

Introduction

The United Nations General Assembly, made up of all members of the United Nations, has been adopting resolutions on the situation in Burma since 1991. In late 2010 it is expected to adopt its 20th Resolution on Burma.

The Resolutions, which are not binding under international law, have made many requests to the dictatorship ruling Burma, the overwhelming majority of which have been completely ignored. Indeed, the Resolutions themselves have frequently referred to the fact that previous resolutions have been ignored.

The nineteen Resolutions which the General Assembly has passed on Burma have expanded from a few paragraphs in 1991 to a few pages in 2009.² They now refer to a wide range of human rights abuses and other issues, which is a welcome step forward. However, they have not progressed in terms of responding in a practical way to the fact that the Resolutions are being ignored. Nor have they responded in a logical and responsible way to the increased seriousness of the abuses revealed by United Nations reports, and then referred to in the General Assembly Resolutions.

With regards to the continued refusal by the dictatorship to act on General Assembly Resolutions, the logical step for the Assembly, given the seriousness of the abuses, and failure of the dictatorship to act, would be referring the situation in Burma to the United Nations Security Council, which has binding powers, and calling on the Council to adopt a binding resolution enforcing General Assembly requests. The General Assembly resolutions regularly refer to Burma as causing problems for neighbouring countries and as meeting

Key points

- 19 Resolutions on Burma by the General Assembly have been ignored by the dictatorship ruling the country.
- Since 1992, 18 years ago, the General Assembly has been calling on the dictatorship in Burma to respect the Geneva Conventions, but it is still failing to do so.¹
- Language used in past General Assembly Resolution relates to 15 possible war crimes and crimes against humanity.
- In 2002, 8 years ago, the General Assembly called for an independent international investigation into abuses of civilians.
- Despite 17 calls for inquiries since 1997, the General Assembly has failed to exercise its power to establish its own inquiry into abuses, including possible war crimes and crimes against humanity.
- On grounds of international law and justice, political reality, and morality, 'elections' due in Burma later this year should not be used as a reason not to, or to delay, the establishment of a UN Commission of Inquiry.
- The 20th United Nations General Assembly resolution on Burma is an opportunity to build on and start to enforce previous resolutions. The General Assembly must take the next logical step and establish a Commission of Inquiry into war crimes and crimes against humanity in Burma.

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the general criteria as a non-traditional threat to the peace. Resolutions also refer to abuses which constitute possible war crimes and crimes against humanity, which the Security Council has a duty to act on. In addition, the Security Council, in placing Burma on its formal agenda, has already agreed the situation in Burma meets the criteria for its engagement. For the General Assembly to call on the Security Council to act is a practical and sensible next step.

- First reference by General Assembly to international law relating to war crimes: 1992
- First reference by General Assembly to abuses that are now classified by the Rome Statute as possible crimes against humanity: 1992

The most serious failure of the General Assembly regarding Burma is in relation to international law, including war crimes and crimes against humanity. The United Nations General Assembly has consistently referred to abuses which could qualify as war crimes and crimes against humanity. It has also repeatedly called on the dictatorship to abide by the Geneva Conventions. However, it has failed to use language such as war crimes – which is what breaches of the Geneva Conventions amount to, or crimes against humanity, which many of the other abuses it refers to amount to. The failure to use such language assists the dictatorship in avoiding the international action that its actions should entail.

The General Assembly has also frequently called for independent investigations into the serious human rights abuses taking place. The General Assembly has called for several different kinds of investigations, including investigations by the dictatorship, independent investigations, investigations in cooperation with the dictatorship but led by the United Nations Special Rapporteur, and even an independent international investigation.

Despite the fact that none of these investigations, which the General Assembly has now been calling for since 1997, have ever taken place, the General Assembly has failed to take the next logical step of establishing its own investigation, which it has the power to do.

In March 2010, the UN Special Rapporteur on Burma called for a UN Commission of Inquiry into war crimes and crimes against humanity in Burma. He stated that the abuses were: *'a state policy that involves authorities in the executive, military and judiciary at all levels'*. He further stated: *'According to consistent reports, the possibility exists that some of these human rights violations may entail categories of crimes against humanity or war crimes under the terms of the Statute of the International Criminal Court.'* ... *'UN institutions may consider the possibility to establish a commission of inquiry with a specific fact finding mandate to address the question of international crimes.'* ³

As governments start to consult on the contents of the 20th General Assembly resolution on Burma, they should now ensure that the establishment of a UN Commission of Inquiry be part of the Resolution. Continuing to comment on abuses that may constitute war crimes and crimes against humanity, but failing to use language which describes them as such, and also failing to take action within the power of the General Assembly to investigate those abuses, can only add to the sense of impunity which the dictatorship enjoys. The General Assembly has itself repeatedly called for an end to this impunity.

The argument that the establishment of such an inquiry should not go ahead at the present time because of 'elections' due in Burma later this year is flawed legally, politically and morally.

Whether or not elections are taking place in Burma, the establishment of a Commission of Inquiry is related to international law and ending impunity in Burma. It is a question of international law and justice, and should not be a political decision.

Even if it were a decision to be made on a tactical political basis, which would go against accepted good legal practice anywhere in the world, the prospect of elections gives no hope for any significant change in terms of Burma's political and human rights situation, and no government expects any immediate significant change.

None of the requests the General Assembly has made regarding making the dictatorship's roadmap, elections and constitution fair and credible have

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been met. And the General Assembly in its 2009 resolution left no doubt on the matter, stating that the human rights situation in Burma is deteriorating, and will continue to do so unless international demands to the dictatorship, including investigations into abuses and an end to impunity, are met. They haven't been. Nor can they be once elections have taken place.

Following elections, it becomes impossible for any investigation to take place in Burma, so the establishment of a UN Commission of Inquiry is the only way that war crimes committed by the dictatorship can be investigated, as the General Assembly has said must happen seventeen times since 1997.

The new constitution of Burma which is due to come into force after the elections has a clause granting anyone from the dictatorship and government immunity from prosecution for '...any act done in the execution of their respective duties.'

In direct defiance of repeated UN General Assembly resolutions for investigations and an end to impunity, Article 445 of the Constitution states:

'All policy guidelines, laws, regulations, notifications and declarations of the State Law and Order Restoration Council and the State Peace and Development Council, or actions, rights and responsibilities of the State Law and Order Restoration Council and the State Peace and Development Council shall devolve to the Republic of the Union of Myanmar. No proceeding shall be instituted against the said councils or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties.'

If the repeated demands of the UN General Assembly regarding investigations and an end to impunity are ever to be realised, they will have to come from the General Assembly itself establishing a Commission of Inquiry.

When previous UN General Assembly resolutions on Burma are viewed in detail, it becomes clear that the establishment of a Commission of Inquiry by the General Assembly would not be the dramatic step it is perceived to be by some governments and observers.

A brief summary of United Nations General Assembly resolutions relating to possible war crimes and crimes against humanity

The 1991 General Assembly Resolution:
In its first Resolution in 1991 the General Assembly referred to 'substantive available information indicating the grave human rights situation in Myanmar.'

The 1992 General Assembly Resolution:
In the second Resolution passed on 18th December 1992, almost 18 years ago, the General Assembly first called on the dictatorship to respect international law. Paragraph 10 of the Resolution: *'Also calls upon the Government of Myanmar to respect fully the obligations under the Geneva Conventions of 12th August 1949, in particular the obligations under article 3 common to the conventions and to make use of such services as may be offered by impartial humanitarian bodies.'*

Article 3 of the Geneva Conventions specifically refers to conflict not of an international nature, and includes treatment of non-combatants as well as those engaged in military actions.

The General Assembly detailed some of the abuses taking place; *'...torture and arbitrary execution, continued detention of a large number of persons for political reasons, the existence of important restrictions on the exercise of fundamental freedoms and the imposition of oppressive measures directed in particular at ethnic and religious minorities.'* It also stated that; *'the human rights situation in Myanmar has resulted in massive flows of refugees to neighbouring countries.'*

In areas of conflict some of these abuses qualify as war crimes.

Arbitrary execution, if widespread and systematic, was later defined by the Rome Statute which came into force in 2002 as a possible crime against humanity.

Persecution of an identifiable group on the basis of ethnicity or religion can also be a crime against humanity.

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Torture can also qualify as a crime against humanity.

In summary, the 1992 General Assembly resolution in Burma made reference to two possible war crimes and four possible crimes against humanity.

The 1993 General Assembly Resolution:

In 1993 the General Assembly again described the abuses in its 1992 Resolution, but this time also included reference to *'abuse of women'*, *'enforced disappearances'* and *'forced labour'*.

This brings to seven the number of possible abuses referred to by the General Assembly which could constitute crimes against humanity.

The 1994 General Assembly Resolution:

In 1994 the General Assembly again referred to the abuses which are now classified as possible crimes against humanity, and again called on the dictatorship to respect its obligations under the Geneva Conventions.

The General Assembly also expressed its concern about an attack the Burmese Army made on a refugee camp in Thailand in 1994. Such an attack could also be classified as a war crime.

The 1995 General Assembly Resolution:

In 1995 the General Assembly again referred to the abuses which are now classified as possible crimes against humanity, and again called on the dictatorship to respect its obligations under the Geneva Conventions. Specific reference was made to: *'..the attacks by Myanmar Army soldiers on the Karens and Karennis during the past year, resulting in further refugee flows to a neighbouring country.'*

The 1996 General Assembly Resolution:

In 1996 the General Assembly again referred to the abuses which are now classified as possible crimes against humanity. However, it went further than previous Resolutions in relations to calling on the dictatorship to respect its obligations under the Geneva Conventions. It called on the dictatorship to: *'...halt the use of weapons against the civilian population, to protect all civilians, including children, women and persons belonging to ethnic or religious minorities, from violations of humanitarian law...'*

Specifically using language regarding use of weapons against civilians amounts to describing a war crime under the Geneva Conventions.

The 1997 General Assembly Resolution:

In 1997 the General Assembly repeated the language on human rights abuses and the Geneva Convention in the previous year's Resolution, but in addition referred to forced labour and abuse of children by government agents.

In this resolution for the first time the General Assembly called for an investigation into the abuses taking place, and end to impunity: *'Also strongly urges the Government of Myanmar...to fulfil its obligation to end the impunity of perpetrators of human rights violations, including members of the military, and to investigate and prosecute alleged violations committed by government agents in all circumstances.'*

The 1998 General Assembly Resolution:

In 1998 the General Assembly repeated the language on human rights abuses, abiding by the Geneva Conventions and on an investigation into abuses. In addition, it referred to the International Labour Organisation Commission of Inquiry into forced labour, and how it: *'indicates a widespread and systematic use of forced labour imposed by the military on the civilian population.'* For an abuse to qualify as a crime against humanity it has to be widespread and systematic. This is the first occasion the General Assembly used this language.

The 1999 General Assembly Resolution:

The 1999 General Assembly Resolution repeated the language of the 1998 Resolution with regards to abuses, international law and calls for an investigation.

The 2000 General Assembly Resolution:

The 2000 General Assembly Resolution repeated the language of the 1999 Resolution with regards to abuses, international law and calls for an investigation.

However, it went further in using stronger language, and referring to new abuses which could constitute possible war crimes and crimes against humanity.

Enforced displacement was referred to as systematic for the first time, which carries legal significance.

Trafficking was also referred to for the first time, which in certain circumstances could constitute a crime against humanity.

The use of child soldiers was also referred to, with the Resolution stating it: *'Deplores the recruitment of children as soldiers, in particular children belonging to ethnic minorities, and strongly urges the government of Myanmar and all other parties to the hostilities in Myanmar to end the abuses of children as soldiers.'*

The 2001 General Assembly Resolution:

The 2001 General Assembly Resolution generally repeated language in previous resolutions.

The 2002 General Assembly Resolution:

The 2002 General Assembly Resolution generally repeated language in previous resolutions.

However, it also called on the dictatorship to; *'... ensure the provision of humanitarian assistance and to guarantee that it does reach the most vulnerable groups of the population.'* Blocking humanitarian assistance could qualify as a crime against humanity as an inhumane act intentionally causing great suffering, or serious injury to body or to mental or physical health.

By the time of the 2002 Resolution, passed on 18th December, the Rome Statute had come into force. By now in 12 separate Resolutions the General Assembly had either referred to or called for action on matters that could constitute nine possible crimes against humanity and five possible war crimes.

Under the Rome Statute these possible crimes cannot be investigated if they took place before July 2002. However, in this Resolution the General Assembly:

'Expresses its grave concern at:

(a) *The ongoing (bold our emphasis) systematic violation of the human rights, including civil, political, economic, social and cultural rights, of the people of Myanmar*

(b) *Extrajudicial killings; rapes and other forms of sexual violence carried out by the members of the armed forces; torture; renewed instances of political arrests and continuing detentions, including of prisoners who have served their sentences; forced relocation; destruction of livelihoods; forced labour; denial of freedom of assembly, association, expression and movement; discrimination on the basis of religious or ethnic background; wide disrespect for the rule of law and lack of independence of the judiciary; deeply unsatisfactory conditions of detention; systematic use of child soldiers; and violations of the right to an adequate standard of living, in particular food and medical care, and to education;'*

Here, five months after the Rome Statute has come into force, the General Assembly describes ten possible crimes against humanity under the Rome Statute.

For the first time the General Assembly called on the dictatorship: *'to facilitate and cooperate fully with an independent international investigation of charges of rape and other abuse of civilians carried out by members of the armed forces in Shan and other states.'*

The 2003 General Assembly Resolution:

Again used similar language to previous Resolutions regarding abuses taking place, but additionally calls for an independent investigation with international cooperation into the Depayin incident. This incident was an attack by a pro-dictatorship political militia on a convoy that Aung San Suu Kyi was travelling in. Many of her supporters were beaten to death.

The 2004 General Assembly Resolution:

The 2004 General Assembly Resolution repeated previous language, but also described enforced displacement as *'systematic'*, language which has legal significance.

The 2005 General Assembly Resolution:

The 2005 General Assembly Resolution repeated previous language, including for investigations into abuses, but additionally specifically called on the dictatorship: *'To ensure that government forces do not engage in food and land requisition or the destruction of villages.'* Additional language on

unhindered delivery of humanitarian assistance was added which specifically referred to international law and international humanitarian law.

The 2006 General Assembly Resolution:

The 2006 General Assembly Resolution repeated previous language, but included new and stronger language, repeatedly describing abuses as systematic or widespread. Attacks on villages in Karen State were specifically referred to.

In addition, language regarding impunity and investigations was expanded and strengthened:

(e) To end impunity, and to this end:

(i) To investigate and bring to justice any perpetrators of human rights violations, including members of the military and other government agents in all circumstances;

(ii) To facilitate a genuinely independent investigation of continuing reports of sexual violence, in particular against women belonging to ethnic nationalities, and other abuse of civilians carried out by members of the armed forces in Shan, Karen, Mon and other States;

(iii) To facilitate a genuinely independent investigation into the attack perpetrated near Depayin on 30th May 2003;

The 2007 General Assembly Resolution:

Similar language to previous Resolutions used again, and much stronger language on international law. The Resolution expressed grave concern at:

'The major and repeated violations of international humanitarian law committed against civilians, as denounced by the International Committee of the Red Cross in June 2007;'

It also called on the dictatorship to: *'Put an immediate end to the continuing recruitment and use of child soldiers, in violation of international law, by all parties, to intensify measures to ensure the protection of children in armed conflict...'*

Specific reference to the targeting of civilians in military operations was also made:

To take urgent measures to put an end to the military operations targeting civilians in ethnic areas,

and to the associated violations of human rights and humanitarian law...

The wording of the 2007 Resolution builds on and takes forward previous resolutions in relation to the dictatorship's obligations under international law. Abuses are increasingly described in the context of international law, and specific reference is being made to that law being broken. The General Assembly is clearly moving closer to viewing the situation in Burma in the context of international law, including war crimes and crimes against humanity, even though it does not actually use those words.

The 2008 General Assembly Resolution:

The 2008 General Assembly Resolution again increased specific language relating to international law, calling on the dictatorship:

'To take urgent measures to put an end to violations of international human rights and humanitarian law, including the targeting of civilian by military operations, rape and other forms of sexual violence persistently carried out by members of the armed forces, and the targeting of persons belonging to particular ethnic groups;'

Here for the first time the General Assembly specifically state that there are violations of international human rights law, and then goes on to list some of those violations.

Again the General Assembly calls for abuses to be investigated. This time the General Assembly calls on the dictatorship: *'To allow a full, transparent effective impartial and independent investigation, primarily by the Special Rapporteur on the situation of human rights in Myanmar...'*

The 2009 General Assembly Resolution:

The last Resolution on Burma from the General Assembly again repeated much from previous resolutions, describing abuses which could meet the criteria of war crimes and crimes against humanity, using language relating to these as systematic, and referring to international law. The General Assembly also repeated its call for abuses to be investigated. The Resolution also raised concerns about the new constitution of Burma which is due to come into force after the elections expected before the end of

2010:

'Calls upon the Government of Myanmar to undertake a transparent and comprehensive review of compliance of the Constitution and all national legislation with international human rights law...'

The Resolution reaffirmed previous Resolutions and stated that the General Assembly was:

'Deeply concerned that the urgent calls contained in the above mentioned resolutions, as well as statements of other United Nations bodies concerning the situation of human rights in Myanmar, have not been met, and emphasising that, without significant progress towards meetings these calls of the international community, the situation of human rights in Myanmar will continue to deteriorate.'

In its last Resolution on Burma:

The General Assembly is clearly stating that the human rights situation in Burma is deteriorating, and will continue to do so unless international demands are met.

The General Assembly also acknowledges that requests made in eighteen previous General Assembly resolutions have not been met.

The General Assembly continues to describe abuses which could constitute war crimes and

crimes and against humanity, specifically using language on international law.

The General Assembly continues to call for independent investigations into abuses taking place. It also says the United Nations should have a role in investigations. By 2009 the General Assembly made a total of seventeen calls for various kinds of investigations.

In the context of this and 18 previous Resolutions, for the General Assembly to establish a Commission of Inquiry is not a major departure from previous positions. It is a comparatively small but logical next step based on previous resolutions.

It is also an essential next step if the credibility and relevance of the resolutions and General Assembly is to be maintained. For the General Assembly to continue to describe and condemn possible war crimes and crimes against humanity, to continue to state that international law is being broken, and continue to call for abuses to be investigated when it is capable of, and indeed has a duty, to establish an investigation itself, is an abrogation of responsibility, and reinforces the sense of impunity with which the dictatorship in Burma operates.

The 20th United Nations General Assembly Resolution on Burma is an opportunity to take the first step towards ending impunity in Burma and seeing the reductions in human rights abuses for which the Assembly has called in vain for 20 years.

Footnotes

1. UNGA Resolution 47/144 Situation in Myanmar 17th December 1992, Progress report of the Special Rapporteur on the situation of human rights in Myanmar 10th March 2010: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-48.pdf>, and, Progress report of the Special Rapporteur on the situation of human rights in Myanmar 21st September 2006
2. UNGA Resolutions can be accessed at: <http://www.un.org/documents/resga.htm>
3. Progress report of the Special Rapporteur on the situation of human rights in Myanmar 10th March 2010: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-48.pdf>

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