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NEXT STEPS ON BURMA

Squaring Interests and Values in Developing Western Approaches to South-East Asia's Most Troubled State

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Cover photo: Buddhist monks held a protest calling to free Aung San Suu Kyi in front of the UN office in Bangkok. © Rungrit Yongrit/epa/Corbis

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While the past half-century has witnessed remarkable advances in democratization in Asia, Burma stands in dramatic exception to this trend. Along with North Korea, Burma remains Asia's most tyrannical and oppressive regime. Ruled since 1962 by a succession of military juntas, Burma (also known as "Myanmar" following the regime's name change in 1989) remains an isolated dictatorship. The ruling junta has brutally suppressed the movement for democracy, and has conducted a widespread and systematic campaign of persecution against the country's non-Burman ethnic nationalities. The current regime, the State Peace and Development Council (SPDC), has one of the worst human rights records in the world, and its leader, Senior General Than Shwe, was ranked by Foreign Policy magazine as the third worst dictator in the world in 2010, just behind North Korea's Kim Jong-il and Zimbabwe's Robert Mugabe.

Over 2,100 political prisoners are incarcerated in Burma today. Burma's democracy leader, Nobel Peace Prize Laureate Aung San Suu Kyi, spent almost 15 years in detention before her release from house arrest in late 2010. Prisoners of conscience are subjected to horrific torture and cruel and degrading conditions. In some cases, political prisoners have been jailed in prisons hundreds of miles from their families, and denied medical treatment. Some have been sentenced to extraordinarily long prison terms of 65 years or more.

Sadly, the regime continues to regard elections as an institution to be cynically manipulated rather than embraced. The most recent national elections, held on November 7, 2010, were designed to perpetuate the rule of the military and their cronies, resulting in little more than a change of uniform. These elections were based on a constitution imposed through a contrived referendum in the aftermath of Cyclone Nargis in 2008, in which the junta

claimed that 92.4 percent of the people voted in favor of the proposed constitution and there was a 99 percent voter turnout. It was, however, illegal to criticize the constitution-making process, and anyone campaigning against the constitution in the referendum could be sentenced to between five and twenty years in jail. The constitution guarantees the military 25 percent of the parliamentary seats, and grants the military immunity for their crimes. The election laws issued in 2010 were so restrictive as to make it impossible for the National League for Democracy (NLD) to register to contest the ballot.

In terms of press freedom, Reporters Without Borders ranks Burma 171 out of 175 countries, only just above North Korea, Eritrea, Turkmenistan, and Iran. The Committee to Protect Journalists describes Burma as one of the world's five worst jailers of journalists and the worst for internet bloggers. The U.S. State Department has categorized Burma as a "Country of Particular Concern" for severe religious freedom violations since 1999. Freedom House describes Burma simply as "the worst of the worst."¹

Just as Burma has eschewed Asia's political progress, it has missed the region's economic dynamism as well. In virtually every global survey of political, press, religious and economic freedom, Burma is ranked among the lowest in the world. Burma is one of the globe's five most repressive economies according to the Heritage Foundation/Wall Street Journal Index of Economic Freedom; is ranked 138 out of 182 countries in the UN Development Program Human Development Index in 2009; and is number 16 in Foreign Policy magazine's Failed States Index, just behind Pakistan and Haiti and worse than North Korea.

While Burma remains notorious for its repression of political freedoms, its discrimination against

¹ Freedom House, "Burma Tops 'Worst of the Worst' List of Human Rights Violators," 4 June, 2010.

The regime continues to regard elections as an institution to be cynically manipulated rather than embraced.

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ethnic minorities is perhaps less well known internationally. The United Nations has placed Burma on its list of countries to monitor for genocide. The genocide risk indices aggregated by the Genocide Prevention Project regard Burma as one of the top two “red alert” countries at highest risk of genocide, along with Sudan.² The Minority Rights Group ranks Burma one of the top five countries where ethnic minorities are “under threat,” and Medicins Sans Frontieres considered Burma one of the top ten humanitarian crises in the world in 2008.³ The International Committee of the Red Cross has accused the regime of “major and repeated violations of international humanitarian law.”⁴

The Persecution of Ethnic Minorities

Although virtually all Burmese citizens suffer under the dictatorship's repressive system, the misery of many ethnic minorities is particularly acute. In eastern Burma, the military regime has been carrying out a campaign of brutal persecution against the Karen, Karenni, and Shan ethnic nationalities for decades, involving the widespread and systematic use of rape as a weapon of war, forced labor, killings of civilians (including women and children), torture, the use of human minesweepers, and the destruction of at least 3,500 villages since 1996, a scale comparable to the better-known tragedy in Darfur, Sudan. Hundreds of thousands of villagers have been driven from their

homes, forced to flee into the jungle as internally displaced people or across the border with Thailand as refugees. Those who do not escape are sometimes held in relocation sites where they are used for forced labor for the military. It is estimated that between 500,000 and 1 million people are internally displaced in eastern Burma, and at least 160,000 are in camps along the Thailand-Burma border.⁵

In western and northern Burma, the human rights and humanitarian situation is also desperate. In Chin State, the predominantly Christian population is subjected to religious discrimination and persecution, including the destruction of crosses and forcible conversion of Chin Christians to Buddhism. Christian villagers are forced to destroy crosses themselves and contribute labor and resources towards the construction of Buddhist pagodas. Forced labor and rape are also used on a widespread basis in Chin State.

In recent years, the Chin have been devastated by a chronic food shortage caused by an explosive growth in the rat population as a result of the flowering of bamboo, a natural phenomenon that occurs every 50 years. An estimated 100,000 people in more than 200 villages were affected.⁶ The regime provided no assistance, and in some cases actively attempted to block humanitarian aid reaching those in desperate need of it. As a result of this human rights and humanitarian crisis, thousands of Chin refugees have fled to India, Malaysia, and other countries, where they are often in very vulnerable situations with little or no protection.

² Global Justice Centre, “The Legal Obligation to Prevent Genocide in Burma,” 2008-09, http://globaljusticecenter.net/publications/Advocacytools/Genocide_indices_for_Burma.pdf.

³ Minority Rights Group, “Peoples Under Threat 2010,” <http://www.minorityrights.org/9885/peoples-under-threat/peoples-under-threat-2010.html>; Medicins sans Frontieres, “Top Ten Humanitarian Crises of 2008,” <http://www.msf.org/msfinternational/invoke.cfm?objectId=5DF33660-15C5-F00A-253193DE95B01B70&component=toolkit.pressrelease&method=full.html>.

⁴ International Committee of the Red Cross, “Myanmar: ICRC Denounces Major and Repeated Violations of International Humanitarian Law,” June 20, 2007.

⁵ *Internal Displacement and International Law in Eastern Burma*, (Bangkok: Thailand Burma Border Consortium, October 2008), <http://burmacampaign.org.uk/images/uploads/TBBC-2008-report1.pdf>; Thailand Burma Border Consortium, “Camp Locations,” 2011, <http://www.tbtc.org/camps/camps.htm>.

⁶ Christian Solidarity Worldwide, “Burma: Visit to the India-Burma Border,” 2009, <http://dynamic.csw.org.uk/article.asp?t=report&id=122>.

Another minority group, the Kachin people also continue to suffer persistent oppression. Although there has been no active conflict in Kachin State since a ceasefire was agreed between the Kachin Independence Organization (KIO) and the regime in 1994, human rights violations including forced labor, religious discrimination, rape, and forced relocation continue to occur. Environmental degradation, drug trafficking and abuse, and the trafficking of women from northern Burma into China are major challenges for the Kachin people.

A grave humanitarian and human rights crisis is also unfolding for the Rohingya people in northern Arakan State. Denied Burmese citizenship despite living in northern Arakan for generations, the Muslim Rohingya people face religious persecution and severe restrictions on movement, marriage, and education. Thousands have fled to Bangladesh, where they lead a precarious existence. Their plight has been well-documented by several organizations, including by the Irish Centre for Human Rights in a report titled Crimes Against Humanity in Western Burma: The Situation of the Rohingyas, published in June 2010.⁷

Crimes against Humanity

Increasingly, many credible observers are reaching the conclusion that the oppression in Burma amounts to crimes against humanity and war crimes as defined by international law. Amnesty International, Human Rights Watch and the International Federation for Human Rights (FIDH), the world's three largest human rights organizations, have described events in eastern Burma as crimes against humanity. In May 2009 a report published by the Harvard Law School, Crimes in Burma, commissioned by some the

⁷ Irish Centre for Human Rights, "Crimes Against Humanity in Western Burma: The Situation of the Rohingyas," 2010, http://burmacampaign.org.uk/images/uploads/ICHR_Rohingya_Report_2010.pdf.

world's leading jurists, concluded from the UN's own reports that the regime is guilty of crimes against humanity.⁸ In March 2010, the UN Special Rapporteur on Human Rights in Burma, Tomas Ojea Quintana, reached the same conclusion, announcing in his report to the UN Human Rights Council that: "there is a pattern of gross and systematic violation of human rights" that has been continuing "over a period of many years." Quintana said the violations "are the result of a state policy that involves authorities in the executive, military, and judiciary at all levels." In an unprecedented move, he argued that "the possibility exists that some of these human rights violations may entail categories of crimes against humanity or war crimes under the terms of the Statute of the International Criminal Court" and recommended the establishment of a Commission of Inquiry to investigate these crimes.⁹ Since the Rapporteur's recommendation, Australia, the United Kingdom, the Czech Republic, Slovakia, and, most recently, the United States have expressed support in principle for the establishment of a Commission of Inquiry.

Given the force and consensus of these findings, the ongoing crisis in Burma puts the credibility of the UN and international humanitarian law at stake. Every year since 1991, the UN General Assembly has passed a resolution on Burma, and since 1992, the General Assembly has been calling on the dictatorship in Burma to respect the Geneva Conventions. In 2002, the General Assembly called for an independent international investigation into the human rights abuses against civilians, and past resolutions include language relating to 15 possible

⁸ Harvard Law School, "Crimes in Burma," 2009, <http://burmacampaign.org.uk/images/uploads/Crimes-in-Burma.pdf>.

⁹ Tomas Ojea Quintana, "Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar," Human Rights Council, Thirteenth Session, Agenda Item 4, March 5, 2009, <http://burmacampaign.org.uk/images/uploads/UNHRC-Report-March-2010.pdf>.

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war crimes and crimes against humanity. In total, 17 calls for inquiries have been made since 1997, yet the General Assembly has failed to exercise its power to establish its own inquiry. The dictatorship in Burma has persistently ignored the General Assembly, and continued to perpetrate violations of international humanitarian law with impunity. If the UN is to be relevant to the world today, it cannot remain idle in the face of such behavior.

A recent report commissioned by former Czech President Vaclav Havel and former Archbishop of Cape Town Desmond Tutu made clear that Burma's regime is a cause of many regional maladies. Large refugee outflows from Burma burden its neighbors, particularly Thailand, India, Bangladesh, and Malaysia. Drug production and trafficking, and the trafficking of women, impact the region, particularly China. A major HIV/AIDS crisis has developed in Burma with regional consequences. All of these are a result of the regime's policies and poor governance. In addition, evidence has emerged in recent years of a nuclear program, developed with assistance from North Korea. Whether for military or civilian purposes, this should be an additional cause for concern for the international community.

Since 2007, the regime has shown its disregard for international law, the will of the international community, and its own people. After brutally suppressing the peaceful protests led by Buddhist monks in the noble but short-lived "Saffron Revolution" of September 2007, Burma's behavior deteriorated still further. In February 2008, the General Secretary of the Karen National Union (KNU), Padoh Mahn Sha Lah Phan, was assassinated in broad daylight on the veranda of his home in Maesot, Thailand. It is widely believed his murder was ordered by the regime. In May 2008, the regime's initial response to the devastation caused by Cyclone Nargis was to reject international aid and aid workers, and only after

intense diplomatic and political pressure from the UN Secretary-General, China, ASEAN, the European Union and the United States did it relent.

The conduct of the referendum, the draft constitution, and the election laws all indicate that the regime has no intention of providing any semblance of democracy. The bizarre trial of Aung San Suu Kyi in 2009, after an American, John Yettaw, swam across Inya Lake to her home uninvited, resulted in a further 18 months under house arrest, and represented an undisguised attempt to continue to exclude her from the political process. These events, combined with the serious escalation in attacks on civilians in eastern Burma, provide a clear indication of the regime's intentions. It cannot be in the interests of other countries to allow the regime's behavior to go unchallenged, international humanitarian law to be so routinely violated, and the authority of the United Nations to be so ignored and undermined.

An Arms Embargo, Sanctions, and Benchmarks

In addition to the establishment of a Commission of Inquiry, the introduction of a universal arms embargo on the regime in Burma is long overdue. The European Union, United States, Canada, and Australia already have adopted arms embargoes, but there is no universal ban on the sale of arms to the junta. China remains the regime's largest arms supplier, though other nations, including North Korea and Russia, have also sold munitions to Burma. India suspended its arms sales to the regime in 2007, although some voices in India have called for closer India-Burma ties, including a resumption of arms sales. The EU and United States should lead the way in building international support for a UN Security Council resolution imposing a universal arms embargo.

Tighter, tougher, and more targeted economic sanctions should be imposed on the regime.

Sanctions are the source of hotly contested debate and controversy, but also of much misunderstanding. Critics sometimes mischaracterize advocates of sanctions as supporting isolation, demanding blanket sanctions that hurt the population at large, and opposing humanitarian aid. In reality, the intention behind sanctions is not to isolate Burma, but instead to put pressure on the regime to engage in a meaningful dialogue with the democracy movement and ethnic minorities, and to end its atrocious human rights violations. Human rights advocates have consistently advocated sanctions targeted solely at the regime, rather than blanket sanctions, and have also consistently advocated increased humanitarian aid. The primary problem with the prevailing sanctions regime is that the measures are not properly targeted, and even the sanctions that exist on paper have not been properly implemented. New measures that would directly affect the generals could include banking sanctions and a ban on the provision of insurance to businesses in Burma.

In addition, international pressure should be calibrated so that the ruling junta understands that resistance to reform will result in incrementally increased pressure, whereas meaningful improvements will lead to reduced pressure. To that end, the UN Security Council should set out concrete benchmarks for progress, including the release of all political prisoners, an end to military offensives against civilians in the ethnic states, the opening up of parts of the country to humanitarian aid, and engagement in meaningful dialogue with the National League for Democracy (NLD) and ethnic nationalities.

For example, a key benchmark to measure progress can be derived from the period following Aung San Suu Kyi's initial release in May 2002 and the attack on her convoy at Depayin in 2003. During this period, Aung San Suu Kyi was free and able

to travel around the country, UN envoys had regular access, Amnesty International visited Burma, and the International Committee of the Red Cross could visit prisons. If Burma returned to a similar situation, and made further improvements, then the international community could consider easing some sanctions. Absent such specific and positive steps, the easing of sanctions could send a counter-productive message to the regime, diminish the leverage of the international community, and further undermine the democracy movement. On the question of elections, the international community should condemn the junta's manipulations and affirm that a process that excludes Aung San Suu Kyi and the NLD is illegitimate and unacceptable.

Humanitarian Aid and Regional Approaches

As one of the world's most impoverished nations, Burma is in urgent need of humanitarian assistance. Yet providing aid is not a simple matter, and the international community needs to carefully consider how it is done. This could mean significantly increasing cross-border assistance in addition to providing aid through the regime. Cross-border delivery mechanisms directly from Thailand and India are often the only ways of reaching the hundreds of thousands of people displaced in the jungles of eastern Burma, suffering chronic food shortages and poverty in Chin State, or facing serious health and education challenges in Kachin and Shan states. The European Union, United States, Australia, New Zealand, Canada, Norway, and Japan should consider increasing humanitarian aid to Burma overall, and directing a significant proportion of assistance through cross-border delivery mechanisms while continuing to provide help in other parts of the country as well. The international community should also increase support for civil society, including Burmese and ethnic media, women's organizations, and human

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The international community must use every tool at its disposal, unleashing the full force of its economic, political, and diplomatic creativity, to bring an end to a desperate situation in Burma that makes it one of Asia's blights just when the region is experiencing unprecedented progress.

rights groups operating inside Burma and along its borders.

Although Burma's plight is a global problem, both its dysfunctions and its potential remedies are located disproportionately in the region. Burma's immediate neighbors, particularly China and India, as well as other countries in the region, such as the members of the Association of Southeast Asian Nations (ASEAN) and Japan, have a crucial role to play, and major democracies around the world should explore ways of encouraging them to conduct their foreign policy towards Burma more responsibly.

Currently, China, and to a lesser extent India, provide a diplomatic and economic lifeline to the military regime in Burma. Both nations need to be persuaded that it is in their interests to develop a more critical approach. While China in particular is unlikely to be convinced by arguments for democracy and human rights, both nations do care about regional stability and their own border security. Led by Indonesia, ASEAN as a collective body in recent years has taken cautious steps towards expressing its concern about conditions in Burma as a member state. This trend should be encouraged. If Asian nations can be convinced that the Burmese regime itself is a cause of instability in the region, they might use their influence constructively to bring more pressure on the junta. Specifically they should encourage a meaningful dialogue between the regime, the democracy movement, and the ethnic minorities that leads to reduced oppression and genuine political reform. A more constructive posture towards Burma by free Asian nations such as India, Japan, and Indonesia would mark a significant maturation of their foreign policies as their democratic identity begins to play a larger role in shaping their external interests.

A Convergence of Interests and Values

Some might argue that Burma is a country where interests and values collide: the short-term commercial and energy interests in oil, gas, and gems versus the promotion of democratic values. However it is, in fact, in the long-term interests of both the West and the region to ensure Burma becomes a peaceful, stable country with a responsible, legitimate government. Over time, this would provide significantly more energy and resource security, as well as commercial opportunities.

History has shown that dictators sow instability, and that where democracy is supported and developed, peace and stability develop and economic growth follows. Both ideals and interests point to pursuing a policy that disregards the illegitimate election process the regime has imposed, and instead encourages it to pursue a meaningful dialogue with its opponents. To achieve that, a combination of targeted pressure and high-level engagement is necessary. Engagement will only work if it is combined with pressure, and conducted at the highest levels with decision-makers in the regime. The international community must use every tool at its disposal, unleashing the full force of its economic, political, and diplomatic creativity, to bring an end to a desperate situation in Burma that makes it one of Asia's blights just when the region is experiencing unprecedented progress.

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