

September 14, 2012

The Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State 2201 C Street NW
Washington, D.C. 20520

By e-mail and U.S. mail

RE: Support for a General Assembly Request to the International Court of Justice for an Advisory Opinion on Burma's constitution

Dear Madam Secretary,

First, let me again express my appreciation for your thoughtful replies to my earlier letters regarding international law and the United States policy on Burma. Following up on my April 6, 2012 letter to you and Mr. Posner, I ask that United States take leadership on reform of Burma's 2008 constitution - now is a critical time for the United States to ensure a stable path to democracy in Burma. To this effect, we request that you consider having the United States sponsor a General Assembly resolution requesting an advisory opinion from the International Court of Justice (ICJ) on the legality of provisions of Burma/Myanmar's constitution under international law. We have also requested that the EU and Norway support such a General Assembly resolution.

Daw Aung San Suu Kyi and the National League for Democracy have made clear that constitutional reform is their number one priority, but without international support it is unclear how this can happen. This is because the constitution cannot be amended without military consent - amendments require more than a 75% vote and at least 25% of parliamentary seats are reserved for the military. *Therefore, actions taken at the international level on the constitution, such as an advisory opinion from the ICJ, will work to support and assist the efforts of Burmese democracy activists on the ground.*

Further to this point, the Secretary General's 2012 report on the Rule of Law recommends that the General Assembly, Security Council and other U.N. Organs, "commit themselves to making greater use of their ability to request advisory opinions from the ICJ" because it can act to increase the "legitimacy of their actions" (A/66/749).

Burma has repeatedly ignored recommendations that it review the 2008 constitution under international law, including two requests by the UN General Assembly (A/RES/65/241 December 24, 2010 and A/RES/66/230 December 24, 2011). The constitution, implemented on January 31, 2011, removes all power over the military from the civilian government. Thus, unlike any member state of the U.N., the government headed by President Thein Sein, has no legal ability to enforce any laws on the military, including Burma's most fundamental international legal obligations, under the U.N. Charter, Chapter VII Security Council resolutions on nuclear issues, and the Genocide and Geneva Conventions. Special Rapporteur Quintana has raised explicit concerns about the issue of the lack of civilian control over the actions of the military under the constitution, including in his latest report (A/HRC/19/67).


I would be happy to provide any additional information on this, including draft language.

Finally, to my great delight, I am planning to meet with Ambassador Mitchell in Rangoon in December!

Thank you for your consideration of this matter. You are doing a spectacular job and you make me and other Americans very proud.

Best regards,

Janet

A handwritten signature in black ink, appearing to read "Janet", written over a large, light-colored scribble or background mark.

CC: Michael Posner, Assistant Secretary of State for Democracy, Human Rights and Labor (DRL)