



May 27, 2008

Attorney General
The Rt Honorable Baroness Scotland of Asthal QC
Attorney General's Chambers
20 Victoria Street
London, SW1H 0NF

Re: Request for the United Kingdom to Propose a Security Council Resolution Referring
the Burma Situation to the International Criminal Court

Dear Baroness Scotland,

Thank you for meeting with Aung Htoo, Zarin Hainsworth and me last February regarding the Global Justice Center and Burma Lawyers' Council Project to end the impunity of Senior General Than Shwe and other military officers in Burma.

I now write with optimistic urgency to request your legal recommendation that the United Kingdom propose a Security Council resolution referring the Burma situation to the International Criminal Court (ICC). The Global Justice Center is acting in collaboration with the major pro-democracy Burma groups including the International Monk Association, the 88 Generation Student Group, various Burmese groups in the international diaspora including refugee groups and other international human rights organizations.

Burma is a conflict country and one in which the UK and others have repeatedly deplored the systematic sexual and gender based violence used by the military as a weapon of war. UNSCR 1325 Article 11 calls for an end to criminal impunity for crimes such as the gang rapes by the Tatmadaw, the junta's military, and UNSCR 1325 makes reference to the ICC (Article 9). A central premise of UNSCR 1325 is that it applies to the United Nations itself. For Articles 9 and 11 of the UNSCR 1325 to be legally meaningful the Security Council, when confronted with evidence of such gender crimes, should presume its response will be under Chapter VII and automatically consider an ICC referral.

The time is ripe for such a Security Council resolution. On May 22, 2008, the European Union Parliament passed P6_TA (2008) 0231 "On the Tragic Situation in Burma"¹ that **"calls on EU Member States to press for the UN Security Council resolution referring the case to the Prosecutor of the ICC for investigation and prosecution."** The Resolution passed overwhelmingly with 524 votes. Article 11 of this EU Resolution calls

¹European Union: European Parliament, *European Parliament Resolution on the Tragic Situation in Burma*, 22 May 2008. P6_TA (2008) 0231.

for the Security Council to hold the Burmese junta criminally accountable by making a referral to the ICC. This call is independent from the E.U. responses to the junta's denial of aid for cyclone Nargis victims.

The UK has repeatedly pledged to enforce the international law precepts against impunity without discrimination and with the clear understanding that criminal accountability for grave crimes, including gender crimes, applies to sitting heads of state and top military commanders. (Appendix I). Attached is an overview of the most salient legal arguments supporting Security Council action including UK legal pledges, global indices on Burma tracking violations of the Geneva Convention, risks of genocide and lawlessness, and details on the longevity of armed conflict as defined by the International Red Cross.

Section K of the EU Resolution calls for the principle of 'responsibility to protect', to be applied in the case of Burma. However the EU Resolution does not explain the legal import of either UNSC 1674 or UNSCR 1325 on equating grave crimes with a threat to peace under Chapter VII. The UK has been a global leader in furthering the 'responsibility to protect'. There is a danger that the legal import of this doctrine could be diluted if it is used solely to address the Burmese junta's denial of aid access rather than placing the aid denial where it belongs, as part and parcel of the clear ongoing grave crimes under the jurisdiction of the ICC; crimes against humanity, war crimes, and genocide.

Only two years ago everyone from expert colleagues to my staff and law students to various political pundits were of the view that such an ICC referral would never happen because for Burma, unlike Africa, geopolitical concerns would always trump the application of international justice mandates. The strong Resolution by the European Union Parliament now makes the rule of law a real possibility for the very first time for the longsuffering people of Burma.

I would welcome the opportunity to meet with you during my upcoming trip to London, June 26 – 27 to discuss the United Kingdom's vital role in the continuing fight against impunity and for global justice for the people of Burma and for all people.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Benshoof". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Janet Benshoof