰ The two opponents' stand on various interventions perceived the intervention as an attempt to impose US domination and to internationalize "domestic issues".⁷¹

Moreover, on January 12, 2007, China and Russia used their veto power in the UN Security Council to stop a resolution calling for Burma's military junta to release all political prisoners including Aung San Sue Kyi, cease attacks on ethnic groups, and speed transition to democracy. China and Russia argued that they shares concerns about conditions in Burma but considered them internal matters that did not constitute threats to international peace and security and therefore the issue should not be dealt with by the Security Council.⁷² Different views make Burma's issue pending in UN Security Council and impeded the progress of resolutions to restore the country. The challenge facing the UN Security Council is the ability to handle the issue with prudence and in a non-confrontational manner.

Although the UNSC's move to include Burma in its permanent agenda might have taken a small step, it has a few important implications on a number of other aspects. Hariharan (2006) noted that, even though the UNSC's decision does not actually weaken the hold of the military regime on the country, it shows that the regime was internationally losing ground. There is a possibility of concerted UN

⁶⁹ Chris Abbott, "Rights and Responsibilities: Resolving the Dilemma of Humanitarian Intervention," Oxford Research Group, September 2005, <http://jha.ac/articles/a180.pdf>.

⁷⁰ "Why Burma should be addressed by the UN Security Council?" Position Paper by National Coalition Government of the Union of Burma, <http://www.ncgub.net/mediagallery/album.php?aid=18>.

⁷¹ Christina G. Badesuu, "Authorizing Humanitarian Intervention: Hard Choices in Saving Strangers," *Canadian Journal of Political Science* 40, no.1 (March 2007), p.51-78.

actions to restore peace and protect fundamental human rights. The UNSC's decision also strengthens the hands of such non-governmental initiatives to make the military junta more accountable.⁷³ This move will pave the way for the international community especially UN agencies to revitalize humanitarian assistance and social support or lead to various forms of humanitarian interventions to reach maximum outreach in Burma.

⁷² <http://www.burmaunsc.org>. (accessed February 12, 2007).

⁷³ Col R. Hariharan, "Myanmar: U.N. Security Council's Move to Tackle the Military Regime," South Asian Analysis Group Paper no. 1955, www.saag.org/%5Cpapers20%5Cpaper1955.html (accessed September 17, 2006).