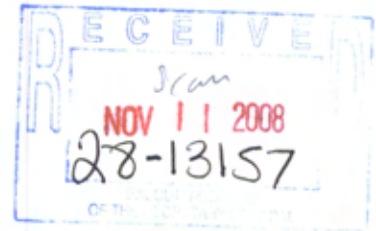


Myanmar

ACTION ^{NH} ✓
COPY ^{VN}
^{RWS}



Note to Mr. Nambiar
(through Mr. Pascoe) *[Signature]*

Third Committee proceedings on Myanmar ✓

Please find attached a note on (i) proceedings in the Third Committee on a draft resolution extending the Secretary-General's good offices in Myanmar and (ii) reactions to the Secretary-General's report on Myanmar. I would be grateful if the attached could be brought to the attention of the Secretary-General.

[Signature]
Ibrahim Gambari
7 November 2008


cc.: Mr. Kim

Note to the Secretary-General

Third Committee proceedings on Myanmar

1. On 30 October, France as EU Chair tabled in the Third Committee a draft resolution on Myanmar extending your good offices mandate, co-sponsored by 28 Member States (attached). Action on the draft resolution could take place as soon as the text is introduced. Although France had initially indicated an interest in using this effort to strengthen consensus on the issue of Myanmar among the broader membership, it is unclear whether the draft text as tabled will achieve that goal, particularly given the opposition in principle of a large number of Member States to country-specific special procedures. As in previous years, Myanmar and several ASEAN countries have complained about the lack of consultations beyond the co-sponsors and the lack of focus and balance of the draft text itself, which in their view essentially resembles previous resolutions both in scope and approach. None of Myanmar's suggested amendments have been taken into account. As a result, as in the past two years, Myanmar may call for a no-action motion on the draft resolution, followed by a vote on the draft text paragraph by paragraph, which may further expose the divisions among Member States on this issue. For our purposes, one remarkable change in the draft resolution from previous years is the reference in OP.6 defining your good offices mandate to discussions with the Government and people of Myanmar on "the transition to democracy", as opposed to "the restoration of democracy".
2. The above follows the release of your annual report on Myanmar to the General Assembly (A/63/356) on 17 October, which I presented to the Third Committee on 22 October under Item 64(c). Concurrently, the report of the Special Rapporteur for Human Rights in Myanmar was released on 8 October, which he presented on 23 October under the item. Based on feedback so far, your report seems to have met the expectations of various interested Member States and constituencies, as it has been broadly received as factual, comprehensive and balanced. The Permanent Representative of Myanmar conveyed to me that his Government considered that "by-and-large, the report is fair and balanced".
3. In its intervention in the Third Committee, Myanmar welcomed your recognition of the improving spirit of cooperation between Myanmar and the UN following Cyclone Nargis, although it expressed disappointment that the report cast doubt on the credibility of the constitutional referendum. Myanmar further reaffirmed that cooperation with the UN is a "cornerstone" of its foreign policy and reiterated the Government's "trust and confidence" in my implementation of the good offices mandate on your behalf. The report did not draw any substantive questions or comments from other Member States, but statements of support were made by Thailand, Indonesia and Liechtenstein.
4. Myanmar opposition groups, some of which have been critical of the good offices efforts in the past, also strongly supported your report. The "government-in-exile", the National Coalition Government of the Union of Burma, informed my office that it welcomes the report. The US Campaign for Burma, a prominent lobby group with close ties to the NLD, told us that they feel the report is balanced. I have been informed that the NLD Central Executive Committee intends to

write a letter to you expressing support for the report. Two groups involved in the September 2007 protests, the All Burma Monks Alliance and the 88 Generation Students, issued a 6 November joint statement welcoming the report, and a coalition of ethnic political parties from the 1990 elections, the United Nationalities Alliance, also issued a welcoming statement on 7 November.



Ibrahim Gambari
7 November 2008

AGNU 63 Draft Resolution - Situation of Human Rights in Myanmar

General Assembly resolution
Situation of human rights in Myanmar

The General Assembly,

Pp1 *Guided* by the Charter of the United Nations and the Universal Declaration of Human Rights, and recalling the International Covenants on Human Rights and other relevant human rights instruments,

Pp2 *Reaffirming* that all Member States have an obligation to promote and protect human rights and fundamental freedoms and the duty to fulfill the obligations they have undertaken under the various international instruments in this field,

Pp3 *Reaffirming also* its previous resolutions on the situation of human rights in Myanmar, the most recent of which is resolution 61/232 of 22 December 2006, 62/222 of 22 December 2007, those of the Commission on Human Rights, and resolution S-5/1 of 2 October 2007, 6/33 of 14 December 2007, 7/31 of 28 March 2008 and 8/14 of 18 June 2008 adopted by the Human Rights Council,

Pp4 *Welcoming* the Presidential Statements S/PRST/2007/37 of 11 October 2007 and S/PRST/2008/13 of 2 May 2008, adopted by the Security Council,

Pp5 *Welcoming* the reports of the Special Rapporteur on the situation of human rights in Myanmar and his oral presentations, as well as the agreement by the Government of Myanmar to the Special Rapporteur's visit for the first time in four years in November 2007 and then again in August 2008 soon after the appointment of the new Special Rapporteur, and encouraging the continuation of such visits and the report of the Secretary-General and his designation of a Special Adviser to continue to pursue the mandate of good offices, and affirming its full support for this mission;

Pp6 *Taking note* of the cooperation of the Government of Myanmar with the international community, including the United Nations, in delivering humanitarian assistance to the people affected by cyclone Nargis despite its initial denial of access resulting in widespread suffering and increasing the risk of loss of lives, and calling upon the Government of Myanmar, in the interest of the people of Myanmar, to cooperate on humanitarian access in all other areas of the country where the United Nations, other international humanitarian organizations and their partners continue to experience difficulties in delivering assistance to persons in need;

Pp7 *Calling upon* the Government of Myanmar to cooperate with the international community in order to achieve concrete progress in areas such as human rights and political processes leading to a genuine democratic transition through concrete measures;

Pp8 *Deeply concerned* that the urgent calls contained in the above-mentioned resolutions, as well as the statements of other United Nations bodies concerning the human rights situation in Myanmar, have not been met and further emphasizing that, without significant progress towards meeting these calls of the international community, the human rights situation in Myanmar will continue to deteriorate;

OP1. *Strongly condemns* the ongoing systematic violations of civil, political, economic, social and cultural rights of the people of Myanmar, as described in resolution 62/222 and the previous resolutions of the General Assembly, of the Commission on Human Rights and of the Human Rights Council;

OP2. *Expresses grave concern* in particular at:

OP2(a) The continuing practice of enforced disappearances, use of violence against peaceful demonstrators, rape and other forms of sexual violence, torture and cruel, inhumane or degrading treatment, arbitrary detentions, including those that resulted of the repression of peaceful protests last year, the extension once again of the house arrest of the General Secretary of the National League for Democracy, Aung San Suu Kyi, as well as the high and increasing number of political prisoners, including other political leaders, persons belonging to ethnic nationalities and human rights defenders, despite the recent release of a small number of them, including U Win Tin;

OP2(b) The continuing imposition of severe restrictions to the exercise of fundamental freedoms such as the freedom of movement, expression, association and assembly, including by lack of independent judiciary and the use of censorship;

OP2(c) The major and repeated violations of international humanitarian law committed against civilians;

OP2(d) The continuing discrimination and violations suffered by persons belonging to ethnic nationalities of Myanmar, and attacks by military forces and non-state armed groups on villages in Karen and other ethnic States in Myanmar, leading to extensive forced displacements and serious violations and abuses of the human rights of the affected populations;

OP2(e) The absence of effective and genuine participation of the representatives of the National League for Democracy and other political parties and some ethnic groups in a genuine process of dialogue, national reconciliation and transition to democracy and that the country's political processes are not transparent, inclusive, free and fair, that the procedures established for the drafting of the constitution resulted in a de facto exclusion of the opposition from the process, and at the decision of the Government of Myanmar to proceed with the constitutional referendum in an atmosphere of intimidation and without regard to international standards of free and fair elections at a time of dire humanitarian need;

OP2(f) Forced labour, forced displacement as well as the continuous deterioration of the living conditions and the increase of poverty affecting a significant part of the population

throughout the country, with serious consequences for the enjoyment of their economic, social and cultural rights;

OP2(g) The climate of impunity due to the fact that perpetrators of human rights violations and abuses are not brought to justice, thereby denying the victims any effective remedy;

OP3. Welcomes

OP3 (a) The visits to Myanmar of the Secretary General's Special Adviser, and expresses appreciation for the work of the Secretary General's good offices mission but notes only limited cooperation by the Government of Myanmar with this mission in 2008;

OP3 (b) The progress report presented by the government of Myanmar and the steps so far taken, even though limited, in implementing the supplementary Understanding signed between the International Labour Organization and the Government of Myanmar in 2007 designed to provide a mechanism to enable victims of forced labour to seek redress;

OP3(c) The submission by the Government of Myanmar of its third periodic report on the implementation of the Convention on the elimination of all forms of discrimination against women;

OP3(d) The progress reported on the work conducted by the Government and international humanitarian entities on HIV/AIDS and avian influenza;

OP3(e) The establishment of the Secretary General's Group of Friends on Myanmar, calls upon the Group to facilitate the work of the good offices mission of the Secretary General, including by assisting with the preparation of his visits and by urging the government of Myanmar to cooperate fully with the mission, and encourages the Group to do its utmost to encourage the government to respect human rights and allow a peaceful transition to democracy;

OP 3(f) The role played by Myanmar's neighbors and ASEAN members in support of the Secretary General's good offices mission, and encourages them to intensify these efforts in this regard;

OP3(g). The constructive role played by ASEAN and the UN in working with the government of Myanmar to respond to the humanitarian crisis caused by the cyclone Nargis;

OP4. Strongly calls upon the Government of Myanmar:

OP4(a) To ensure full respect for all human rights and fundamental freedoms, including by ending restrictions on these freedoms that are incompatible with the government's obligations under international human rights law and to protect its inhabitants;

OP4(b) To allow a full, transparent, effective, impartial and independent investigation, primarily by the Special Rapporteur, into all reports of human rights violations, including enforced disappearances, use of violence against peaceful demonstrators, arbitrary detentions, torture and cruel, inhumane or degrading treatment, rape and other forms of sexual violence,

forced labour and forced displacement, and for bringing those responsible to justice in order to end impunity for violations of human rights;

OP4(c). To reveal the whereabouts of persons who are detained, missing or who have been subjected to enforced disappearance;

OP4(d) To seize the opportunity of the Secretary General's Good Offices and to cooperate fully with the good offices mission in the fulfilment of its responsibilities as mandated by the General Assembly: the release of political prisoners and the commencement of a substantive dialogue on democratic transition, and that such cooperation shall include facilitating the Special's Adviser's visits to the country, allowing him unrestricted access to all relevant parties, including the highest level of leadership within the regime, human rights defenders, ethnic minorities representatives, student leaders and other opposition groups, and engaging in a genuine and fruitful process aiming at achieving tangible progress towards democratic reform and the full respect of human rights;

OP4(e) To fully implement previous recommendations of the Special Rapporteur, the General Assembly, the Human Rights Council, the Commission on Human Rights, the International Labour Organization and other United Nations bodies;

OP4(f) To desist from further politically motivated arrests and to release without delay and without conditions those who have been arbitrarily arrested and detained, as well as all political prisoners, including Aung San Suu Kyi, other National League for Democracy leaders, 88 Generation group leaders, ethnic group leaders and all those detained as the result of the protest which took place in September 2007;

OP4(g) To lift all restraints on peaceful political activity of all persons by, inter alia, guaranteeing freedom of peaceful assembly and association and freedom of opinion and expression, including for free and independent media, and to ensure unhindered access to media information for the people of Myanmar;

OP4(h) To cooperate fully with the Special Rapporteur, including by granting him full, free and unimpeded access in his upcoming visits to Myanmar to monitor the implementation of Human Rights Council and General Assembly resolutions, and to ensure that no person cooperating with the Special Rapporteur or any international organization is subjected to any form of intimidation, harassment or punishment;

OP4(i) To ensure timely, safe, full and unhindered access to all parts of Myanmar, including conflict and border areas, for the United Nations, international humanitarian organizations and their partners and to cooperate fully with those actors to ensure that humanitarian assistance is delivered to all persons in need throughout the country;

OP4(j) 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 from armed conflict and to pursue its collaboration with the Special Representative of the Secretary-General on Children and Armed Conflict;

OP4(k) To take urgent measures to put an end to violations of international human rights and humanitarian law, including the targeting of civilians 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;

OP4(l) To end the systematic forced displacement of large numbers of persons within their country and the violence contributing to refugee flows into neighbouring countries, and to respect cease fire agreements;

OP5. *Calls upon* the Government of Myanmar:

OP5(a) To permit all political representatives and representatives of ethnic nationalities to participate fully in the political transition process without restrictions and, to that end, to resume without further delay a dialogue with all political actors, including the National League for Democracy and representatives of ethnic nationalities;

OP5(b) To pursue, through dialogue and peaceful means, the immediate suspension and permanent end of conflict with all ethnic nationalities in Myanmar and to allow the full participation of representatives of all political parties and representatives of ethnic nationalities in an inclusive and credible process of national reconciliation, democratization and the establishment of the rule of law;

OP5(c) To allow human rights defenders to pursue their activities unhindered and to ensure their safety, security and freedom of movement in that pursuit;

OP5(d) To refrain from imposing restrictions on access to and flow of information from the people of Myanmar, including through the openly available and accessible use of internet and mobile phone services;

OP5(e) To fulfil its obligations to restore the independence of the judiciary and due process of law, which are not compatible with international human rights law as well as to ensure that discipline in prisons does not amount to torture or cruel, inhuman or degrading treatment or punishment and that conditions of detention otherwise meet international standards;

OP5(f) To engage in a dialogue with the Office of the High Commissioner for Human Rights with a view to ensuring full respect for all human rights and fundamental freedoms;

OP5(g) To engage more actively to eliminate the use of forced labour and to increase its efforts with the International Labour Organization towards the effective implementation of the national mechanism established to receive complaints of forced labour, including allowing the International Labour Organization to distribute informational material in Myanmar on such mechanism;

OP5(h) To resume its humanitarian dialogue with the International Committee of the Red Cross and allow it to carry out its activities according to its mandate, in particular by granting access to persons detained and to internal armed conflict areas.

OP6. *Requests* the Secretary-General:

OP6(a) To continue to provide his good offices and to pursue his discussions on the situation of human rights, the transition to democracy and the national reconciliation process with the Government and the people of Myanmar, including democracy and human rights groups and all relevant parties, and to offer technical assistance to the Government in this regard;

OP6(b) To give all necessary assistance to enable his Special Adviser, and the Special Rapporteur to discharge their mandates fully and effectively and in a coordinated manner;

OP6(c) To report to the General Assembly at its sixty-fourth session as well as to the Human Rights Council on the progress made in the implementation of the present resolution;

OP7. *Decides* to continue the consideration of the question at its sixty-fourth session, on the basis of the report of the Secretary-General and the interim report of the Special Rapporteur.