



January 10, 2019

U.S. Relations with Burma: Key Issues in 2019

In 2018, the 115th Congress was generally critical of the Trump Administration's Burma policy, particularly its limited response to atrocities committed by the Burmese military against the Rohingya, intensifying conflict with ethnic insurgencies, and rising concerns about political repression and civil rights. In December 2018, Congress passed the Asia Reassurance Initiative Act of 2018 (P.L. 115-409), which prohibits the provision of funding for International Military Education and Training (IMET) and Foreign Military Financing (FMF) Program in Burma for fiscal years 2019 through 2023.

Major Developments in Burma in 2018

At the end of 2018, an estimated one million Rohingya, most of whom fled atrocities committed by Burma's military (Tatmadaw) in late 2017, remained in refugee camps in Bangladesh, unable and unwilling to return to Burma's Rakhine State given the current policies of the Burmese government. Also in 2018, fighting between Burma's military, or Tatmadaw, and various ethnic armed organizations (EAOs) escalated in Kachin and Shan States, and spread into Chin, Karen (Kayin), and Rakhine States, while efforts to negotiate a nationwide ceasefire stalled. In December 2018, Commander-in-Chief Min Aung Hlaing announced a four-month unilateral ceasefire in eastern (but not western) Burma, possibly signaling a new flexibility in the peace negotiations. Many EAOs remain skeptical.

The Rohingya Crises

More than 700,000 Sunni Rohingya fled to Bangladesh in late 2017, seeking to escape Tatmadaw forces that destroyed almost 400 Rohingya villages, killed at least 6,700 Rohingya (according to human rights groups and Doctors Without Borders), and sexually assaulted hundreds of Rohingya women and girls. Repatriation under an October 2018 agreement between the two nations is stalled as the Burmese government is unable or unwilling to establish conditions that would allow the voluntary, safe, dignified, and sustainable return of the Rohingya to Rakhine State. Among the conditions sought by the Rohingya are their return to locations at or near their original villages, recognition as an indigenous ethnic minority, restoration of their full citizenship, and establishment of an accountability mechanism to investigate and prosecute the alleged atrocities. Meanwhile, smaller numbers continue to add to those Rohingya in need of humanitarian assistance in Bangladesh.

Burma's mixed military/civilian government has so far denied any systematic and/or widespread misconduct by Burma's security forces, and continues to deny the United Nations, international humanitarian assistance organizations, and local and international media unrestricted access to northern Rakhine State.

Figure 1. Map of Burma (Myanmar)



Source: CRS

The Stalled Peace Process

The 3rd session of the 21st Century Panglong Conference—an effort to forge a nationwide ceasefire agreement between the government, the military, and EAOs—was held in July, but made little progress towards ending the long-standing conflict. Two of the larger EAOs, the Karen National Union and the Restoration Council of Shan State, subsequently suspended their participation in the formal peace process.

In December 2018, Commander-in-Chief Min Aung Hlaing announced a four-month unilateral ceasefire in western (but not eastern) Burma, and reversed his previous objection to the inclusion of three other EAOs—the Arakan Army, the Myanmar National Democratic Alliance Army, and the Ta'ang National Liberation Army—in the peace talks.

Violation of Human Rights and Civil Liberties

According to some analysts, Burma's mixed military/civilian government responded to domestic and international criticism in 2018 by curtailing freedom of speech and press freedom. In September 2018, Kyaw Soe Oo and Wa Lone, reporters investigating the alleged human

rights abuses in Rakhine State, were convicted for violating Burma's 1923 Official Secrets Act, and sentenced to seven years in prison. Other journalists have been arrested following interviews with EAO leaders.

Also, 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. According to the Assistance Association for Political Prisoners (Burma), as of November 2018, 305 people are either serving sentences or awaiting trial for their political activities.

State of Political Reforms

Many observers expected Aung San Suu Kyi and the National League for Democracy (NLD) to implement political reforms following their parliamentary victory in 2015. However, since taking power in 2016, the NLD 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). A special commission set up by the NLD-led government identified more than 140 laws that should be abolished or amended; 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 and other observers, the waiving of those sanctions has emboldened the Tatmadaw to utilize its constitutional powers to control developments in 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 condemned the violence committed by both Rohingya militants and the Tatmadaw in Rakhine State. In November 2017, Secretary Tillerson determined that the Tatmadaw's "clearance operation" constituted "ethnic cleansing," and announced that United States would "pursue accountability through U.S. law, including possible targeted sanctions."

Following Secretary Tillerson's statement, the Trump Administration provided additional funding for humanitarian assistance in Bangladesh and Rakhine State (nearly \$390 million), 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.

On September 18, 2018, an independent U.N. fact-finding mission on Myanmar released its final report, determining that the actions of Burma's security forces in Kachin, Rakhine, and Shan States possibly constituted genocide,

crimes against humanity, and war crimes. It recommended the U.N. Security Council "refer the situation to the International Criminal Court or create an ad hoc international criminal tribunal." The mission also called for the establishment of "an independent, impartial mechanism to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses."

On September 24, 2018, the State Department released the findings of its own study, concluding "the vast majority of Rohingya refugees experienced or directly witnessed extreme violence and the destruction of their homes," and the refugees "identified the Burmese military as a perpetrator in most cases." It also stated "that the recent violence in northern Rakhine State was extreme, large-scale, widespread, and seemingly geared toward both terrorizing the population and driving out the Rohingya residents," and "(t)he scope and scale of the military's operations indicate they were well-planned and coordinated."

Since the release of the two reports, the Trump Administration has placed sanctions on three additional Tatmadaw officers and two military units under the Global Magnitsky Act, but has declined to characterize the human rights abuses as either genocide or crimes against humanity.

Looking Ahead: Leading Policy Issues

Given the humanitarian situation in Bangladesh and Rakhine State, Congress may choose to consider funding for assistance to the displaced Rohingya. Congress may also examine ways to ensure that a credible, independent investigation of the alleged 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 the United States can serve in promoting the peaceful resolution of Burma's civil war, including whether or not to continue providing assistance to the formal peace process. In addition, Congress may weigh providing assistance to support the protection in civil liberties, the end the arrest and prosecution of political prisoners in Burma, and the repeal or amendment of problematic laws.

An underlying factor shaping the U.S. approach is the overall assessment of political developments in Burma. Both the Obama and Trump Administrations based their policies on the premise 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. Congress's sense of which assessment is more convincing may guide its actions towards Burma in 2019.

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