

# SECURITY COUNCIL



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United Nations Peacekeepers, joined by the members of the Patriotic Force of Resistance (FRPI), welcome the announcement of the signing of the disarmament agreement with the representatives of the government of the Democratic Republic of the Congo and the United Nations Mission in the Democratic Republic of Congo.

There have been a number of noteworthy developments in the work of the Security Council (the Council) this year, ranging from a new mandate for the UN's assistance mission in Afghanistan that encourages Afghans to take charge of running their country, to a more concerted effort to enforce the arms embargo in Somalia. However, serious human rights concerns have arisen on two fronts, which are elaborated below. The first concerns the Council's failure to take action in response to Myanmar's 'unfair' electoral process. The second stems from increasing pressure on the Council from some African States to prematurely withdraw UN peacekeepers. Both developments raise concerns about the ability and willingness of the Council to ensure the protection of civilians where there are threats to international peace and security.

## Security Council fails to respond following informal briefing on Myanmar

The Security Council met in an informal briefing on 24 March to discuss the situation of Myanmar<sup>1</sup> following the Government's recent adoption of five electoral laws.<sup>2</sup> The UK, the main advocate for greater Security Council involvement in Myanmar (supported by France, the US, and Austria), pushed for the meeting to signal the Council's concern about the new laws, one of which would disqualify opposition leader Ms Aung San Suu Kyi from participating or voting in the elections.<sup>3</sup>

China, who along with the Russian Federation voted against Myanmar's original placement on the Council's agenda in 2006,<sup>4</sup> agreed to an informal briefing as long as no immediate outcome resulted. Consequently, following the briefing, the Council remained silent on the new electoral laws. This was despite the fact that both the Secretary-General and the Human Rights Council<sup>5</sup> have said the laws fall well short of international expectations regarding free and fair elections, and the Council itself has previously stated that an inclusive process is crucial to ensuring a credible election outcome.<sup>6</sup>

<sup>1</sup> This was the first time the Council had addressed questions relating to Myanmar since August 2009.

<sup>2</sup> The first general elections in Myanmar in twenty years will be held in 2010 though the Government has not yet announced an exact date.

<sup>3</sup> The laws, announced on 10 March, relate in part to the registration of political parties, and prohibit anyone with a criminal conviction from being a member of an official party, thus preventing political prisoners from participating in future national elections, including Aung San Suu Kyi, the leader of the National League for Democracy (NLD). In response the NLD decided to boycott the elections.

<sup>4</sup> China and Russia also vetoed a resolution concerning the human rights situation in Myanmar in 2007.

<sup>5</sup> A/HRC/13/L.15.

<sup>6</sup> S/PRST/2008/13; S/PRST/2007/37; SC/9731 (13 August 2009); SC/9662 (22 May 2009); SC/9228 (17 January 2008); SC/9171 (14 November 2007). Other expectations laid out in these documents include: the importance of releasing all political prisoners, the need for the government to take

During the closed briefing, the Secretary-General's chef-de-cabinet and 'interim' envoy on Myanmar, Mr Vijay Nambiar, briefed the Council on recent developments, including the rejection of Ms Suu Kyi's appeal against her extended house arrest and the new electoral laws. Significantly, Mr Nambiar also presented the report of the UN Special Rapporteur on the situation of human rights in Myanmar, Mr Tomas Ojea Quintana, who visited the country in February.<sup>7</sup> Given that the interim envoy only took up the post in January and is yet to visit Myanmar,<sup>8</sup> the consideration of the Special Rapporteur's report was a crucial opportunity for Council members to obtain up-to-date and reliable information on the situation.

The Special Rapporteur suggested that some human rights violations may amount to crimes against humanity or war crimes and as such, warranted referral to the International Criminal Court.<sup>9</sup> Given the Government's failure to investigate these 'gross and systematic' violations, he further recommended the UN consider establishing a Commission of Inquiry (COI) with a fact-finding mandate to investigate. The Council is unlikely to set up such a commission in the near future given China's stance, and it is not even clear if Council members referred to or discussed this recommendation during the closed consultations.

The divisions in the Council on the best way to respond to the new developments reflect long-standing differences among the permanent five members about when the Council should act in Myanmar and what particular actions would positively influence the Government. One unresolved issue is whether the situation in Myanmar is a threat to regional or international peace and security, which is the threshold for triggering Council action. The UK views a flawed election process as a precursor to instability in the country and thus a potential threat to regional peace and security. China, supported by the Russian Federation, both of which have economic interests in the country, steadfastly maintain that no such threat exists and, moreover, assert that any attempt by the Council to weigh in on the electoral process would impinge on Myanmar's sovereignty. China also maintains that Council rebukes only hamper diplomatic efforts carried out through the Secretary-General's good offices, despite the fact that scant progress has been made through this route in the last few years.<sup>10</sup>

measures to create the necessary conditions for a genuine dialogue with Ms. Suu Kyi and all concerned parties and ethnic groups to achieve an inclusive national reconciliation, and calling on the government to address political, economic, humanitarian and human rights issues.

<sup>7</sup> A/HRC/13/48.

<sup>8</sup> It is unclear if or when the Secretary-General will appoint a dedicated envoy, rather than an interim person who has many other responsibilities. Although the US and UK appear supportive of Mr. Nambiar, the appointment of a new envoy would signal a serious commitment by the Secretary-General at a time when Myanmar is at a critical juncture.

<sup>9</sup> The Security Council has the authority to refer a country to the ICC for investigation if mass atrocity crimes are alleged.

<sup>10</sup> The Secretary-General has expressed disappointment with recent efforts, including his own, saying in March that it was "frustrating"

Following the Council briefing, the Secretary-General met in a closed-door meeting with the Group of Friends on Myanmar<sup>11</sup> on 25 March. Afterwards he urged the Government to 'create conditions that give all stakeholders the opportunity to participate freely in elections' and said that the Group believed inclusive elections were necessary to advance the prospect of stability, democracy and development in Myanmar. However he gave no indication of how the Group or the Council would help achieve this.

Meanwhile, the Government of Myanmar continues to ignore a myriad of expectations set out in previous Council statements. Instead of stepping up pressure with a strongly worded Council resolution, China and the Russian Federation prefer to refer the situation 'back' to the Human Rights Council. However Myanmar's track record in this forum is also appalling, as reflected by its open rejection of resolutions on the human rights situation and strained relations with the Special Rapporteur.

It is unclear what level of involvement the Council will undertake in the next few months. The setting of the date for the general election or a visit by the interim envoy to the country could be the triggers for another briefing. It will hopefully not be another opportunity lost by the Council to ensure Myanmar lives up to its international responsibilities.

### Civilians at risk: DRC and Chad request withdrawal of UN peacekeeping missions

The recent requests by two African States - the Democratic Republic of Congo (DRC) and Chad - for the drawdown and/or withdrawal of the UN peacekeeping missions (MONUC<sup>12</sup> and MINURCAT<sup>13</sup> respectively) poses a considerable challenge for the Council this year. The Council needs to respond to the host countries' wishes while ensuring that any phasing out of peacekeeping staff or troops does not undermine each mission's mandate to protect civilians.

and "disappointing" that the country's military leader had not yet implemented commitments he made during their meeting in July 2009 including the release of political prisoners and Ms Suu Kyi. The UN news story, 25 March 2010, is available at [www.un.org/apps/news/story.asp?NewsID=34201&Cr=myanmar&Cr1=](http://www.un.org/apps/news/story.asp?NewsID=34201&Cr=myanmar&Cr1=)

<sup>11</sup> The group comprises the five permanent members of the Council plus Australia, India, Indonesia, Japan, Norway, Singapore, South Korea, Thailand, Vietnam and the European Union. It was set up by the Secretary-General in December 2007 as a forum for informal discussions and for developing shared approaches to back UN efforts to promote democracy and national reconciliation in Myanmar.

<sup>12</sup> The UN Mission in the Democratic Republic of Congo (MONUC) was established in 1999 to monitor the Lusaka Ceasefire Agreement. Over the past decade, it has evolved through multiple phases in response to changing conditions in the DRC. Based on agreements with the DRC Government, the UN envisaged a progressive withdrawal over three years.

<sup>13</sup> The UN Mission in the Central African Republic and Chad (MINURCAT) was established in 2007 to ensure the security of about 450,000 refugees and displaced persons in eastern Chad and north-east Central African Republic. It was originally envisaged that it would be required until at least 2011.

In 2009, the Government of the DRC requested that the Security Council order MONUC's withdrawal by August 2011, with the first troop departure to precede the country's celebration of 50 years of independence in June this year. Chad originally requested that the Council not renew MINURCAT's mandate past March, however more recently they agreed to keep the civilian part of the mission, providing the military component withdrew.

Rather than being based on a realistic assessment of actual conditions, both requests appear politically motivated. National multiparty elections will be held in the DRC in 2011, and legislative elections in Chad this year. Chad also argues that its request is based on 'the new context in the region' including an improved relationship with the Sudan, and a stronger capacity of the national police force to provide security in eastern Chad.<sup>14</sup> Both these claims are contested by human rights groups.<sup>15</sup> On 15 March, the Council unanimously authorised a two-month extension of MINURCAT to provide more time for members to discuss the options.<sup>16</sup>

The Council plans to take action on the DRC at the end of May when MONUC's mandate expires, and following a Council mission to the DRC in April. In his March 2010 report on the DRC, the Secretary-General recommended the Council withdraw up to 2,000 troops by 30 June 2010, which Council members appear united in supporting, so long as the withdrawal is responsibly undertaken and does not put civilians at risk. However, divisions may arise during negotiations on a new resolution depending on the intransigence or flexibility of the Government's position.<sup>17</sup>

Both peacekeeping missions provide vital support for protection of civilians, security sector reform, and defending against human rights abuses. In the DRC, some Council members have expressed concern that MONUC's departure would leave a security vacuum in the highly unstable east, where the Democratic Forces for the Liberation of Rwanda (FDLR) and Lord's Resistance Army (LRA) remain active, and where MONUC is supporting national army forces fighting these rebel groups.<sup>18</sup> Moreover, members of the national army and police force have been criticised for committing serious human rights violations with impunity, including summary executions, sexual violence, torture and ill-treatment.<sup>19</sup> In Chad, a central

concern is the security and welfare of thousands of refugees and internally displaced persons, who would be placed at risk if UN peacekeepers left. Humanitarian aid groups and UN staff working on critical rule of law programmes would also be unable to operate without MINURCAT's protection.

The timing of any drawdown presents a serious dilemma for the Council. Some members have expressed concern that any gains will be lost in a premature withdrawal, and do not want arbitrary deadlines imposed. The Secretary-General has laid out key benchmarks for withdrawal of both peacekeeping missions in his reports to the Council. In his March report on the DRC,<sup>20</sup> the Secretary-General reiterated that the benchmarks developed in 2007<sup>21</sup> were still valid for the gradual drawdown of MONUC.<sup>22</sup> One option in the DRC is the wholesale reconfiguration of the mission, with MONUC retaining jurisdiction over the volatile east while progressively handing over tasks in the rest of the country to the UN country team and Government.<sup>23</sup> In the case of Chad, the Secretary-General's report from December 2008 laid out the benchmarks required for MINURCAT's withdrawal.<sup>24</sup>

Amid these developments, the Council debated exit and transition strategies for peacekeeping missions. A presidential statement resulted which stressed that the Council needs to improve its strategies for ending or reconfiguring peacekeeping missions, including by developing clear, credible and achievable mandates for a transition mission and assigning appropriate resources to carry out those mandates.<sup>25</sup> Implementation of this commitment would clearly benefit any transition or reconfiguration of missions in the DRC and Chad. ■

<sup>14</sup> S/2010/115, 3 March 2010. Letter to the President of the Security Council from the Permanent Representative of Chad to the UN.

<sup>15</sup> For example, Human Rights Watch sent a letter to the Security Council on the consequences of MINURCAT's withdrawal from Chad, 16 February 2010, available at [www.hrw.org/en/news/2010/02/17/letter-un-security-council-consequences-minurcat-withdrawal-chad](http://www.hrw.org/en/news/2010/02/17/letter-un-security-council-consequences-minurcat-withdrawal-chad)

<sup>16</sup> Security Council Resolution 1913.

<sup>17</sup> China will likely align itself with the DRC Government.

<sup>18</sup> About 95 percent of MONUC troops are based in the east.

<sup>19</sup> A/HRC/13/63, 8 March 2010. The second joint report of seven UN independent experts on the situation in the DRC. Significantly following DRC's review under the Human Rights Council's UPR process in December 2009, the Government rejected several recommendations relating to accountability of its security forces,

including that it create an independent mechanism to take action against those responsible for serious human rights violations.

<sup>20</sup> S/2010/164.

<sup>21</sup> The Secretary-General included benchmarks for the gradual drawdown of MONUC in his 14 November 2007 report, S/2007/671, as a result of a request by Security Council Resolution 1756 (2007).

<sup>22</sup> S/2007/671. The benchmarks include: the need for Congolese and foreign armed groups to no longer pose a significant threat to peace and stability in the DRC or to neighboring countries; and that the national army and police force have capacity to assume responsibility for the country's security, including duties performed by MONUC.

<sup>23</sup> Security Council Resolution 1856 from 2008 speaks to this issue by requesting the Secretary-General to provide recommendations on the progressive handover of tasks related to the strengthening of democratic institutions and the rule of law from MONUC to the UN country team and bilateral and multilateral partners in western DRC.

<sup>24</sup> S/2008/760. The benchmarks include: the voluntary return and resettlement in secure conditions of a critical mass of internally displaced persons; the capacity of local authorities to provide the necessary security for refugees, internally displaced persons, civilians and humanitarian workers; and the ability of the national law enforcement agencies to maintain law and order with respect for international human rights standards.

<sup>25</sup> S/PRST/2010/2.