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### BRIEFING NOTES

## MYANMAR AND THE UN SECURITY COUNCIL September 23, 2005

### 1. Time for the UN Security Council to Intervene

Intense pressure from ASEAN led to Myanmar's decision to relinquish its turn at the organization's chairmanship in 2006 during the ASEAN Ministerial Meeting in Laos in July. It was a small but important victory for the AIPMC which, since inception in November 2004, has consistently argued that Myanmar's military junta lacked the credibility and competency to lead ASEAN. It also showed that peer pressure worked while constructive engagement – ASEAN's disastrous eight-year long experiment in appeasement – had achieved nothing for regional stability and cohesion, and even less for self-determination of the long-suffering people of Myanmar.

It is time for ASEAN to come up with a fresh strategy that will deliver results. Myanmar's military regime, the SPDC, clearly responds to pressure. A strategy that applies consistent diplomatic and political pressure will be even more effective if it is led by ASEAN. Otherwise the SPDC will continue to flout its own promises for the commencement of genuine political reforms, national reconciliation, and the release of political prisoners including democracy leader Daw Aung San Suu Kyi. Myanmar's problems will continue to pose a threat to the region.

On September 20, a groundbreaking report jointly commissioned by former president of the Czech Republic Vaclav Havel and South African Nobel Peace Prize Laureate Bishop Desmond Tutu called for an urgent, new, and multilateral diplomatic initiative at the UN Security Council to bring about change in Myanmar.<sup>1</sup>

This is an appeal the AIPMC feels compelled to support. The 70-page report's findings detail what we have been saying all along: the deteriorating situation in Myanmar is impacting not only those within the country but people outside its borders as well. Quite apart from its truly disgraceful human rights record, Myanmar's troubles – ranging from ethnic conflicts and refugee outflows to drugs and the unchecked spread of HIV/AIDS – are becoming a serious cause for concern for ASEAN and the international community.

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<sup>1</sup> DLA Piper Rudnick Gray Cary, *Threat to the Peace: A Call for the UN Security Council to Act in Burma*, 20 September 2005

The urgency of the situation cannot be underestimated. It must be raised at the highest levels of governments, regional organizations and the United Nations now. The inclusion of Myanmar on the Security Council's agenda is essential to ensure such diplomatic efforts are effective. Diplomatic interventions by the UN secretary general Kofi Annan and his special envoy Razali Ismail have so far been resisted by the SPDC largely because they were not backed-up by the weight of a Security Council resolution.

In fact, the regime has successfully ignored and humiliated the United Nations system for years. Their refusal to fully heed the efforts of several special envoys, the UN General Assembly, the UN Commission on Human Rights, and the secretary general's diplomacy demands that something new and altogether much stronger from the world body is required. Charged with the mission of maintaining peace and security, the UN Security Council has the authority to make binding decisions that will add weight to the various UN initiatives.

The proposal has since received support from many parties including the National League for Democracy which won the 1990 elections in Myanmar. It is also consistent with the repeated calls from ASEAN for the SPDC to work with the UN secretary general's office to bring about change in Myanmar. Since the regime has snubbed ASEAN and refuses to listen, this move will strengthen ASEAN's calls because it will demand the regime follow the norms of regional and international diplomacy. While AIPMC does not support military intervention, it welcomes the pressure for change that the Security Council will bring to bear on the SPDC.

The AIPMC would support resolutions at the Security Council that require the SPDC to work with the UN secretary general's office to formulate a plan for national reconciliation to mitigate Myanmar's threat to international peace and security. Such a resolution should also require that the secretary general make periodic progress reports to the Security Council to gauge the progress made.

We urge ASEAN governments not only to support the move but, as Myanmar's closest neighbours, to lead this multilateral effort to help bring about change there. As the report points out, the situation in Myanmar is far worse than in countries where the Security Council had previously decided to act such as Sierra Leone, Yemen and Haiti.

We cannot afford to wait any longer. Political instability in Myanmar continues to threaten regional security and cohesion. Since the deferment of the ASEAN chair in July, rumors that head of the SPDC Sr Gen Than Shwe had been ousted in a coup refused to subside despite official denials. One result had been a 30% depreciation in Myanmar's currency, the kyat, to 1,300 kyats per US dollar exacerbating rampant inflation and hardship to the people.<sup>2</sup>

Our sentiments are articulated capably by Bishop Tutu, who stated "Quiet closed-door meetings among countries in New York are no longer enough. They have failed...It is time for the UN Security Council to act. In fact, it is past due... If governments want to talk about the situation in Burma (Myanmar), the time is now and the venue is the Security Council."<sup>3</sup>

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<sup>2</sup> Irrawaddy, *Kyat plummets as coup rumors persist*, 20 September 2005

<sup>3</sup> DLA Piper Rudnick Gray Cary, *President Vaclav Havel and Bishop Desmond M Tutu Call on UN Security Council to Intervene Immediately in Burma*, 20 September 2005

## 2. The Basis for an Intervention

Under Article 39 of the UN Charter, the Security Council has the sole authority to “determine the existence of any threat to the peace, breach of peace, or act of aggression.” Action by the council can include the adoption of simple and clear resolutions requiring action on the part of the offending government or group to curtail its aggressive or threatening acts, sanctions against the perpetrating government or group, or the authorization of a UN peacekeeping force to enter the territory.

The Havel/Tutu-commissioned report<sup>4</sup> found that although the Security Council takes a case-by-case approach in deciding on its interventions, there is a set of factors which the council considers in deciding situations that constitute a “threat to the peace.” These factors include: (1) the overthrow of a democratically-elected government; (2) conflict among governmental bodies and insurgent armies or armed ethnic groups; (3) widespread internal humanitarian/human rights violations; (4) the substantial outflow of refugees; and (5) other cross-border problems (for instance, drug trafficking).

All the cases of internal conflict in which the Security Council had been engaged – Sierra Leone, Afghanistan, Yemen, Haiti, Rwanda, Liberia and Cambodia – have included some of these factors. But Myanmar was unique in that all five factors were present and, in some cases, were far more serious than the other countries. The report highlighted the following:

► *Overthrow of Democratically-Elected Government:* A military regime overthrew the democratically-elected government in 1962. In 1990, the military regime permitted elections to take place. The result: the National League for Democracy (NLD) became the democratically-elected government, winning more than 80 percent of the seats in Parliament. The NLD was never permitted to take power and NLD members have since been harassed, jailed, and murdered. NLD leader Aung San Suu Kyi has remained under house arrest since 1990 with only intermittent periods of release.

► *Conflict Between Central Governments and Ethnic Factions:* Serious, protracted fighting between the SPDC and various ethnic groups seeking autonomy and freedom from oppression has been consistent and ongoing, even in areas where non-binding ceasefire agreements have been made.

► *Widespread Internal Humanitarian/Human Rights Violations:* The SPDC has committed grave, systematic, and widespread human rights abuses against the people in Myanmar, including violations similar to but even worse than in other cases previously considered by the Security Council. Some violations that are unique to Myanmar, or particularly pervasive, include the destruction of more than 2,700 villages since 1996, massive forced relocations, rape of ethnic minorities by SPDC soldiers, and widespread forced labor. As many as 70,000 children have been forced to become soldiers by the regime—more than in any other country in the world. Additional violations include the denial of political rights and free speech, harassment of political activists, torture, and murder.

► *Outflow of Refugees:* Almost 700,000 refugees have poured out of Myanmar in recent years as a result of the grave conditions created by the regime. The government is responsible for a

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<sup>4</sup> DLA Piper Rudnick Gray Cary, *Threat to the Peace: A Call for the UN Security Council to Act in Burma*, 20 September 2005

decline in the economic situation so alarming that Myanmar is now one of the poorest countries in the world, providing its people little or no access to health care or education.

► *Drug Production and Trafficking*: Myanmar is one of the world's leading producers of heroin and amphetamine-type stimulants. The trafficking and use of these drugs are of enormous concern to the international community and to the region particularly.

### **3. Myanmar Flouts the UN and International Community**

A great deal of time, effort and resources have been spent by ASEAN and the international community to try and gently prod Myanmar towards democratic reform. The SPDC has rebuffed the goodwill and quiet diplomacy, with total disregard to the damage its misbehavior has caused to its ASEAN neighbors and the international community.

- In return for ASEAN's friendship and understanding, Myanmar's contributions have come in the form of key meetings with dialogue partners being usurped or distracted by Myanmar's continued misbehavior; failure to deliver on empty promises; standing by while ASEAN members embarrass themselves by publicly defending Myanmar based on those promises; and increased regional repercussions in the form of refugees, narcotics, HIV/AIDS and weapons.
- At the same time that the military regime espouses its respect of and full participation in the UN, they have denied the secretary general's special envoy to Myanmar, Razali Ismail and Special Rapporteur on Human Rights, Paulo Sergio Pinheiro's requests to visit Myanmar for more than one year.
- The UN General Assembly and UN Committee on Human Rights have consistently called on the Myanmar junta to honor the results of the 1990 elections and to end the human rights abuses and military hostilities throughout the country.
- More than 20 times since November 2002, the UN secretary general Kofi Annan has expressed serious concern about the lack of progress towards democratization and national reconciliation in Myanmar, including the release of Aung San Suu Kyi. In Annan's April meeting with Sr-Gen Than Shwe he encouraged the general to open up and allow the NLD to play a political role.<sup>5</sup>
- In February the SPDC refused to cooperate with the ILO very High Level Team and the mission was terminated early. Since 1991, the International Labor Organization (ILO) has deemed Myanmar to be in violation of its Convention of standards. The issue of forced labor in Myanmar is so severe that it has been called a 'modern form of slave labor' and the ILO took the unprecedented action to invoke Article 33, putting the Myanmar Government at risk for potential economic sanctions by all ILO members.<sup>6</sup>
- Despite the strong disapproval of the International Atomic Energy Agency (IAEA), the Myanmar Government moved forward to acquire a nuclear reactor and nuclear technology from North Korea. In addition to legitimate concerns about the intended use

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<sup>5</sup> AFP, *Annan offers UN help to restore democracy in Myanmar*, 28 April 2005

<sup>6</sup> International Labour Organization, *International Labor Conference adopts Resolution targeting forced labor in Myanmar (Myanmar)*, 14 June 2000

of the reactor, the IAEA found that the safety, health and environmental standards were “well below the minimum the body would regard as acceptable.”<sup>7</sup>

- Since 1996 the Inter-Parliamentary Union (IPU), has called for democratic transition and has supported the results of the 1990 elections. In the most recent resolution on 8 April 2005, the IPU “calls upon the authorities to engage in a genuine dialogue with those who were elected in the 1990 elections and represent the people.”<sup>8</sup>
- In 2000, 3,285 parliamentarians from 94 countries, including 131 MPs-elect from 5 ASEAN countries, signed the ‘Declaration of Members of Parliaments throughout the World in Solidarity with the Democratically Elected Members of Parliament of Myanmar.’ The Declaration calls for the rights of elected MPs in Myanmar to convene Parliament, the release of imprisoned MPs and the end to human right violations in Myanmar.<sup>9</sup>

**For more than 12 years, various sections of the United Nations system have been trying to promote democratic transition, reconciliation, and respect for human rights in Myanmar. Since 1991-92, the UNCHR and UNGA resolutions said, “despite the assurances given at various times that it [Government of Myanmar] would take firm steps towards the establishment of a democratic State, has not to this day fulfilled those commitments.”**

*Summary of UN Interventions on Myanmar*

- ◆ **Since 1991, Myanmar has been cited as in violation of International Labor Organization standards for forced labor and Freedom of Association.**
- ◆ **Since 1991, the UNCHR has adopted by consensus annual resolutions on the situation of human rights in Myanmar expressing ‘grave concern’.**
- ◆ **United Nations General Assembly has adopted by consensus 13 consecutive resolutions calling for democracy in Myanmar.**
- ◆ **UN Secretary General has produced annual reports since 1995 expressing concern over the situation in Myanmar.**
- ◆ **Secretary General’s Special Envoy for Myanmar, Razali Ismail (Malaysia) began his mission in June 2000 and has made 12 trips to Myanmar.**
- ◆ **The Special Rapporteur on the situation of human rights in Myanmar Paulo Sergio Pinheiro (Brazil) began his mandate in 2001 and has made 6 fact-finding missions to Myanmar.**
- ◆ **UN Assistant Secretary-General for East Asian affairs Alvaro de Soto (Peru) visited Myanmar 5 times between May 1997 October 1999.**
- ◆ **1997-2000 Mr. Rajsoomer Lallah (Mauritius) was the Special Rapporteur on the situation of human rights in Myanmar. The regime never permitted him to enter Myanmar.**
- ◆ **1992-96, Dr. Yozo Yokota (Japan) was the Special Rapporteur on the situation of human rights in Myanmar.**
- ◆ **11 UN Special Rapporteurs have submitted inquiries of concern to the SPDC and UN, most of which the SPDC has failed to acknowledge, let alone respond to.**

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<sup>7</sup> Selth, Andrew, *Myanmar’s North Korean Gambit: A Challenge to Regional Security?*, Australian National University, Strategic and Defence Studies Centre, Canberra Papers on Strategy and Defence No. 154, March 2004

<sup>8</sup> Inter-Parliamentary Union Governing Council 176<sup>th</sup> Session, *Human Rights of Parliamentarians: Myanmar Resolution unanimously adopted by the IPU Governing Council*, Manila, 8 April 2005

<sup>9</sup> National Coalition Government of the Union of Myanmar, *MP Campaign Update*, 8 December 2001 available online [www.ncgub.net](http://www.ncgub.net)

## 4. Regional Implications

ASEAN has been on the receiving end of the Myanmar regime's misdeeds. Not only is the credibility and integrity of ASEAN being tarnished by the negative attention cast by their behavior, many of its members are being affected by the problems that have spilled across the Myanmar border that include the influx of refugees, narcotics, HIV/AIDS and weapons. These are having a serious on regional security and stability. The junta's collusion with drug traffickers and weapons dealers illustrate that the government directly contributes to this insecurity.

- Myanmar's neighbors struggle with the influx of millions of people fleeing Myanmar as a direct result of civil war, forced relocation and eviction, land confiscation, political suppression, forced conscription, human rights abuses, and gross economic mismanagement. At the end of 1997, there were about 210,000 Myanmar refugees and asylum seekers throughout the region, with 130,000 of them in Thailand.<sup>10</sup> Now the region houses over half a million refugees from Myanmar and Thailand alone holds over 335,000 – more than doubling both of these figures. In 1996, the year before Myanmar became a member of ASEAN, Thailand housed 300,000 migrant workers from Myanmar. During the 2004 migrant registration process in Thailand, 906,000<sup>11</sup> people from Myanmar were registered - and this figure does not account for the unregistered, which some estimates consider could double the figure. Furthermore, it is estimated that there are more than a million Internally Displaced Persons (IDPs) in Myanmar, with more than 630,000 living directly adjacent to Thailand.<sup>12</sup> All IDPs are potential refugees. Until a lasting solution is found to these causes, people will continue to leave Myanmar and seek refuge in other countries, despite the tough policies and abuses they often face there. This pattern can create problems in the region in terms of undocumented migrants, human trafficking, excess labor, public health, drug trafficking, and education.
- The May 7 bombings in Rangoon, where one of the locations featured a Thai trade exhibition, underscore the instability in Myanmar and the resentment against military rule. Thai Prime Minister Thaksin Shinawatra was 'surprised' by and rejected accusations by the SPDC that Thailand harbored those responsible for the bombings in Rangoon.<sup>13</sup> Such allegations are unfriendly, unfounded and have serious implications internationally.
- Political instability in Myanmar continues to threaten regional security and cohesion. Since the deferment of the ASEAN chair in July, rumors that head of the SPDC Sr Gen Than Shwe had been ousted in a coup refused to subside despite official denials. One result had been a 30% depreciation in Myanmar's currency, the kyat, to 1,300 kyats per US dollar exacerbating rampant inflation and hardship to the people.<sup>14</sup>
- The Myanmar government's refusal to meaningfully address the massive problem of ATS production and trafficking has had serious and costly implications for neighboring countries. The Thai government has tried to crack down on the production and trafficking of ATS along the Thai-Myanmar border. The result has been that some ATS productions

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<sup>10</sup> US Committee for Refugees and Immigrants, *World Refugee Survey 1998 Country Report*, 1998

<sup>11</sup> Jesuit Refugee Service, *Life of Migrants after Registration*, January 2005

<sup>12</sup> U.S. Committee for Refugees, *Worldwide Refugee Information Country Report: Myanmar*, 2002 & Released by an organization in Thailand, *Internally Displaced People and Relocation Sites in Eastern Myanmar*, September 2002

<sup>13</sup> Bangkok Post, *PM: We do not abet terrorism*, 17 May 2005 & Nation (Thailand), *Finger-pointing 'surprises' PM*, 17 May 2005

<sup>14</sup> Irrawaddy, *Kyat plummets as coup rumors persist*, 20 September 2005

have been moved along the Laos-Myanmar border, increasing the flow of amphetamines into Laos.<sup>15</sup> In 2003, seizures of ATS in Cambodia increased by 50%.<sup>16</sup> Unless the production of ATS is stopped in Myanmar, Cambodia will face substantial challenges addressing the issue.

- In mid-April 2005, it was reported Third Army commander Lt-Gen Picharnmet Muangmanee wanted to halt anti-narcotics development assistance to the Doi Tung Royal Project in the ethnic Wa area, totaling more than 50 million baht (US\$1,282,051) because opium cultivation persists. Prime Minister Thaksin indicated that the assistance would continue.<sup>17</sup>
- The SPDC is either permitting or assisting the United Wa State Army, the largest criminal narcotics gang in the world, to attack the Shan State Army (South). If the UWSA acquires SSA territory they will have unprecedented access via proximity to traffic drugs to Thailand.<sup>18</sup> It is thought that in April consignments totaling 1.4-2 tons of heroin and 14-30 million methamphetamine pills were shipped down to the Thai border waiting to be trafficked into Thailand.<sup>19</sup>
- The attack by the UWSA on the SSA-S on April 12, 2005, resulted in more than 30 shells falling inside Thai territory near the village of Mai Lan, thus risking the safety of Thai civilians.<sup>20</sup>
- The SPDC refuses to extradite Thai fugitive and amphetamine king Surachai 'Bang Ron' Ngernthongu who has found refuge in Myanmar since late 1998. He is known to have continued his narcotics trafficking.<sup>21</sup>
- Christian Solidarity Worldwide has raised concerns that the Myanmar Army used chemical weapons on attacks against Karenni opposition forces in February 2005. The location of the fighting was close to the Thai-Myanmar border. If chemical weapons are used along the border, the safety of Thai citizens against the effects of the chemicals cannot be assured.<sup>22</sup>
- The Myanmar regime's secretive relationship with North Korea, including the movement of narcotics, weapons and technology for a nuclear reactor, is a source of great concern for the region.

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<sup>15</sup> Charoenpo, Anucha, *Shan plants move to Laos to dodge law*, Bangkok Post, 23 June 2003

<sup>16</sup> Bangkok Post, *UN report warns of growing drug trade*, 30 June 2004

<sup>17</sup> AFP, *Myanmar opium crop eradication continues: UN*, 21 April 2005 & Bangkok Post, *PM wants farm projects in Myanmar to continue*, 20 April 2005

<sup>18</sup> Shan Herald Agency for News, *Junta: From forced labor to forced submission*, 6 May 2005 & Shan Herald Agency for News, *Wa bucking up for new showdown*, 9 May 2005 & Nation (Thailand), *Clash between Burmese army, Shan rebels intensifies near Thai border*, 18 April 2005

<sup>19</sup> Shan Herald Agency for News, *Wa bombards Shan positions*, 12 April 2005

<sup>20</sup> Shan Herald Agency for News, *Wa bombards Shan positions*, 12 April 2005

<sup>21</sup> Bangkok Post, *Rangoon Makes A Curious Choice to Host Drug Talks*, 9 February 1999 & Nanuam, Wassana, *Bang Ron reported to be with Red Wa Army*, Bangkok Post, 29 December 1998

<sup>22</sup> CNN, *Myanmar 'used chemicals' on rebels*, 21 April 2005

- Myanmar is named by the Financial Action Task Force (FATF) as one of three non-cooperative countries in combating money laundering, which is strongly associated with the narcotics trade.<sup>23</sup>

(ENDS)

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<sup>23</sup> Financial Action Task Force, *FATF Welcomes China As An Observer (includes updates on NCCT)*, Paris, 11 February 2005