

**Edited remarks**  
**Speech—October 26, 2007**  
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*"There can be no global justice unless the worst of crimes – crimes against humanity – are subject to the law.*

*In this age more than ever we recognize that the crimes of genocide against one people truly is an assault on us all – a crimes against humanity.*

*The establishment of an International Criminal Court will ensure that humanity's response will be swift and will be just."*

*- Kofi Annan July 16, 1998*

**“SC 1325 and the Military Junta in Burma:  
Ending Impunity and Forging Accountability for Gender Crimes”**

**I. Introduction**

**This panel, with women from Burma, marks the seventh anniversary of United Nations Security Council Resolution 1325. On October 31, 2000, the Security Council recognized for the first time that fully implementing women’s legal rights to protection, nondiscrimination, and justice—both during and after conflict—is critical to global peace and security.**

**This Resolution is based on the reality that today’s armed conflicts are largely internal, not international, and that nine out of ten victims are civilians, mostly women and children. SCR 1325 recognizes that more and more women are intentionally targeted in armed conflicts, and that gender crimes such as rape and sexual slavery are routinely used to torture women and to terrorize communities.**

**The Security Council’s authority for SCR 1325 is based on existing international laws establishing a clear duty of member states and of the U.N. itself to protect people from**

those crimes of most serious concern to the global community, such as genocide or rape of civilian women in areas of conflict. No geopolitical interests or claims of sovereignty can dispense with the legal rights of the victims of those crimes. Nor can any country, court, or U.N. body distribute “get out of jail free” passes to favored Generals. This means that members of the military junta in Burma, starting with General Than Shwe, are individually criminally accountable for the widespread and ongoing crimes perpetrated daily on the women of Burma, including genocidal gang rapes, sexual mutilation and murder.

The imperative behind SCR 1325 is the conclusion by the Security Council that to fulfill its mission under the U.N. Charter to maintain peace and global security, women’s legal rights to full participation in all justice, peace, and democracy processes are enforced. SCR 1325 requires an end of the male oligarchy, which has long excluded women as key decision makers. Member states and the U.N. itself are mandated to take all necessary measures to reverse the gender imbalance endemic to cease fire agreements, peace negotiations, constitution drafting committees and other transitional governmental entities.

## **II. Burma: a Sovereign State or Criminal Cabal?**

The recent killings, torture and imprisonment of monks, protesters, and their family members in Burma are not new. Rule by crime is “business as usual” for the military junta, which, under various guises, has engaged in 45 years of armed conflict against its own people. Over 40% of the country’s budget is for defense, and despite no war or even threat of war with any other country, the junta has increased its 400,000-person army

annually. The junta makes no pretense of complying with any rule of law, and in fact it is the military that routinely violates the very treaties the junta has pledged to enforce, including the Convention on Genocide, the Convention on the Political Rights of Women, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

“Business as usual” for General Than Shwe and his henchmen is power by enslavement of the people of Burma using such means as forced labor, torture, arbitrary arrests, murder, rape and abducting children for the army. Country reports, U.N. agency reports, U.N. special envoys reports, and repeated documentation by international human rights groups verify this “rule by crime.” In fact, the International Red Cross, in a rare departure from neutrality, has deplored in no uncertain terms the junta’s ongoing violations of international humanitarian law, the most serious of State crimes.

Since 2002, women’s groups outside the country have issued seven reports detailing the systematic rape and torture of ethnic women, including the Karen, Shan, Mon and other ethnic groups, by the military. These reports painstakingly document the routine rapes of ethnic women—60% of which, according to one report, were gang rapes. They include the times, dates, and villages where the rapes took place, as well as the names or badge numbers of the soldiers, commanders, and other battalion information. The response by the junta at the U.N. and to the international press has been flatly to deny that any such rapes occur. The junta response inside Burma has been to kill or jail young women who report the rapes.

Although there is consensus in the global community of “no tolerance” for such heinous crimes, this evolution in global justice has not helped the long-suffering people in Burma.

### **III. The Challenge of Applying 1325 to a Failed State**

Now, what does SCR 1325 mean for the women sitting here today, women representing their sisters in Burma? What has SCR 1325 actually done for women in Burma?

The short answer is that 1325 could mean everything for the women from Burma, and that SCR 1325 has done nothing for the women of Burma.

But the story does not end here. My remarks are not a eulogy for 1325; they are to be—if you help me—a wake up call. We should—and can—turn 2007 into a new historic milestone, one marking 2007 as the first year when the Security Council, citing to its obligations under SCR 1325, took action under its strongest power, Chapter VII, and passed a Resolution establishing an independent commission of inquiry on crimes in Burma.

Why has this not been done? Why is it so hard for the United Nations to deal with a rogue state like Burma?

Burma is a prototype of a failed state that motivated the passage of SCR 1325 in the first place; there is an ongoing armed conflict, women's lives and rights are lost daily, and there is no rule of law or system for redress or remedies. Burma also exposes the structural weakness of 1325. Because SCR 1325 is enforced under the U.N. umbrella, women from failed states cannot be reached by, nor can they reach, the U.N. for help. No woman from inside Burma has ever in forty-five years come to the U.N. and

**spoken honestly about crimes in the country. To do so would mean that if they ever went back to Burma they would be jailed, if not killed. The women from Burma sitting next to me here today can talk freely to you only because they escaped to Thailand.**

**Let me give you a few examples of how U.N. implementation of SCR 1325 is the least effective:**

- In 2001, under the mandate of SCR 1325, Koffi Anan appointed Ellen Johnson-Sirleaf and Elisabeth Rehn, two women leaders who have been instrumental in the implementation of SCR 1325 around the globe, as experts to investigate the situation of women during and post-conflict and to report directly back to the Security Council. They went to 14 conflict countries but not Burma, as there was not—nor has there ever been—free access to the country. Thus, from the very beginning of SCR 1325, women in Burma were off its radar screen.**
- In its annual review of SCR 1325 the Security Council agreed in 2004 to hear from women from five conflict countries: Iraq, Cote D’Ivoire, Sudan, Burma and the Congo. Ohmar Khan, the representative from the Women’s League of Burma, was the only one then not allowed to speak to the Security Council. Why not? Because she was not from a “member state,” but living in exile in Thailand.**
- UNIFEM is to be commended for its dedicated and persistent voice on behalf of women’s rights to equality. However its ability to act is limited by the U.N. system. Although UNIFEM lends support to women in conflict areas such as Darfur and the Congo, it does not reach out to fund, train, or support in any way women from Burma who are not “inside” the country. This means women from Burma, whether living “inside” or in exile, have no ready means to U.N. access. Since it is illegal to form an NGO inside Burma, no women’s group could even apply for U.N. consultative status. Nor can the Women’s League of Burma achieve consultative status as a practical matter given the exile status of its members and the fact that it is only an informal organization in Thailand.**
- Geopolitical concerns can preclude U.N. agencies from fulfilling their obligations to enforce key SCR 1325 imperatives. For example, women from Iraq were unable to access any U.N. technical support or funding to bring women victims, such as the Kurdish victims of gender crimes in the Anfal genocides, to the Iraqi Tribunal. The U.N. and thus the agencies are essentially “boycotting” the Iraqi Tribunal because it was not formed under U.N. auspices. This discrimination against Iraqi women in the U.N. system is also in part a political statement against the United States. This means Iraqi women war crimes victims of Saddam have**

**become victims of geopolitical fighting in their search for redress and accountability.**

#### **IV. SC 1325 in the Context of International Law**

**Do not underestimate how powerful we can make SCR 1325 as a legal tool for women or how such a legal tool can give women power. SCR 1325 is part of a growing body of international law establishing justice and equality during and post-conflict. The Security Council is a source for new international laws such as SCR 1325 and the contract between the Security Council and the International Criminal Court (agreed to by the States Assembly). The Security Council is also bound by such international law as its mandate under the U.N. Charter and in its role as the ultimate enforcing body for such treaties as the Convention for the Prevention of Genocide and the Geneva Conventions.**

**Under its Chapter VII powers, the Security Council has the authority to determine a threat to peace or breach of the peace or aggression and to frame the U.N. response. In the last twenty years the Security Council has been less hesitant to act in accordance with its obligations under Article 39 of the U.N. Charter, “threat to peace,” and SCR 1325 should embolden the Council further.**

**The advances in international criminal law, including the establishment of the International Criminal Court, is one component fueling the Security Council’s changing view of the impregnability of sovereignty. This is reflected also by the Security Council’s historic endorsement in 2006 of the “Responsibility to Protect” doctrine. SCR 1674 sets out the obligations of the Security Council to take actions under Chapter VII when national authorities, such as the military junta in Burma, fail to protect citizens from genocide,**

crimes against humanity and other similar atrocities. This “Responsibility to Protect” thus reinforces the mandate of SC 1325: both require the Security Council to intervene before conflict is over and both view “justice delayed as justice denied.”

Although neither genocide nor crimes against humanity requires an ongoing armed conflict situation, Burma is in armed conflict. This makes the killing and rapes of ethnic women by the military criminal violations of the Geneva Conventions, and arguably war crimes under the ICC. Further, the Genocide Convention, to which Burma is a party, requires that member-states act not only to prevent acts of genocide, but also to punish those responsible. When, as is the case in Burma, the ruling junta itself engages in genocidal acts the Security Council can—I would say must—be seized under Article 8 for enforcement.

Finally, an important new legal imperative supporting Security Council action on Burma under Chapter VII is found in the agreement between the Security Council and the ICC passed by the States Assembly. Under the agreement the Security Council agrees to play a key role in ICC implementation, particularly in regards to those states such as Burma and Sudan, which have not acceded to the Rome treaty. In return for this cooperation, the ICC gives the Security Council the power to stay a prosecution for a year when certain global interests are at stake.

The ICC statute holds sitting heads of state and top generals criminally liable for heinous crimes, which means that the junta perpetrators are exposed to liability now. This is in line with international legal norms, which also hold immunity or amnesty provisions invalid for perpetrators of “jus cogens” crimes, the most serious of all crimes such as war crimes or genocide. For decades the junta has flouted all attempts by the U.N. to “engage,” ignoring

some 28 General Assembly resolutions, including those which called for an independent investigation of such crimes as the Depayin massacre and the rapes by the military of ethnic women. General Ibrahim Gambari is on his fourth trip to Burma since 2006, and there have been some six previous envoys, the first in 1990 nearly 18 years ago.

Nothing has changed and it is time to get real. The Global Justice Center is determined that the equality guarantees of SCR 1325 move from a promise to a pledge and from so-called “soft” international law to becoming a strong legal tool to enforce women’s rights. Crimes perpetrated by the Burmese military leaders should not be buried under the rubric of “human rights violations,” but called what they are—war crimes or other international crimes.

## **V. Conclusion**

In 1948 the Declaration of Human Rights recognized the inherent “dignity and the equal inalienable rights of all members of the human family” as foundational to freedom, peace and justice. SCR 1325 is a renewed commitment to these principles and a call to put principles into action. The U.N. declaration speaks of “acts, which shock the conscience of mankind.” It is those acts which women in Burma suffer daily. Just as women have become the pawns of war, they must not be the pawns of “peace.” We, sitting here, are the “conscience of mankind” and must act to help those held by their own government. U.N. membership is not a grant of criminal immunity.

All of us must ensure that our Representatives, the 15 member states on the Security Council, end the appeasement of Burma with a Resolution ensuring criminal

**accountability. SCR 1325 should ensure that the rights of the women of Burma—and women globally—under the U.N. Charter triumph and are not trumped by lack of courage, failure of will, apathy, or geopolitical concerns.**

*Sources Available Upon Request*