

## **Security Council Resolution: Burma Referral to the International Criminal Court**

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**Resolution 8888 (2008)**  
**To be adopted by the Security Council,**  
**On XX 2008**

*The Security Council,*

*Taking note* of the grave crimes of concern to the global community being perpetrated on the people of Burma within the territory of Burma, and

*Taking note* that Burma has the longest running armed conflict in the world and that for sixty years the government has been under the legal duty to monitor, prevent and enforce any violations of the Geneva Convention,

*Deeply concerned* that the longstanding impunity from criminal accountability afforded Senior General Than Shwe and other top military commanders increasingly imperils human security and constitutes a threat to international peace,

*Taking note* that blocked access to humanitarian aid to victims of cyclone Nargis, by Senior General Than Shwe and top military commanders, is additional evidence of ongoing and systematic crimes of omission or commission against the people of Burma,

*Taking note* that the global monitor of international humanitarian law, the International Committee of the Red Cross, monitored events inside Burma until June 2007 when, believing the people of Burma to be imperiled, issued a public call for action to the global community. The International Committee of the Red Cross verified that all bilateral confidential negotiations had broken down, that their delegates had personally observed major and repeated criminal violations of international humanitarian law by the military, that there exists the likelihood that such grave crimes will continue to be perpetrated on civilians and other persons protected by the Geneva Conventions and that they could no longer perform their monitoring function due to denied access by Senior General Than Shwe,

*Expressing once again* its grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law have been committed in Burma and noting that both the United Nations and the International Committee of the Red Cross access to investigate such crimes has been denied,

*Recalls that* from 1990 to date there have been 30 Resolutions on Burma by the United Nations General Assembly and the Commission on Human Rights, seven envoys, and a Presidential Statement of Concern; all of which have failed to effect any move to reconciliation or stem government tyranny,

*Reaffirming* the importance of compliance with international humanitarian and human rights law and *reaffirming further* that persons who commit or authorize or ignore serious violations of international humanitarian law and human rights law, including heads of state and top military commanders, are individually responsible and accountable for those violations and that the international community will exert every effort to bring those responsible to justice in accordance with international standards of justice, fairness and due process of law,

*Reaffirming further* that the Security Council is the ultimate enforcer of violations of both the Geneva and Genocide Conventions, ratified by Burma in 1992 and 1956 respectively,

*Strongly condemning* the situation in Burma, which has resulted in the death of many thousands of innocent civilians, including women and children, documented crimes of sexual violence on ethnic women by the military, internal displacement of a significant percentage of the ethnic groups, and the massive exodus of refugees to neighboring countries,

*Reaffirming* that the most serious crimes of concern to the international community must not continue or go unpunished and that such crimes “threaten the peace, security and well being of the world”,

*Recalling* its resolution 1325 (2000) on women, peace and security, particularly noting its reference to the International Criminal Court, and that criminal prosecution should be mandated for gender crimes,

*Recalling* 1674 (2006) on the protection of civilians in armed conflict, its various resolutions on children and armed conflict and on women, peace and security, as well as its resolution 1631 (2005) on cooperation between the United Nations and regional organizations in maintaining international peace and security, and further reaffirming its determination to ensure respect for and compliance with these resolutions,

*Recalling* articles 75 and 79 of the Rome Statute and encouraging States and other members of the international community to contribute to the International Criminal Court Trust Fund for Victims,

*Determining* that the situation in Burma continues to constitute a threat to international peace and security,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Decides* to refer the situation in Burma to the Prosecutor of the International Criminal Court;

2. *Decides* that the State Peace and Development Council and all other parties to the conflict in Burma, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully;

3. *Invites* the Court and the Association of South East Asian Nations to discuss practical arrangements that will facilitate the work of the Prosecutor and of the Court, including the possibility of conducting proceedings in the region, which would contribute to regional efforts in the fight against impunity;

4. *Also encourages* the Court, as appropriate and in accordance with the Rome Statute, to support international cooperation with domestic efforts to promote the rule of law, protect human rights and combat impunity in Burma;

5. *Recognizing* the magnitude of damage caused by armed conflict to civilian populations and the need for remedy and rehabilitation for the victims, encourages States to contribute to the trust fund for victims of the International Criminal Court provided by Article 78 of the Rome Statute.

6. *In addition calling for* a separate and additional compensation fund for victims to be established at the United Nations for reparations for people from Burma whether or not the perpetrators are individually identified;

7. *Also emphasizes* the need to promote healing and reconciliation and encourages in this respect the creation of institutions, involving all sectors of Burmese society, such as truth and/or reconciliation commissions, in order to complement judicial processes and thereby reinforce efforts to restore long-lasting peace, with the Association of Southeast Asian Nations and international support as necessary;

8. *Decides* that nationals, current or former officials or personnel from a contributing State outside Burma which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that contributing State for all alleged acts or omissions arising out of or related to operations in Burma established or authorized by the Council or the Association of Southeast Asian Nations, unless such exclusive jurisdiction has been expressly waived by that contributing State;

9. *Recognizes* that none of the expenses incurred in connection with the referral including expenses related to investigations or prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily;

10. *Invites* the Prosecutor to address the Council within three months of the date of adoption of this resolution and every six months thereafter on actions taken pursuant to this resolution;

11. *Decides* to remain seized of the matter.

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