

## Myanmar/Burma's Binding Obligations Under International Law

This document outlines some of Myanmar/Burma's (hereinafter "Burma") obligations under international law, and demonstrates the ramifications of these obligations. Burma's obligations under international law have greatly increased due to the advances in international law and the enforcement of states obligations over the last fifteen years.

International law mandates that states either act or refrain from acting in certain ways, and provides remedies for state breaches. The framework of Burma's obligations arise from four interrelated bodies of international law: international human rights and other treaty law, including the United Nations (UN) Charter; customary international law, including the laws of state responsibility; international humanitarian law; and international criminal law.

### Treaty Obligations

Burma has ratified and accepted the obligations of a number of international treaties. By ratifying a treaty, Burma is obligated under international law to comply with the provisions of the treaty in good faith<sup>i</sup> and cannot use domestic laws to justify a failure to comply with treaty obligations.<sup>ii</sup>

The most important treaty that Burma is a party to is the UN Charter, which is considered a "super-treaty" because Article 103 of the Charter mandates that any conflict between Charter obligations and those under any other international agreement be resolved in favor of the Charter (see below for more information on UN Charter obligations). Other treaties include the Genocide Convention, the four Geneva Conventions, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). A more extensive list of the treaties that Burma is party to is below in Annex 1.<sup>iii</sup>

### Binding International Law Regardless of Treaty Status

Customary international law (CIL), also called "the law of nations," is binding law arising from "general practice accepted as law."<sup>iv</sup> This area of law, which includes the laws of state responsibility, is particularly important in countries such as Burma that are party to relatively few international treaties. For example, even though Burma has not signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or the Additional Protocols to the Geneva Conventions, it is still bound by those provisions of the treaty that have arisen to the level of CIL.<sup>v</sup> The ICRC keeps a database of those rules of international humanitarian law (IHL), or the laws of war, which have reached the status of customary international humanitarian law,<sup>vi</sup> including states obligations to investigate alleged war crimes occurring within its borders and the requirement that a state give full reparations to victims of violations of IHL.<sup>vii</sup>

An integral component of CIL is the laws which regulate state-to-state conduct, commonly referred to as the laws of state responsibility. Largely unwritten, these rules were finally codified in 2001 by the UN International Law Commission in the Draft Articles on the Responsibility of States for Internationally Wrongful Acts.

Additionally, some norms of CIL involve obligations to respect “those rules of conduct that prohibit what has come to be seen as intolerable because of the threat it presents to the survival of States and their peoples and the most basic human values.”<sup>viii</sup> These norms are known as peremptory, or *jus cogens* norms and include the prohibitions on slavery, torture, apartheid and genocide –states are in no way allowed to derogate from those norms. The International Court of Justice (ICJ), the principal judicial organ of the UN, has described basic rules of international humanitarian law as “intransgressible,” which indicates that these too could be considered peremptory.<sup>ix</sup>

Under the laws of state responsibility, where there are serious breaches of peremptory norms,<sup>x</sup> the violator state is obligated to take certain actions to end the breach. Additionally, all states incur obligations to respond, including: (1) take positive measures to end a breach, including non-recognition; (2) not recognize as lawful a situation created by a serious breach; and (3) not render aid or assistance to maintain the unlawful situation.<sup>xi</sup>

Customary international law should not be confused with domestic customary law (also called traditional law), which derives from local custom and practice.

## Implications of International Law for Burma

Burma’s Constitution renders the “Republic of Myanmar” incapable of complying with many of its obligations under international law. This includes fundamental obligations that require the civilian government to regulate and prosecute the military, including those required by Chapter VII Security Council resolutions, the Genocide Convention and the Geneva Conventions, as well as CIL. Since the civilian government does not have the authority to mandate that the military take or cease action, it cannot comply with Burma’s international obligations, which puts it in direct violation of international law.

This problem can be seen, for example, through Burma’s (in)ability to comply with Security Council resolutions, which it is required to do as a party to the UN Charter.<sup>xii</sup> For example:

- The Secretary-General’s report on child soldiers, pursuant to UN Security Council Resolution 1612, has found the Burmese military to be a “persistent violator,” which means that it has been named in the report for five or more years.<sup>xiii</sup>
- The Secretary-General’s report on conflict-related sexual violence, pursuant to UN Security Council Resolutions 1820 and 1960, names the Burmese military as a party credibly suspected of using rape and sexual violence, particularly in the ethnic regions.<sup>xiv</sup>
- Security Council Resolution 1540 instructs states to take all appropriate measures to ensure that domestic policy on nuclear, biological, and chemical weapons is consistent with international law. Further Security Council Resolutions, such as 1718 and 1874, call on all member states to strictly control exports to North Korea.<sup>xv</sup> In particular, they prohibit trade pertaining to North Korea’s missile and nuclear programs. However, in 2009, Burma was found to be illegally dealing with North Korea by the 1874 oversight committee.<sup>xvi</sup>

These problems cannot be effectively investigated and ended as called for by the Security Council Resolutions dealing with them because of the military’s independence from the Burmese civilian government. By making the military autonomous from the civilian government, the Constitution enables the military to flagrantly disregard Burma’s international legal obligations. Even after numerous reports

from the UN which point out these violations of international law, the military does not have to answer to the civilian government or the international community, which allows it to, for example, commit sexual violence against ethnic women with impunity.

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<sup>i</sup> Vienna Convention on the Law of Treaties, art. 26, Jan. 27, 1980, 1155 U.N.T.S. 331 [hereinafter Vienna Convention].

<sup>ii</sup> Vienna Convention at art. 26.

<sup>iii</sup> Ratification of a treaty notifies the state's intent to be bound by the terms of the treaty and gives legal effect to the objective and purpose of the treaty. Signatory of a treaty expresses the states which endorse the principles contained within the treaty by signing without having it be legally binding upon them. Accession, though less common, has the same legal effect as ratification; after a treaty has entered into force, a state which did not participate in its drafting can still become a member by acceding to the treaty.

<sup>iv</sup> Statute of the International Court of Justice, art. 38(1), June 26, 1945, 156 U.N.T.S. 77.

<sup>v</sup> See Jean-Marie Henckaerts & Louise Doswald Beck., Customary International Humanitarian Law, Volume I & II (International Committee of the Red Cross 2005) [hereinafter ICRC CIHL]. The ICRC also maintains a regularly updated database which updates the study, ICRC, Customary IHL Database, available at: <http://www.icrc.org/customary-ihl/eng/docs/home> (last visited Nov. 27, 2012).

<sup>vi</sup> ICRC, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_cha](http://www.icrc.org/customary-ihl/eng/docs/v1_cha) (last visited Nov. 27, 2012).

<sup>vii</sup> ICRC CIHL, Rules 150 and 158, Customary IHL Database, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul](http://www.icrc.org/customary-ihl/eng/docs/v1_rul) (last visited Nov. 27, 2012).

<sup>viii</sup> Rep. of the Int'l Law Comm'n, 53<sup>rd</sup> sess, April 23-June 1, July 2- Aug. 10. 2001, Art. 40, commentary para. 3, U.N. Doc. A/56/10; GAOR, 56<sup>th</sup> Sess. Supp. No. 10 (2001).

<sup>ix</sup> Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. 257, ¶79 (Advisory Opinion of July 8).

<sup>x</sup> The Draft Articles provide that "serious" breaches occur when there is a "gross or systematic failure to fulfill the obligation in question." Int'l Law Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts art. 40(7), U.N. Doc. A/56/10 (2001) [hereinafter Draft Articles on State Responsibility].

<sup>xi</sup> Draft Articles on State Responsibility at Art. 40-41 and commentary to those articles.

<sup>xii</sup> U.N. Charter art. 24-25, 28.

<sup>xiii</sup> U.N. Secretary-General, *Persistent Violators*, Children and Armed Conflict, <http://childrenandarmedconflict.un.org/our-work/persistent-violators-and-sanctions/> (last visited Nov. 27, 2012).

<sup>xiv</sup> U.N Secretary-General, *Conflict-Related Sexual Violence*. Rep. of the Secretary-General, ¶¶ 39-41 U.N. Doc. S/2012/33 (Jan. 13, 2012).

<sup>xv</sup> See, e.g., S.C. Res. 1695, U.N. Doc. S/RES/1695 (July. 15, 2006); S.C. Res. 1718, U.N. Doc. S/RES/1718 (Oct. 14, 2006); S.C. Res. 1874, U.N. Doc. S/RES/1874 (June. 12, 2009); S.C. Res. 1887, U.N. Doc. S/RES/1887 (Sept. 24, 2009); S.C. Res. 1928, U.N. Doc S/RES/1928 (June. 7, 2010).

<sup>xvi</sup> Rep. of the Panel of Experts Established Pursuant to Resolution 1874, U.N. Doc. S/2010/571 (June. 12, 2009).

## Annex 1: Relevant International Treaties Signed by Burma

**Table 1 - International Humanitarian Law Treaties**

Title	Signature	Ratification	Accession
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1st Geneva Convention)		25 Aug 1992	
Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (2nd Geneva Convention)		25 Aug 1992	
Geneva Convention relative to the Treatment of Prisoners of War (3rd Geneva Convention)		25 Aug 1992	
Geneva Convention relative to the protection of civilian persons in time of war (4th Geneva Convention)		25 Aug 1992	
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Geneva, 3 September 1992)	14 Jan 1993		
Treaty on the Non-Proliferation of Nuclear Weapons (Washington, 1 July 1968)			2 Dec 1992

**Table 2 - International Human Rights Treaties**

Title	Signature	Ratification	Accession
Convention on the Prevention and Punishment of the Crime of Genocide (New York, 9 Dec 1948)	30 Dec 1949	14 Mar 1956	
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (New York, 18 Dec 1979)			22 July 1997
Convention on the Political Rights of Women (New York, 31 March 1953)	14 Sep 1954		
International Convention for the Suppression of the Traffic in Women and Children (New York, on 12 November 1947)	13 May 1949		
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (New York, 21 March 1950)	14 Mar 1956		
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (New York, 15 November 2000)			30 Mar 2004
Convention on the Rights of Persons with Disabilities (CRPD) (New York, 13 December 2006)			7 Dec 2011
Convention on the Rights of the Child (CRC) (New York, 20 November 1989)			15 Jul 1991
Freedom of Association and Protection of the Right to Organize, ILO Convention 87 (4 July 1950)		4 Mar 1955	

**Table 3 – Other Treaties**

<b>Vienna Convention on the Law of Treaties (Vienna, 23 May 1969)</b>			<b>16 Sep 1998</b>
<b>Charter of the United Nations and Statute of the International Court of Justice (San Francisco, 24 October 1945)</b>	<b>19 Apr 1948</b>	<b>19 Apr 1948</b>	