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U.S. Relations with Burma: Key Issues in 2018

Congress is examining the conduct of U.S. policy toward Burma (Myanmar) in light of an ongoing, major humanitarian crisis and other developments in Burma. While Congress was largely deferential to the Obama Administration's moves to normalize diplomatic relations with Burma, it may decide to play a more active role in formulating and monitoring U.S. policy toward Burma during the Trump Administration, particularly given large-scale human rights abuses by Burma's military. Legislation has been introduced—the BURMA Act of 2017 (H.R. 4223) and the Burma Human Rights and Freedom Act of 2017 (S. 2060)—that would modify U.S. policy to reflect recent events in Burma.

Major Developments in Burma

Burma faced several major challenges in 2017, including the massive displacement of Rohingya from Rakhine State into Bangladesh, allegations of large-scale human rights violations by the Burmese military, an escalation in fighting in Kachin and Shan States, and growing dissatisfaction with the lack of political and economic reforms. The Burmese government, led by State Counselor Aung San Suu Kyi and Commander-in-Chief Senior General Min Aung Hlaing, responded to these challenges in ways that drew criticism from the international community, particularly in terms of the treatment of the Rohingya. In some cases, however, their actions garnered widespread support domestically.

The Rohingya Crises

On August 25, 2017, a relatively new and little known Rohingya nationalist group, the Arakan Rohingya Salvation Army (ARSA), launched a coordinated attack on 30 security outposts in Burma's Rakhine State. The Burmese military, or Tatmadaw, responded with a "clearance operation" that resulted in the displacement of nearly 700,000 Sunni Rohingya to Bangladesh, the destruction of almost 400 Rohingya villages, the killing of at least 6,700 Rohingya (according to human rights groups and Doctors Without Borders), and the sexual assault of hundreds of Rohingya women and girls.

The ARSA attack and the Tatmadaw's response has created significant humanitarian crises in Burma and neighboring Bangladesh with an estimated one million displaced Rohingya requiring assistance. The two nations are also planning a large-scale repatriation process, although many experts view this as premature. In addition, the international community, including the United States, has called on Burma to permit an independent international investigation into the alleged human rights violations that occurred after the ARSA attack. Some observers worry that Islamist extremists will attempt to radicalize the displaced Rohingya and increase the risk of terrorist activities in South and Southeast Asia.

Burma's mixed military/civilian government has so far denied any systematic and/or widespread misconduct by Burma's security forces, but continues to deny international humanitarian assistance organizations, the local and international media, and a U.N. investigatory team access to the affected areas of northern Rakhine State. For more about the Rohingya crises, see CRS Report R45016, *The Rohingya Crises in Bangladesh and Burma*.

Escalating Conflict and Stalled Peace Process

Burma has been riven by a low-grade civil war between government forces and various ethnic armed organizations (EAOs) since it became an independent sovereign state in 1948. In 2016, Aung San Suu Kyi and her party, the National League for Democracy (NLD), assumed power after a landslide victory in parliamentary elections, and soon after identified ending the long-standing conflict as one of their top priorities.

However, escalated fighting between the Tatmadaw and several of the EAOs in Kachin and Shan States, as well as the alleged human rights abuses in Rakhine State, have raised serious doubts about the prospects for peace. The 3rd session of the 21st Century Panglong Conference—an effort to forge a peace agreement between the government, the military, and EAOs—which was tentatively scheduled for late January 2018, has been postponed at least until late February. For more about the Burma's conflict and its prospects for peace, see CRS In Focus IF10808, *Burma's Peace Process: Narrowing Opportunities in 2018*.

Violation of Human Rights and Civil Liberties

According to some analysts, Burma's mixed military/civilian government has responded to domestic and international criticism by curtailing nominally protected civil liberties. Although the 2008 constitution protects freedom of speech, protesters and critics often are charged with violating old and new Burmese laws. Two Burmese reporters working for Reuters investigating the alleged human rights abuses in Rakhine State were arrested and charged with violating Burma's 1923 Official Secrets Act. Other journalists have been arrested following interviews with EAO leaders. Peaceful protesters have faced criminal charges for allegedly violating the 2011 Peaceful Processions and Peaceful Assembly Act. Several critics of the government have been charged under section 66(d) of the 2013 Telecommunications Act for allegedly defaming or threatening government officials. As a consequence, according to the Assistance Association for Political Prisoners (Burma), 236 people are either serving sentences or awaiting trial for their political activities. For more about political prisoners in Burma, CRS Report R44804, *Burma's Political Prisoners and U.S. Policy: In Brief*.

State of Political Reforms

After the National League for Democracy (NLD) won a supermajority in both chambers of Burma's Union Parliament in the 2015 elections, many observers expected Aung San Suu Kyi and the NLD to implement a variety of political reforms to advance the nation's transition to a democratic civilian government that protects internationally-recognized human rights. However, since taking power in 2016, the Union Parliament has made little progress on political reforms, and in some cases, it appears that the mixed military/civilian government has found it advantageous to use various restrictive laws to suppress political opposition (see "Violation of Human Rights and Civil Liberties" above). While the Union Parliament rescinded the 1975 State Protection Law, revoked the 1950 Emergency Provisions Act, and several other repressive laws, it rejected efforts to repeal section 66(d) of the Telecommunications Act and amend the Peaceful Processions and Peaceful Assembly Act. A special commission set up by the NLD-led government identified more than 140 laws that should be abolished or amended; only a few have been addressed by the Union Parliament.

Status of U.S. Policy Toward Burma

The Obama Administration responded to what it perceived as positive developments in Burma by suspending various sanctions imposed by Congress when the nation was ruled by a military junta. According to some Members of Congress, the waiving of those sanctions has emboldened the Tatmadaw to utilize its constitutional powers to control developments in Burma. Two bills were introduced in November 2017—the Burma Unified through Rigorous Military Accountability Act of 2017 (BURMA Act; H.R. 4223) and the Burma Human Rights and Freedom Act of 2017 (BHRFA; S. 2060)—that would reformulate U.S. policy toward Burma.

Approach of the Trump Administration

Initially, the Trump Administration largely continued the approach of the Obama Administration in relations with Burma. After the Rohingya crises arose, U.N. Ambassador Nikki Haley, Secretary Rex Tillerson, and other State Department officials expressed their appreciation of the complex challenges facing the Burmese government, but also condemned the violence committed by both ARSA and the Tatmadaw in Rakhine State. In November 2017, Secretary Tillerson determined that the Tatmadaw's "clearance operation" constituted ethnic cleaning, and announced that United States would "pursue accountability through U.S. law, including possible targeted sanctions."

Since Secretary Tillerson's statement, the Trump Administration has provided additional funding for humanitarian assistance in Bangladesh and Rakhine State, stopped providing visa waivers for senior Tatmadaw officers, placed economic sanctions on one Tatmadaw general under the Global Magnitsky Act, and called for a global ban on arms sales to Burma's military. Additional actions are reportedly being considered, depending on what measures the Burmese government takes to address the Rohingya crises.

Pending Legislation

The BURMA Act (H.R. 4223) states that the United States "supports a complete transition to democracy and genuine

national reconciliation in Burma." The BHRFA (S. 2060) states that the United States supports "the establishment of a peaceful, prosperous, and democratic Burma that includes respect for the human rights of all its people regardless of ethnicity and religion." Both bills call for additional humanitarian assistance and "the dignified, safe, and voluntary return of all those displaced from their homes." In addition, both bills would impose a visa ban on senior military officers involved in human rights abuses in Burma, place new restrictions on security assistance and military cooperation, reinstate the jadeite import ban of Section 3A of the Burmese Freedom and Democracy Act, and require U.S. opposition to international financial institution (IFI) loans to Burma if the project involves an enterprise owned or directly or indirectly controlled by the Tatmadaw. The bills also would require that the President determine whether persons subject to the visa ban "should be included on the SDN [Specially Designated Nationals and Blocked Persons] list," a Department of the Treasury list of foreign persons subject to economic sanctions.

Looking Ahead: Leading Policy Issues

Congress may face a variety of issues on which it may take action in 2018. The humanitarian situation in Bangladesh and Rakhine may push Congress to consider funding for assistance to the displaced Rohingya. Congress may also examine ways to ensure that a credible, independent investigation of the alleged human rights abuses in Kachin, Rakhine, and Shan States occurs, and that those determined to be culpable are held accountable for their actions. Another issue Congress may consider is what role, if any, the United States can serve in promoting the peaceful resolution of Burma's low-grade civil war. In addition, Congress may choose to address the apparent decline in civil liberties and the continued arrest and prosecution of political prisoners in Burma, and examine options on how to support the Union Parliament in repealing or amending the more problematic laws.

An underlying factor in most of these issues is the overall assessment of the situation in Burma. The framework that was largely used during the Obama Administration, and appears to continue to be used during the Trump Administration, is that Burma is part way through a transition from a military junta to a democratically-elected civilian government. Under this assessment, the general approach is to find ways to advance the transition. However, some analysts argue that recent events indicate that Burma's military leaders never supported such a transition, and that the current governance system, as embodied in the 2008 constitution, was the intended endpoint for any political reforms. If this is a more accurate representation of the situation in Burma, then efforts to foster further political reform may face stiff opposition from the Tatmadaw.

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