

Any government that abdicates its core duties to its own people should have no credible voice as the representative of those same people to the international community.

by

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At long last, the military junta that controls Burma has agreed to allow international aid into the areas devastated by Cyclone Nargis. From recent reports, outsiders may assume that the lobbying of UN Secretary-General Ban Ki Moon convinced the regime to relent and grant a reprieve in its repression of the Burmese people. Yeah right.

Tan Shwe heads a regime whose mendacity is exceeded only by its pathological quest to retain power. Even the name of the junta, the State Peace and Development Council (SPDC), is dishonest on its face, as its record demonstrates an utter disregard for the welfare of the Burmese people. When the World Food Program sent in thirty-eight tons of food in the immediate aftermath of the disaster, the SPDC impounded the supplies. That first reaction should have the most instructive evidence of the priorities of the junta, but there was much more to come. Relief supplies sent from Canada, the United States, Australia, and France have all been impeded or impounded.

Even as bodies still hung in trees, desperate survivors were sent rotting rice while the state controlled company continued to export rice. Burmese volunteers operating private aid missions report that government officials misappropriated aid supplies and sold them at local markets; in other areas a trickle of aid flows through only because local officials demanded cash bribes to stop their interference.

There have been reports that the regime hastily established immigration control checkpoints on key access routes to prevent unauthorized foreigners from delivering aid. Medical experts agree that the lack of clean water will soon cause a tsunami of secondary deaths as people succumb to dehydrating diarrheal disease and cholera. International assistance could easily address these problems.

Writing in the seventeenth century, Dutch scholar Hugo Grotius concluded that a state cannot conduct "atrocities against its subjects which no just man can approve." Unless the junta allows unfettered humanitarian access immediately, the casualties from this manmade disaster will top those from the natural disaster. Common sense and the interests of humanity dictate a strong reaction from the international community against the unconscionable interference of the

SPDC leadership. If there were ever a time for deeds to replace the polite rhetoric of international dialogue, the mounting death toll and daily suffering inside Burma compels urgency. ASEAN has demonstrated its impotence in confronting the regime. Other nations keep the channels of commerce open with the regime to suit their own interests. Frustrated outsiders decry the actions of the junta as a crime against humanity and call for the United Nations Security Council to refer the situation to the International Criminal Court in The Hague. Unconscionable conduct is not necessarily illegal. Amidst the cries to use the threat of ICC prosecution as a political lever, there has been a notable absence of specific mention whether international law would support such a charge.

In fact, while such charges would break new ground, the current corpus of the law could sustain such prosecutions. The quintessential function of human government is to protect its people and, in the words of Thomas Aquinas foster "the unity and peace of the people." The law of crimes against humanity represents the twentieth century incarnation of Grotius' ancient principal. Government officials who sustain a widespread or systematic campaign to intentionally cause "great suffering, or serious injury to the body or to the mental or physical health" of the civilian population commit the crime against humanity of inhumane acts. The government cannot convincingly claim ignorance of the conditions inside the Irrawaddy delta, and the evidence of direct governmental deprivation of urgently needed assistance is overwhelming.

The Iraqi High Tribunal sustained convictions for the crime against humanity of inhumane acts against government officials who deprived citizens of their homes and sustenance by razing over 5000 acres of date palm groves and orchards. The Iraqi regime bulldozed the fertile land as retribution against the people of the area. According to the case law of the Yugoslavia Tribunal, the crime of other inhumane acts was "designed as a residual category, as it was felt undesirable for this category to be exhaustively enumerated. An exhaustive categorization would merely create opportunities for evasion of the letter of the prohibition."

Any tribunal examining the actions of the SPDC could logically extrapolate from the Iraqi example and conclude that the government knowingly facilitated the deprivation of relief on a systematic basis. The humanitarian catastrophe and its attendant suffering is the epitome of inhumane acts at the hands of the very officials whose foremost moral obligation should be to ameliorate suffering. In the

end, even the possibility of prosecution may not be enough to open the floodgates of relief. The ICC would find it nearly impossible to develop the evidence needed to support prosecution against specific SPDC officials, and even then would be forced to feebly ask for them to be surrendered for prosecution. The best course of action is to revoke the credentials of the SPDC in the upcoming General Assembly this fall. Any government that abdicates its core duties to its own people should have no credible voice as the representative of those same people to the international community. The SPDC should have no friends in court.

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