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**BURMA:
CREDENTIALS CHALLENGE OF THE
STATE PEACE AND DEVELOPMENT
COUNCIL DELEGATION TO THE
UNITED NATIONS**

Legal Memorandum

**Prepared by
The Public International Law & Policy Group**

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**BURMA: CREDENTIALS CHALLENGE OF THE STATE PEACE AND DEVELOPMENT
COUNCIL DELEGATION TO THE UNITED NATIONS**

Executive Summary

This memorandum analyzes the process for challenging the credentials of the delegation of the State Peace and Development Council to the United Nations. Past credentials challenges in other states provide insight into how the United Nations may approach a credentials challenge in Burma.

The United Nations Credentials Committee uses two methods to approach a challenge to the credentials of a member state's delegation: the technical analysis method and the representation credentials challenge method. A straightforward technical analysis favors upholding the credentials of the delegation so long as the delegation receives endorsement from the appropriate government official and the delegation previously held the United Nations seat. A representation credentials analysis makes a political decision about the legitimacy of the challenged government.

Historically, the United Nations has rarely denied accreditation to a delegation because such a decision has significant political implications. The Credentials Committee may reject a credentials challenge if the appropriate government official endorses the delegation to represent the state. The Credentials Committee may also consider the legitimacy of the government represented in its analysis of the delegation's credentials if a vested United Nations interest, the foreign policy of an influential member state, and the promotion of democracy are at stake. The Credentials Committee will weigh international support when considering a credential challenge.

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Statement of Purpose

This memorandum analyzes the process for challenging the credentials of the delegation of the State Peace and Development Council to the United Nations. Past credentials challenges in other states provide insight into how the United Nations may approach a credentials challenge regarding Burma.

Introduction

Accreditation is the process through which the United Nations accepts a delegation from the government of a United Nations member state into the General Assembly. Depending on the circumstances, accreditation of a delegation may require a technical procedure or a political decision. Denial of accreditation does not affect a state's member status to the United Nations, but rather challenges the ability of a particular government to send a delegation to the United Nations. By denying accreditation, the international community essentially sends the message that it does not approve of the government that endorsed the delegation.¹

Membership, Accreditation, and Representation

Membership, accreditation, and representation are distinct concepts in the United Nations system. Although the United Nations Charter only addresses membership, the concepts of and processes for accreditation and representation have evolved over time and provide alternative mechanisms for depriving a member state of a seat at the General Assembly.²

Membership

Membership refers to state membership in the United Nations. According to the Charter of the United Nations, admission of new members requires an affirmative vote of all permanent members of the Security Council and two-thirds

¹ See Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int'l L. & Pol. 725 (2000).

² See Halberstam, Malvina, *Excluding Israel from the General Assembly by a Rejection of Its Credentials*, 78 AM. J. INT'L L. 179, 181-84 (1984) (distinguishing between membership, accreditation, and representation in order to argue that the using the accreditation process to exclude a member violates the United Nations Charter generally).

vote of the members of the General Assembly present and voting.³ Suspension of an existing member requires an affirmative vote of the General Assembly upon recommendation of the Security Council.⁴ Expulsion of an existing member requires an affirmative vote of the General Assembly upon recommendation of the Security Council because of persistent violations of principles in the United Nations Charter.⁵

Accreditation

Accreditation to the General Assembly is a procedural formality addressed in the Rules of Procedure of the General Assembly.⁶ According to the Legal Counsel to the United Nations, a document from the government of the member state that endorses a particular delegation satisfies the credentials requirement.⁷

Representation

The actual presence of a delegate of a member state at the General Assembly is representation. If two or more authorities each claim to be the lawful government of a state and issue documents accrediting a delegation to the United Nations, then accreditation becomes more than a procedural formality. In this situation, representation determines which authority has the power to issue documents of accreditation on behalf of that state—a substantive question with political implications. Because no United Nations body has the express power to make that decision, the General Assembly adopted a resolution that provided that

³ See U.N. Charter, art. 18, para. 2 (“Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include... the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members...”).

⁴ See U.N. Charter, art. 5 (“A member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.”).

⁵ See U.N. Charter, art. 6 (“A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.”).

⁶ See UNITED NATIONS, RULES OF PROCEDURE OF THE GENERAL ASSEMBLY 26-27 (1985), available at <http://daccessdds.un.org/doc/UNDOC/GEN/NS0/005/44/IMG/NS000544.pdf?OpenElement>.

⁷ See Halberstam, Malvina, *Excluding Israel from the General Assembly by a Rejection of Its Credentials*, 78 AM. J. INT’L L. 179, 182 (1984) (explaining the process for accreditation, and quoting Legal Counsel to the United Nations, who defined credentials as “the document attesting that the person or persons named are entitled to represent their State at the seat of or at meeting of the organization,” and credentials for the General Assembly as “a document issued by the Head of State or Government or by the Minister of Foreign Affairs of a Member State of the United Nations, submitted to the Secretary-General, designating the persons entitled to represent that Member at a given session of the General Assembly”).

the “Purposes and Principles of the Charter and the circumstances of each case” governs the ultimate determination.⁸

Credentials Accreditation Process

A government’s head of state, head of government, or minister of foreign affairs selects the member states’ representatives, thereby issuing credentials to the delegation.⁹ The delegation then presents the credentials to the United Nations Secretary-General prior to the convening of the General Assembly.¹⁰ The Credentials Committee examines the credentials of the delegations of member states and reports their findings to the General Assembly.¹¹ In their report, the Credentials Committee recommends whether to adopt or reject the credentials of the delegation of each United Nations member state.¹²

At the beginning of every United Nations General Assembly Session, the General Assembly votes to appoint nine members of the Credentials Committee based on a proposal from the President.¹³ The current members of the Credentials Committee for the 61st United Nations General Assembly Session are China, Guyana, Kenya, Madagascar, Monaco, Peru, Russia, Tonga, and the United States.¹⁴ Although no United Nations member state has a permanent position on the Credentials Committee, the United States, Russia, and China traditionally receive an appointment.¹⁵ The composition of the Credentials Committee affects

⁸ See Halberstam, Malvina, *Excluding Israel from the General Assembly by a Rejection of Its Credentials*, 78 AM. J. INT’L L. 179, 182-84 (1984) (discussing the process by which the General Assembly decided how to approach a case where two or more authorities claim to be the regular government of a state).

⁹ See UNITED NATIONS, RULES OF PROCEDURE OF THE GENERAL ASSEMBLY 27 (1985), available at <http://daccessdds.un.org/doc/UNDOC/GEN/NS0/005/44/IMG/NS000544.pdf?OpenElement> (“The credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs.”).

¹⁰ See UNITED NATIONS, RULES OF PROCEDURE OF THE GENERAL ASSEMBLY 27 (1985), available at <http://daccessdds.un.org/doc/UNDOC/GEN/NS0/005/44/IMG/NS000544.pdf?OpenElement> (“The credentials of representatives and the names of members of a delegation shall be submitted to the Secretary-General if possible not less than one week before the opening of the session.”).

¹¹ See UNITED NATIONS, RULES OF PROCEDURE OF THE GENERAL ASSEMBLY 28 (1985), available at <http://daccessdds.un.org/doc/UNDOC/GEN/NS0/005/44/IMG/NS000544.pdf?OpenElement> (“Rule 28: A Credentials Committee shall be appointed at the beginning of each session....It shall examine the credentials of representatives and report without delay.”).

¹² See Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int’l L. & Pol. 725, 730 (2000).

¹³ See UNITED NATIONS, RULES OF PROCEDURE OF THE GENERAL ASSEMBLY 28 (1985), available at <http://daccessdds.un.org/doc/UNDOC/GEN/NS0/005/44/IMG/NS000544.pdf?OpenElement> (“It shall consist of nine members, who shall be appointed by the General Assembly on the proposal of the President. The Committee shall elect its own officers.”).

¹⁴ See UN.org, United Nations General Assembly 61st Session, Credentials Committee, available at <http://www.un.org/ga/61/credent/credent.shtml> (last visited Jan. 28, 2007).

¹⁵ See Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int’l L. & Pol. 725, 731-32 (2000).

which delegations it accredits, and past voting records of the member states of the Credentials Committee may indicate their positions.

If the General Assembly votes to reject the credentials of a delegation of a member state, the General Assembly may either vote to accredit a chosen delegation or leave the seat empty and send the matter back to the Credentials Committee. In practice, however, the General Assembly generally accepts the findings and recommendations of the Credentials Committee report without debate.¹⁶

Credentials Challenge

There are two ways to initiate a credentials challenge. First, a rival delegation from the same state may submit another set of credentials to the Secretary-General. Second, a member state may record a vote in the General Assembly rejecting the credentials of a delegation.¹⁷

Because the United Nations General Assembly Rules of Procedure do not explicitly address credentials challenges, two methods for assessing credentials challenges have developed.¹⁸ On the one hand, approval of credentials is a purely technical process that only requires issuance of credentials by a government's head of state, head of government or minister of foreign affairs. On the other hand, the decision to adopt credentials of a delegation is a political decision because the United Nations confers legitimacy upon the government of a state by accepting the credentials of its delegation.¹⁹

The success of a credentials challenge depends largely on the type of analysis applied by the Credentials Committee. A technical analysis almost always defers to accreditation of the delegation. To question the legitimacy of the government that the delegation represents, certain factors must persuade the

¹⁶See Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int'l L. & Pol. 725, 730 (2000) (discussing the rare exceptions in which the General Assembly questions the recommendation of the Credentials Committee).

¹⁷ See Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int'l L. & Pol. 725, 730 (2000).

¹⁸See UNITED NATIONS, RULES OF PROCEDURE OF THE GENERAL ASSEMBLY 26-27 (1985), available at <http://daccessdds.un.org/doc/UNDOC/GEN/NS0/005/44/IMG/NS000544.pdf?OpenElement>.

¹⁹ See Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int'l L. & Pol. 725, 730 (2000).

Credentials Committee to employ the representation analysis. The General Assembly usually adopts the recommendation of the Credentials Committee as is.²⁰

The Technical Credentials Challenge Analysis

The technical credentials analysis test simply requires that the appropriate government authority (head of state, head of government, or minister of foreign affairs) endorse the credentials of the delegation.²¹ If so, the Credentials Committee and the General Assembly will approve the delegation.

Under the technical analysis, if two delegations from two separate governments submit credentials for representatives of the same General Assembly, the Credentials Committee will recommend accrediting the delegation from the government represented in the previous General Assembly Session. If the General Assembly wishes to seat the new government that submitted credentials, it may vote to amend or reject the report submitted by the Credentials Committee. Using this approach, it is often difficult to unseat an incumbent government.²²

The Representation Credentials Challenge Analysis

The representation analysis questions which delegation, if any, may represent the member state in the General Assembly. According to this method, the Credentials Committee recommends approving the credentials of a particular delegation in its report to the General Assembly only if the Credentials Committee views it as a legitimate government that represents the interests of the member state's people. The Credentials Committee considers a number of factors besides just endorsement by the head of state, head of government, or minister of foreign affairs in the process of resolving a credentials challenge.²³

Factors that Determine the Appropriate Method of Analysis

Historically, the Credentials Committee and the General Assembly use many factors to decide whether to approach a credentials challenge technically or

²⁰ See Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int'l L. & Pol. 725, 730 (2000).

²¹ See Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int'l L. & Pol. 725, 733 (2000).

²² See Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int'l L. & Pol. 725, 733 (2000).

²³ See Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int'l L. & Pol. 725, 733 (2000).

representatively. If there is significant political support to challenge the legitimacy of a particular delegation, the Credentials Committee or General Assembly may rely on the representative method of analysis. Without external political pressure, the Credentials Committee and General Assembly often defer to the technical analysis because it is straightforward and easily determinable. Foreign policies of influential member states, the promotion of democracy, and other interests of the United Nations may also influence the method of analysis applied in the case of a credentials challenge. The Credentials Committee often references who effectively controls the state, but that is not a determinative factor in the analysis of legitimacy under the representation method.²⁴

A successful credentials challenge references the above factors to persuade the Credentials Committee to apply the representation method of analysis. The rival delegation or member state that submits the challenge may point to how the government of the challenged delegation does not represent the people of the member state, effectively control the member state, or engage in democratic practices. Evidence that a challenged delegation interferes with the foreign policies of other member states or with the interests of the United Nations strengthens the challenge. Also, support from other member states, particularly influential ones like the United States, fortifies the challenge. If the Credentials Committee finds that the delegation does not represent a legitimate government and recommends that the General Assembly not accredit the delegation, the General Assembly will likely vote in favor of the recommendation of the Credentials Committee.²⁵

Past Credentials Challenges

Hungary, South Africa, and Haiti provide instances of state practice for challenging the credentials of delegations to the United Nations. In each of these instances, the Credentials Committee relied on the representation method of analysis because of the United Nations' interests in the state, foreign policies, or the promotion of democracy.

The Hungarian Credentials Challenge

²⁴See generally Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int'l L. & Pol. 725, 739-72 (2000).

²⁵See generally Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int'l L. & Pol. 725, 739-72 (2000).

In 1956, a revolt in Hungary led to Soviet troops taking control of the government. In the United Nations General Assembly Session following the revolt, some representatives expressed doubts about the legitimacy of the United Nations credentials issued by the Soviet-backed Hungarian government. In the Credentials Committee's examination of the Hungarian delegation's credentials, the United States representative suggested that the Credentials Committee should not approve the credentials of the Hungarian delegation. The Credentials Committee adopted the suggestion not to accredit the Hungarian delegation in its report, which the General Assembly then approved. Thereafter, the General Assembly chose to take no further action with respect to the credentials of Hungary, thereby excluding the Hungarian delegation from participating in the General Assembly.²⁶

The foreign policy goals of the government of the United States (halting the spread of communism and Soviet influence), an influential member state of the United Nations, appeared determinative in this instance. Although a more remote concern compared to the foreign policy of the United States, the military government in this instance also did not promote the interests of democracy.²⁷

There were other factors that did not affect the analysis of the Credentials Committee in the instance of Hungary. The fact that the Soviet-backed government of Hungary possessed effective control of the state did not determine the outcome of this credentials challenge. Because United Nations had not invested in the ousted government or maintained troops within its borders, it had no vested interest in the state or its government at the time.²⁸

The South African Credentials Challenge

Several members of the United Nations expressed strong concern about the South African practice of apartheid. In 1970, influenced by growing opposition to South African policies, the General Assembly adopted a proposal from the Credentials Committee to object to the credentials of representatives of the South African government.²⁹ Not accepting the credentials of South African

²⁶ See Higgens, Rosalyn, *DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* (Oxford University Press 1963), 158-59.

²⁷ See Michael P. Scharf, *THE LAW OF INTERNATIONAL ORGANIZATIONS PROBLEMS AND MATERIALS* (Carolina Academic Press 2001).

²⁸ See Michael P. Scharf, *THE LAW OF INTERNATIONAL ORGANIZATIONS PROBLEMS AND MATERIALS* (Carolina Academic Press 2001).

²⁹ See Halberstam, Malvina, *Excluding Israel from the General Assembly by a Rejection of Its Credentials*, 78 AM. J. INT'L L. 179, 185 (1984) (quoting Abdelaziz Bouteflike of Algeria 25 UN GAOR (2281st plen.mtg) at 76, UN Doc. A/PV.2281, whose interpretation that the rejection of South Africa's credentials barred it from participation in the

representatives demonstrated condemnation of the government's practice of apartheid.³⁰

The foreign policies of influential states and the promotion of democracy affected the outcome of the South African credentials challenge. Although the representative of the United States had not supported the non-accreditation of the South African government two years earlier, the United States representative supported the motion in the 1970 vote. By not accrediting the South African government, the members of the United Nations expressed disapproval of its limited form of democracy that disenfranchised blacks.³¹

There were other factors that did not affect the analysis of the Credentials Committee in the instance of South Africa. In this credentials challenge, the United Nations had little interest in the member state involved because it had invested little in the incumbent government and had no United Nations peace-keeping forces in the state. This also provides another instance in which the General Assembly disregarded the fact that the government of South Africa effectively controlled the state.³²

The Haitian Credentials Challenge

In 1992, the United Nations Credentials Committee rejected the credentials presented by the military government that overthrew the democratic government elected in Haiti. This may have been in part due to the United Nations role and interest in democratic elections. The United Nations had established an elections observer group to oversee the 1990 elections in Haiti. The observation of elections in Haiti created an interest of the United Nations in the democratic government overthrown in 1992, which may have impacted the decision of the Credentials Committee.³³

General Assembly was confirmed by the General Assembly with a vote of 91 in favor, 22 against, and 19 abstentions).

³⁰ See Halberstam, Malvina, *Excluding Israel from the General Assembly by a Rejection of Its Credentials*, 78 AM. J. INT'L L. 179, 184-85 (1984) (explaining the history of using accreditation to exclude a member from the General Assembly).

³¹ See Michael P. Scharf, *THE LAW OF INTERNATIONAL ORGANIZATIONS PROBLEMS AND MATERIALS* (Carolina Academic Press 2001).

³² See Michael P. Scharf, *THE LAW OF INTERNATIONAL ORGANIZATIONS PROBLEMS AND MATERIALS* (Carolina Academic Press 2001).

³³ See Griffin, Matthew, *Accrediting Democracies: Does The Credentials Of The United Nations Promote Democracy Through Its Accreditation Process, And Should It?*, 32 N.Y.U J. Int'l L. & Pol. 725, 749 (2000).

Additionally, influential United Nation member states clearly disapproved of the military coup in Haiti. In Haiti, like in Hungary and South Africa as discussed above, the representatives of the United States favored discrediting the representatives' credentials. The decision to reject credentials of the military government also reflected the goal of the United Nations to promote democracy, although it was not a determinative factor taken alone. Once again, the effective control of the military government did not sway the decision to deny accreditation of the government's representative.³⁴

Conclusion

The United Nations usually defers to the authority of the government of a member state to decide its delegation to the General Assembly. In the rare situation that the Credentials Committee or General Assembly decides a challenge to the credentials of a delegation, it considers who effectively controls the state, the foreign policies of its members, the United Nations interest in the state, and the promotion of democracy.

³⁴ See Michael P. Scharf, *THE LAW OF INTERNATIONAL ORGANIZATIONS PROBLEMS AND MATERIALS* (Carolina Academic Press 2001).

About the Public International Law & Policy Group

The Public International Law & Policy Group, a 2005 Nobel Peace Prize nominee, is a non-profit organization, which operates as a global pro bono law firm providing free legal assistance to states and governments involved in peace negotiations, drafting post-conflict constitutions, and prosecuting war criminals. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution.

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Frequently, PILPG sends members in-country to facilitate the provision of legal assistance and its members often serve on the delegations of its clients during peace negotiations. To facilitate this assistance, PILPG is based in Washington, D.C. and has points of contact in New York City, Boston, Seattle, Cleveland, London, Paris, Rome, The Hague, Stockholm, Belfast, Krakow, Budapest, Zurich, Tbilisi, Kabul, and Nairobi.

PILPG was founded in London in 1995 and moved to Washington, D.C. in 1996, where it operated under the auspices of the Carnegie Endowment for International Peace for two years. PILPG currently maintains an association with American University in Washington, D.C., and Case Western Reserve University in Cleveland, Ohio. In July 1999, the United Nations granted official Non-Governmental Organizations status to PILPG.

In January 2005, a half dozen of PILPG's pro bono clients nominated PILPG for the Nobel Peace Prize for "significantly contributing to the promotion of peace throughout the globe by providing crucial pro bono legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice."