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Putting Burma's Junta on Trial

By Andrew Marshall
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Last month two famous defendants — one adored, the other despised — appeared in courts nearly 10,000 km apart. Charles Taylor, the former president of Liberia, is being tried by a special tribunal in The Hague for murder, rape, torture, and other war crimes allegedly committed during the decade-long conflict in neighboring Sierra Leone. Taylor — known as "Pappy" to child soldiers who, say prosecutors, were abducted, drugged and dispatched to commit atrocities on his orders — used his first appearance on the stand on July 14 to dismiss the charges as "disinformation, misinformation, lies, rumors." (Read "Lies and Rumors": Liberia's Charles Taylor on the Stand.)

Meanwhile, and much more convincingly, Aung San Suu Kyi was protesting her innocence before a court in Rangoon. The Burmese democracy icon faces up to five years in prison for violating the terms of her house arrest after an American man swam to her lakeside home in Rangoon. The charges are farcical, the verdict a foregone conclusion: Suu Kyi is expected to be declared guilty on Aug. 11. But some in Burma's embattled democracy movement will turn to The Hague for solace. Taylor is the first African head of state to face an international war crimes tribunal. Could Senior General Than Shwe, leader of the Burmese junta, be the first Asian? (Read "Viewpoint: Why Foreigners Can Make Things Worse for Burma.")

This is not as far-fetched as it might initially seem. A compelling case for investigating war crimes in Burma is made in a May 2009 report by the International Human Rights Clinic at Harvard Law School. Called "Crimes in Burma," its authors are heavy-hitters: they include one former judge and two former prosecutors from the International Criminal Tribunal for the former Yugoslavia, including the British lead attorney in the case against Slobodan Milosevic. Referring only to U.N. documents, the report lays out the "systematic and widespread" atrocities committed in Burma in recent years: killings, torture, rape, "epidemic levels" of forced labor, a million people homeless, the recruitment of tens of thousands of child soldiers, and — here they draw comparisons with Darfur — the displacement or destruction of more than 3,000 ethnic nationality villages. These abuses were usually committed during armed conflict, which "strongly suggests" they are war crimes and crimes against humanity, says the report.



A precedent for acting on such abuses has been set by the former Yugoslavia, Rwanda and Darfur, the authors continue. They assert that with such overwhelming evidence from its own documents, the U.N. Security Council should establish a commission to investigate war crimes in Burma, then create a special tribunal to try those responsible for them. "The [U.N. Security] Council is the only body that can take the action necessary to respond adequately to the crisis in Burma," conclude the authors, before warning of "the painful consequences of inaction."

The Security Council held its first-ever debate on Burma in 2005, but has done little but talk since. The chances of the U.N.'s most powerful body establishing a Burmese war crimes commission are slim so long as permanent members China and Russia exercise their veto. But this shouldn't stop the U.S., U.K., and France from demanding one. It would certainly be noted in Naypyidaw, the junta's remote new capital. As the ongoing persecution of Suu Kyi amply demonstrates, Burma's generals are impervious to global condemnation. But don't be fooled by common depictions of them as blinkered, paranoid and xenophobic. "These caricatures ignore the fact that the regime contains intelligent officers who are close observers of the international scene," observed Andrew Selth of Australia's Griffith University last year. And there is some evidence that international justice is something those officers view with alarm. (Read about the 2007 crackdown in Burma.)

Just look at the military-drafted constitution, which was "approved" by a sham referendum in the wake of Cyclone Nargis in 2008. It not only formalizes the junta's rule, by reserving for the military a quarter of seats in the new parliament after elections next year. It also grants junta officials immunity from prosecution. "This clause won't protect them from international prosecution, but it shows they're worried about it," says Mark Farmaner, director of the advocacy group Burma Campaign UK. (See pictures of Burma after Cyclone Nargis.)

So does the regime's sudden interest in a little-known exile group called the Burma Lawyers' Council. In May, at a Bangkok hotel, it held a three-day seminar entitled "Advancing human rights and ending impunity in Burma." Among the subjects discussed by the 100 or so delegates were the criminal accountability of individual junta members and how the U.N. Security Council might be persuaded to investigate Burmese war crimes. Days before the seminar began, the junta outlawed the lawyers' group, which previously had barely blipped on Naypyidaw's radar, then requested Thailand to halt the seminar. It went ahead, but the harassment continued. As Burmese spies prowled the hotel lobby, delegates heard reports that agents had been dispatched to kidnap or kill the group's chairman Aung Htoo. He was smuggled out of the seminar and spent three weeks in hiding in Thailand before fleeing for Sweden.



Aung Htoo says a war crimes commission "very much concerns the Burmese leadership." He believes the prospect might cause reform-minded officers to break ranks and topple Than Shwe. Of course, it could also have the opposite effect, causing the generals to tighten their grasp on power — although ethnic minorities suffering ongoing military atrocities in eastern Burma might think this was a risk worth taking. "At the moment Burmese soldiers know they can act with impunity," says Farmaner. "A threat of consequences might change behavior on the ground."

The sad and wretched history of Burma is relentless. Its civil war — the world's longest — rages on. Ceasefires between the junta and other insurgent groups are looking shaky. Piecemeal and uncoordinated sanctions by the U.S. and Europe have failed. Suu Kyi's party, the National League for Democracy, is comatose, and more than 2,000 political prisoners are in Burmese jails. Convincing the U.N. Security Council to investigate Burmese war crimes might seem like an uphill struggle. "But that is why we campaign — to change things," says Farmaner. That campaign could galvanize Burma's weary democrats, even as their leader prepares for yet another lengthy spell in the junta's custody.

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