

4.4 Mission Notes

Myanmar

The political situation in Myanmar has been in a state of flux since January 2009. Myanmar's Junta has continued to move towards the general elections planned for later this year – step five of its seven-step political 'roadmap.' It also signaled some receptiveness to a degree of US reengagement with Myanmar; US policy was revised in September 2009 to become a mix of sanctions and engagement. However 2009 was also marked by the trial on spurious charges of Aung San Suu Kyi, the leader of the main opposition party the National League for Democracy (NLD), which won the 1990 general elections but has not been allowed to govern. The trial culminated in August 2009 with Aung San Suu Kyi's conviction and an extension of her house arrest. Furthermore, a 60-year-old, low-level insurgency – the world's longest conflict – continues in Myanmar, pitting numerous ethnic groups against Myanmar's regime. The ceasefires brokered by the regime with many of the ethnic groups remain fragile, and in 2009 the military commenced new operations against some of them, including the Kokang ethnic group and the Karen National Union. The Myanmar military also commenced a push last year to corral ethnic groups into becoming part of a border guard. And recent reports that Myanmar has a nuclear program, if verified, could jeopardize the revised US policy towards Myanmar and solidify Myanmar's international pariah status.

The forthcoming elections are likely to be a point of inflection for Myanmar, a country of around 50 million people that has been under military rule since 1962. They will likely prove to be



UN Secretary-General Ban Ki-moon (center) attends the High-Level Group of Friends on Myanmar meeting. Vijay Nambiar (right), Chef de Cabinet, and Ibrahim Gambari (second from left), then Special Adviser to the Secretary-General on Myanmar, also attended, 23 September 2009.

UN Photo

an opportunity for a younger generation within the military to come to the fore. The Junta has gone to considerable lengths to ensure its continuing dominance in post-election Myanmar. The 2008 constitution stipulates that one quarter of parliamentary seats will go to military personnel, and some leading military figures have resigned their military posts with a view to taking part in the elections as civilians. In addition, Myanmar's election law bars people with criminal convictions participating in political parties – this disqualifies many opposition figures, including Aung San Suu Kyi.¹ The role that ethnic groups and other opposition parties can play in the elections have been a source of considerable tension, and the main opposition party the National League for Democracy (NLD) has ruled itself out of contention: it has boycotted the elections and, as a result, has disbanded.

Special Adviser, Myanmar

Authorization and Start Date	23 December 1994 (UNGA Res. 49/197)
SASG	Vijay Nambiar (India) (acting)*
Budget	\$1.2 million (1 January 2010-31 December 2010)
Strength as of 18 September 2009	International Civilian: 5

* After the former Special Adviser Ibrahim Gambari was appointed the Joint Special Representative for Darfur in December 2009, Vijay Nambiar, the UN Secretary-General's Chief of Staff, began acting as the temporary Advisor.

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BACKGROUND

The UN's diplomatic engagement in Myanmar has a couple of sources: a 1992 Commission on Human Rights mandate for the creation of a Special Rapporteur,² and a 1993 General Assembly resolution requesting the UN Secretary-General's involvement,³ which was followed by a 1994 General Assembly resolution requesting the Secretary-General continue discussions with Myanmar's government,⁴ the latter were interpreted as a mandate for the Secretary-General to use his good offices. The General Assembly reaffirmed its support for this mandate most recently in December 2009.⁵

In 1997, then Secretary-General Kofi Annan appointed Peruvian diplomat Alvaro de Soto to the position of Special Envoy of the Secretary-General for Myanmar, a role de Soto held until 1999. There have been two other Special Envoys since then. In April 2000 Secretary-General Annan appointed Malaysian diplomat Razali Ismail to the position, which Ismail held until his resignation in late 2005. Ibrahim Gambari formally assumed the position in May 2007 and held it until the end of 2009, when he was appointed an AU/UN Envoy to Darfur. The UN has yet to name a formal replacement, although Vijay Nambiar has been acting in the role.

The objectives of the UN political engagement in Myanmar are to promote national reconciliation between the Junta and opposition parties, democratic transition, and respect for human rights. Secretary-General Ban Ki-moon has set out a five point plan of specific requests made of

the regime under the good offices' auspices: (1) the release of all political prisoners; (2) dialogue which is all-inclusive, substantive and time-bound; (3) the need to create conditions allowing a credible political transition to democratic, civilian government; (4) improving socio-economic conditions; and (5) regularizing the good offices process between the UN and Myanmar by setting up a UN office in country.⁶ In pursuit of these objectives, Special Envoys for Myanmar have sought (when allowed access into Myanmar by the Junta) to engage with the Junta and other relevant actors within Myanmar such as opposition figures, as well as with neighboring and other key states and regional organizations. The UN's good offices role is clearly predicated upon engagement with the Junta, which has agreed to the UN playing this role (in preference over ASEAN) and maintains that it views its engagement with the UN as the 'cornerstone' of Myanmar's foreign policy.⁷

Ban Ki-moon has made Myanmar a signature issue and has visited on two occasions. His initial visit – the first by a UN Secretary-General in 44 years – took place in May 2008 in the wake of Cyclone Nargis, which devastated Myanmar's Delta region. The second visit occurred in July 2009. In addition to this political engagement, there have been several UN Special Rapporteurs on the situation of human rights in Myanmar. The position is currently held by Tomas Ojea Quintana.

A UN Resident Coordinator oversees a reasonably large UN in-country presence that includes the UN Development Program (UNDP), the UN Office of Drugs and Crime (UNODC) and the World Food Program (WFP). UNDP's mandate restricts it from working with or through Myanmar's government, but the UN Country Team still played an important role in the coordination of international relief efforts in the aftermath of Cyclone Nargis.

EFFECTIVENESS OF THE MISSION

The Secretary-General's good offices mission to Myanmar has not met with notable success, and neither the Special Envoys nor the Secretary-General have had much to show for their labors and visits. While some political prisoners have been released from time to time, the Junta has tightly controlled

such releases, and arbitrary arrests remain a problem. Successive envoys have been unable to push forward reconciliation processes or make significant headway on the issue of human rights. The mission has also had little discernible impact on promoting democratic transition as the Junta implements its political roadmap.

There are three main reasons for this lack of demonstrable success. The first is the insularity and ‘recalcitrance’ of the Junta, which has been extremely resistant to outside involvement. It has in the past denied access into Myanmar to the UN’s high-level representatives, and when it has granted access it has heavily circumscribed officials’ in-country visits and activities. Often UN officials have not been permitted to meet with key opposition figures they would need to meet to fulfill their mandate. And securing the Junta’s agreement to complete the five point plan remains an ongoing challenge.

Second, UN representatives have not had a robust toolkit at their disposal. This stems from the sharp divisions within the international community over how to respond to Myanmar’s military regime – some states seek a more robust response, others emphasize respect for sovereignty and that democratic transition is a domestic issue⁸ – and in particular over the role of the UN. As a result, the Security Council response has been tepid: in 2006 there was a Security Council procedural vote (which cannot be vetoed) to formally include Myanmar on its agenda, but in early 2007, China and Russia exercised their first double veto since 1972 on a proposed resolution on Myanmar.

Third, the narrowness of the good offices mandate has effectively put the UN and the Junta at cross-purposes. The mandate does not have a distinct focus on the ethnic insurgencies, or include a role for the UN in peacemaking or assisting with the maintenance of ceasefires.⁹ A number of Western states view the situation in Myanmar primarily through the prism of human rights and concentrate on the leading opposition party the NLD, above all Aung San Suu Kyi. The Junta, by contrast, sees the situation through the lens of Myanmar’s ongoing ethnic conflicts and the management of ceasefires.

It should be noted that UN representatives have not been entirely passive actors in this drama. Various Secretary-Generals have attempted to move the diplomatic process forward, though with mixed results. A 2005 meeting between then

Secretary-General Annan and Myanmar’s leader Than Shwe helped to revive UN diplomatic efforts after a Junta-imposed hiatus. In December 2007, Ban Ki-moon created the Group of Friends on Myanmar as a more informal mechanism. It is a large grouping – its 14 members include the five permanent members of the Security Council as well as four ASEAN states – which has lessened its effectiveness, and it also contains many divergent views on Myanmar. As a result it has had limited impact, except for generally supporting the UN’s good offices role. In December 2008, Ban Ki-moon called for more consensus on the part of member states on the meaning of the good offices role, but the pronounced divisions remain.

There was also a breakthrough after Cyclone Nargis. On his visit shortly after the cyclone hit, Ban Ki-moon succeeded in creating the foundations for the Tripartite Core Group (TCG), comprised of the UN, ASEAN and the Myanmar government, which coordinated international humanitarian aid entering the country. This was an important act of policy entrepreneurship. The resulting successful humanitarian operation raised expectations of the prospects of a similar political effort – many spoke of the ‘window of opportunity’ afforded by Nargis. However, the Junta rebuffed attempts to broaden the international humanitarian effort into the political realm or even to extend the humanitarian efforts beyond the Delta region, and Ban Ki-moon’s July 2009 visit did not result in any significant diplomatic progress.

CONCLUSION

All in all, then, the Secretary-General’s good offices mission has had less impact on the situation within Myanmar than might have been hoped for, except in a humanitarian context after Cyclone Nargis. The issue of Myanmar has a vocal and global human rights lobby, which has loudly criticized the lack of results on the part of the UN mission; some analysts have argued for a reassessment of UN’s high-level envoy policy towards Myanmar.¹⁰

The UN’s political efforts towards Myanmar have now largely stalled until after Myanmar’s election takes place later this year. The elections and their aftermath could be a period of considerable

The Special Advisor on the Prevention of Genocide

In December 1948, the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. The Convention, which came into force in 1951, defines genocide in legal terms and makes genocide a crime under international law, applicable to all countries whether they are party to the Convention or not. However, after the international community failed to prevent genocides in Rwanda and in the Balkans in the 1990s, it became clear that the UN had to considerably strengthen its role in genocide prevention. Subsequently, in 2001, the UN Security Council in its resolution 1366 invited the Secretary-General to provide the Council with information and analysis on cases of serious violation of international law and potential conflict situations stemming from ethnic, religious and territorial disputes. Responding to the Council's request, Kofi Annan in 2004 appointed Juan Méndez as the first Special Advisor on the Prevention of Genocide for a four-year tenure. In 2007, Secretary-General Ban Ki-moon chose Francis Deng as his Special Advisor. The post also became a full-time position at the level of Under-Secretary-General, the third highest rank in the UN system. The office of the current Special Advisor consists of five professional and five support staff.

The Special Advisor is mandated¹ to act as an early warning mechanism to the UN system by collecting information on serious violations of human rights and international humanitarian law of ethnic and racial origin that might lead to genocide and by alerting the Secretary-General and through him the Security Council to these situations. The Special Advisor can make recommendations to the Council on actions to prevent genocide, liaises with the wider UN system on genocide prevention and works to enhance the UN's capacity to analyze and manage information relating to genocide and related crimes.

In executing his mandate, the Special Advisor works together with various UN entities, particularly the Office of the High Commissioner for Human Rights, the UN Departments of Political Affairs and Peacekeeping Operations, as well as governments, regional organizations, NGOs and academia. In addition to monitoring developments in all countries, the Special Advisor may also conduct country visits. Lastly, the Special Advisor seeks to compile lessons learnt from successful genocide prevention cases to learn how societies can best manage diversity. A nine-member UN Advisory Committee on the Prevention of Genocide, that was established in 2006 and is expected to meet biannually, provides further support and guidance to the Special Advisor's work.

The Genocide Convention affirms that states have the duty to "prevent and punish" genocide.² In a similar vein, at the 2005 World Summit UN member states agreed that "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and that the international community has the responsibility to protect where states fail to do so.³ Given the strong correlation between the principle of the responsibility to protect and the Special Advisor's mandate, Mr. Deng works closely with the Special Advisor with a focus on the Responsibility to Protect, Edward Luck. Together the Advisors work to improve information collection and analysis as well as early warning mechanisms within the UN system. The Secretary-General's proposal to join the two offices under the leadership of the Special Advisor on the Prevention of Genocide will be submitted to the General Assembly later in 2010.

Mr. Deng is carrying out his mandate under considerable difficulties. The term genocide is highly politicized and its definition generally disputed as too narrow or too broad. A substantive part of his work relies on the cooperation of governments to share information and provide him with access to specific areas within their boundaries. However, many governments see Mr. Deng's work as interfering with their sovereignty and collaboration can thus be sparse. Similarly, the principle of the responsibility to protect is surrounded by controversy, as some countries fear that the notion will lead to an erosion of their sovereignty. Mr. Deng therefore has to tread waters lightly and, in addition to his mandated tasks, raise awareness and educate about the importance of this work.

1 Letter dated 12 July 2004 from the Secretary-General to the President of the Security Council (S/2004/567).

2 UN Convention on the Prevention and Punishment of the Crime of Genocide, Article 1.

3 2005 World Summit Outcome document (A/Res/60/1).

instability for Myanmar, but they might also present opportunities for renewed diplomatic engagement by the UN once the nature of the post-election parliament and political process becomes clear. Such opportunities should be seized upon. The elections might also present opportunities for the UN and other outside actors to help build institutional

capacity within Myanmar and build the skill sets of the next generation – to enable them to form some attachments outside their state and to create a constituency within Myanmar for deeper reform. If such opportunities are not taken, Myanmar’s decimated human and institutional capacity will take decades more to repair.

NOTES

- 1 Burma’s constitution already barred her from running for president by virtue of her marriage to a British citizen.
- 2 Resolution 1992/58
- 3 A/RES/48/150
- 4 A/RES/49/197
- 5 A/RES/64/238
- 6 A/64/334
- 7 See the website of the Permanent Mission of the Union of Myanmar to the United Nations, http://www.myanmarmissionny.org/component/option,com_frontpage/Itemid,1/.
- 8 See, for example, Alberto Turlon, “Is China Ready to Face Facts on Burma?,” *The Irrawaddy*, April 5 2010.
- 9 A criticism made of Gambari during his tenure as Special Envoy, for example, was that he did not meet with ethnic minority representatives.
- 10 See, for example, Brian McCartan, “Another UN failure in Myanmar,” *Asia Times Online*, July 8 2009, http://www.atimes.com/atimes/Southeast_Asia/KG08Ae02.html.