

Scaling up the U.S. Response to the Coup in Burma

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KEY TAKEAWAYS

On February 1, the Burmese military thwarted the will of the Burmese people and carried out a coup, dashing hopes for a brighter, more democratic future.

The U.S. should send a clear signal to the Burmese military that there will be serious repercussions and should work to support the will of the Burmese people.

The U.S. should increase and enforce sanctions against Burmese military targets and make a public legal determination on crimes committed against the Rohingya.

On February 1, the Burmese military thwarted the will of the Burmese people and carried out a coup. The coup dashed the Burmese people's hopes for a brighter, more democratic future for the Southeast Asian nation.

In the months since the coup began, millions of Burmese citizens have taken to the streets to oppose the military takeover.¹ Protests have been augmented by strikes in various areas of the Burmese economy, starting in the health care sector and extending to parts of civilian leadership. The apparatus for robust civilian resistance, formed in response to previous attempts by the military to thwart reform, remains in place. People are putting both life and livelihood on the line in an effort to get their country back on the path to democracy.

The Burmese military has already killed close to 1,000 demonstrators, including at least 40 children,²

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and have imprisoned far more: As of May 31, according to the Assistance Association for Political Prisoners (Burma), 5,576 people had been arrested, and 4,443 “were still detained.”³ From the first days of the coup, de facto head of the country Aung San Suu Kyi and President U Win Myint have been under house arrest.

That the response to demonstrations has been swift and often brutal is no surprise. The leader of the coup, Senior-General Min Aung Hlaing, is the same Burmese military official who was responsible for carrying out what the United Nations calls genocide and crimes against humanity against the Muslim minority Rohingya.⁴ The likelihood of future atrocities is high and should be closely monitored, especially as the Tatmadaw (Burma’s military) exercises unbridled power and authority. Min Aung Hlaing says that the military will rule Burma for only one year; the reality may be different.

The U.S. response to the coup has been relatively swift. The Biden Administration undertook a sanctions review and redirected aid away from the Burmese government toward the people and civil society.⁵ Since then, the Administration has issued additional sanctions against Burmese military leaders and their affiliates.

As the coup stretches on, the U.S. Administration may look for additional steps that it can take to strengthen the hand of the Burmese people while holding the Burmese military accountable. To these ends, the Administration should:

Finally issue an atrocity determination saying whether the Burmese military carried out genocide and crimes against humanity against the Rohingya;

Broaden its application of preexisting sanctions tools, including by designating Burma as a Primary Money Laundering Concern (PMLC) or identifying specific entities that might qualify as PMLCs; and

Press the Burmese regime to release all political prisoners.

The Global Response to the Coup

The Burmese People. The Civil Disobedience Movement (CDM) is the latest incarnation of Burma’s pro-democracy movement, which has innovated and flourished as civil society has grown increasingly robust in spite of various threats to its existence. The 2021 CDM started in the medical

community where doctors and nurses refused to report to work and instead set up roadside medical clinics to meet the people's needs.⁶ This response to the coup later spread to the transportation industries, banking sector, legal profession, educators, and beyond. Many in the Burmese government's civilian leadership refuse to report to work and are playing a key role in leading the movement.⁷

An opposition National Unity Government (NUG) has emerged. The NUG represents a conglomeration of ousted National League for Democracy (NLD) lawmakers and operates in consultation with the CDM and the Committee Representing Pyidaungsu Hluttaw (comprised primarily of NLD lawmakers elected in November 2020). While the NUG initially faced criticism for not engaging the Rohingya, they have since sought ways to include Rohingya voices in their movement. The NUG established a Federal Charter,⁸ an interim document intended to provide order to a movement that seeks to get the country back on the path toward reform and establish the NUG as the legitimate government of Burma as opposed to the military. Protests have extended beyond Burma's borders and have included Burmese diplomats in New York and Washington, D.C., as well as staff on strike and otherwise declaring their allegiance to the CDM rather than the ruling military junta.⁹

Protestors in Burma are sacrificing their livelihoods and even their lives to stand in opposition to the coup and make their voices heard. Such bravery demands a strong response, especially when put in the context of the existential threat posed by the military junta's leadership.

The U.S. Government. The U.S. was among the first countries to condemn and take action in response to the coup. On the same day as the coup, the Administration inaugurated a review of U.S. sanctions and assistance programs directed toward Burma.¹⁰

The President declared a state of national emergency on February 11 when he issued Executive Order 14014 invoking the National Emergencies Act¹¹ and using his authority under the International Emergency Economic Powers Act (IEEPA)¹² to issue sanctions.¹³ Within 10 days of the coup, the Administration issued sanctions against 10 individuals and three entities, including the coup's leader, Senior-General Min Aung Hlaing (the second time he has been sanctioned by the U.S.).¹⁴ This first tranche of sanctions also targeted Burma's jade and ruby industries¹⁵ and froze over \$1 billion in Burmese government foreign currency reserves in the U.S.¹⁶

Since that time, the U.S. has continued to issue piecemeal sanctions against individuals and entities in Burma.

On March 22, the U.S. placed the 33rd and 77th Light Infantry Divisions on the Specially Designated Nationals (SDN) List for the role they played in the violent suppression of democracy.¹⁷

On March 25, the U.S. designated two major military-owned enterprises, the Myanma Economic Holdings Public Company Limited (MEHL) and the Myanma Economic Corporation Limited (MEC), two of the largest military-owned conglomerates in Burma.¹⁸

Subsequently, Myanma Gems Limited was placed on the SDN list.¹⁹

Shortly thereafter, the timber and pearl industries were targeted.²⁰

Sanctions continued to be issued into May with the latest round of sanctions on May 17 targeting the State Administrative Council.²¹

Other individuals in addition to the aforementioned entities have likewise been targeted since the coup. In total, 32 individuals and 16 entities have been designated since the coup began.

In addition to sanctions, the U.S. government suspended all aid to the Burmese government (except assistance to the health care sector, civil society and areas that benefit the Burmese people) and redirected \$42.6 million toward civil society and the private sector.²² The Office of the United States Trade Representative also suspended U.S. engagement with Burma under the Trade and Investment Framework Agreement in March and stated that it is reconsidering whether Burma continues to merit preferential trade status under the Generalized System of Preferences, which is up for reauthorization.²³

The International Landscape. The Biden Administration has placed a strong emphasis in its foreign policy on coordination with allies. The response to the coup has been no exception. Sanctions against Min Aung Hlaing and against MEC and MEHL were implemented in concert with the United Kingdom, Canada, and the European Union (EU),²⁴ and concerns over deteriorating conditions in Burma were expressed in a statement issued after a meeting of the Quad.²⁵

All 15 members of the United Nations Security Council condemned the coup on March 11 and called on regional organizations like the Association of Southeast Asian Nations (ASEAN) to step up and respond.²⁶ On April 24, ASEAN issued its Five-Point Consensus on the situation in Myanmar, but these points of consensus had no mechanisms to ensure accountability for the military or that commitments made by ASEAN to provide humanitarian assistance or mediation are fulfilled.²⁷

Because of this leadership void, many around the globe closely observed China's response. Many assumed that China would offer *carte blanche* support for the Tatmadaw's efforts, but this assumption fails to take into account the complicated relationship between China and Burma. Historically, the Chinese government has been an opportunistic neighbor, supporting both Burma's military and the efforts of its opposition ethnic armed groups. Thus, when the NLD took power, China moved quickly to build its relationship with the then-civilian leadership and further diversify its contacts in Burmese civil society.

China's transactional relationship with the Burmese military is best understood through the lens of China's own internal and foreign policy priorities. In other words, China's response is dictated less by its relationship with the Burmese military than it is by which actions best preserve Beijing's own internal security and stability.²⁸ Fears of instability along the China–Burma border are of special concern. This at least partially explains China's tenuous response to the coup and its emphasis on the importance of “a peaceful and stable Myanmar.”²⁹

Given this context, continued U.S. leadership is essential, especially if the will of the Burmese people is to be heeded and members of the Burmese military are to be held to account.

What the United States Should Do

Despite a relatively strong and swift response, there are still things that the Administration can do to strengthen U.S. leadership and response to the coup in Burma. The Burmese people (especially those active in the CDM) have expressed their willingness to take hits economically if it means that the military's actions will be constrained or reversed. The international community should not allow its humanitarian impulses to impede its response; instead, it should craft a policy that helps the Burmese people return the country to the path of reform and respect for human rights.

Specifically, Congress and the Administration should:

Increase sanctions pressure comprehensively and swiftly. The Biden Administration was quick to undertake a sanctions review and even to sanction some of the higher-profile targets, but it is not using these tools in the most comprehensive manner possible. Executive Order 14014 and the overarching framework for Burma sanctions are relatively strong, but there is ample room for expansion and enforcement of preexisting authorities.

The Administration can work with Congress to impose secondary sanctions against foreign individuals and entities that continue to do business with already sanctioned elements of the Tatmadaw. The U.S. Department of the Treasury also can issue special guidance to clarify the intent and application of preexisting sanctions authorities and forewarn the international community of the consequences of continuing to do business with the Burmese military. Beyond these efforts, the U.S. can issue sector-specific sanctions that identify particular sectors of concern in Burma and clarify that the U.S. has the ability to sanction subsidiaries: for example, subsidiaries of MEC and MEHL, the jade and gems industries, and the natural gas industry.

Secondary sanctions are often critical to closing the loophole on bad actors' access to the international financial system. Secondary sanctions, including the targeting of correspondent accounts such as Burmese military bank accounts at regional banks in Singapore and Thailand or international bank accounts in the U.K. or the EU, could be equally valuable in cutting off Burma's military from financial resources. These strategies have been used in previous contexts. In North Korea, for example, the U.S. has targeted North Korea's illicit financial activities and entities that are actively flouting U.S. and United Nations sanctions.³⁰ Similar measures may be applicable in the Burmese context.

Place the state-owned Myanma Oil and Gas Enterprise on the Specially Designated Nationals List. According to a white paper from the Independent Economists for Myanmar, the Burmese military controls at least \$4 billion in U.S. currency assets, or approximately two-thirds of Burma's total foreign currency assets. In particular:

The largest inflows of foreign currency to the military as an institution are earned from natural gas, jade, metallic minerals, land rentals, telecommunications fees and perhaps from businesses involved in trade (e.g., port fees, transport and logistics companies, Myanmar National Airlines), totalling in the range of USD 2.5 billion per year.³¹

Although the Administration has targeted many of these industries, it has not yet targeted the Myanma Oil and Gas Enterprise (MOGE), which is believed to have held at least \$4.6 billion in total (not only

dollar-denominated) oil and gas revenue in 2018.³² The U.S. Treasury Department should place MOGE and any relevant affiliates on the Specially Designated Nationals (SDN) List to round out the industries targeted by U.S. sanctions. Sector-specific sanctions would also catch a broader swath of actors in the oil and gas industries.

Investigate whether certain Burmese military-owned banks or entities qualify as Primary Money Laundering Concerns (PMLCs). Burma was labeled a PMLC under Section 311 of the USA PATRIOT Act in 2003 and subject to more restrictive “special measures” as mandated by the Treasury Department’s Financial Crimes Enforcement Network (FinCEN).³³ When the Obama Administration rolled back sanctions in 2016, Burma was offered “exemptive relief,” which meant that under certain conditions, banks could maintain correspondent accounts with Burmese banks.³⁴

Treasury should investigate and determine whether the country of Burma merits redesignation and whether certain banks or entities in Burma—including two of its largest banks, the Myawaddy Bank and Innwa Bank—qualify for designation as PMLCs.³⁵ The U.N.’s Independent International Fact-Finding Mission on Myanmar found significant evidence connecting these banks to now-sanctioned military conglomerates MEC and MEHL.³⁶ Others recommend investigating the Myanmar Foreign Trade Bank and Myanma Investment and Commercial Bank, and other banks and entities may be worth investigating to determine the extent to which they are entangled with the Tatmadaw and, most especially, whether they engage in money laundering or other forms of illicit finance on behalf of the military. Such a designation leads to new restrictions and record-keeping, especially on correspondent accounts and accounts payable, among other restrictions.³⁷ These efforts are especially important for cutting off the military’s access to the international financial system and, when done in tandem with secondary sanctions, ensure that the military cannot evade financial regulation as it seeks to maintain its grip on power.

If the U.S. designates the country as a whole as a PMLC, it risks running afoul of its ability to provide humanitarian assistance to the CDM and to needy Burmese people. Treasury should therefore pursue a country-specific designation *only as a last resort* and do what it can to preserve the space for continued humanitarian activities if possible.

Make an official public legal determination on crimes committed against Rohingya. The Trump Administration never issued a determination on whether the Burmese military carried out genocide and/or crimes against humanity against Rohingya in August 2017.³⁸ The Public International Law and Policy Group (PILPG), which was commissioned by the U.S. Department of State to produce the report, found evidence that both atrocities were carried out. State published only the factual findings produced by PILPG,³⁹ not its legal findings, so PILPG published the report in its entirety to make explicit that it found evidence for both genocide and crimes against humanity carried out against Rohingya.⁴⁰

In spite of this, and in spite of the fact that the Trump Administration on its final day in office issued a legal determination on crimes committed against Uyghurs in Xinjiang, China, the Biden Administration has made no efforts to issue an atrocity determination for Rohingya. It should do so as soon as possible, especially since Rohingya remain at risk of future atrocities now that the same individuals who carried out atrocities in 2017 are in power. The Secretary of State has the authority to issue a determination on atrocity crimes at any point in time, and Secretary of State Antony Blinken should do so without delay.

Press for the release of all political prisoners in Burma. The U.S. should press for the release of civil society leaders and others imprisoned or facing charges after the coup as well as high-profile government officials like Aung San Suu Kyi and U Win Myint. The U.S. should also reiterate calls both to temper the violence and to end extrajudicial imprisonment. An American journalist working for Frontier Myanmar, Danny Fenster, was recently detained and is currently believed to be held in the notorious Insein Prison in Burma.⁴¹ The State Department should actively press the Burmese military for his release, along with Burmese nationals currently held as political prisoners.

Increase specialized aid and assistance to members of the CDM. Using existing cross-border channels, the U.S. should continue to support a wide range of civil society organizations, including ethnic and women's groups, that can provide support to those who are suffering the consequences of the coup. This should include not only assistance to CDM participants, protesters, detainees' families, and those directly

involved in the movement, but also an element specifically targeting military and other security personnel in a manner that would encourage defections.

Closely monitor and heed early signs of potential future atrocities carried out against ethnic minorities in Burma. Since the start of the coup, many have pointed out that certain communities are especially at risk of being further targeted by the Burmese military, particularly Rohingya.⁴² Other minorities like those in the Shan and Kachin states also have come into conflict with the military. The international community should closely monitor these communities for signs of impending or possible atrocities and put in place systems of response.

Continue to build international consensus on the response to the Burma coup by undertaking coordinated responses with allies. Coordinated sanctions action taken by the U.S. in concert with the EU, the U.K., and Canada pave the way for future coordinated responses with allies across the globe. Given their significant economic investments in Burma, both Japan and Korea also may have a role to play in pressuring the Burmese military economically.

Coordination with allies is especially important when it comes to implementation and enforcement of secondary sanctions. ASEAN countries like Thailand and Singapore also conduct significant business, including banking, with entities in Burma. The U.S. should seek their assistance in enforcing secondary sanctions and ensuring that the military is cut off from the international financial system to foster change in the military's behavior.

Consider granting Priority 2 (P-2) refugee status to Rohingya refugees, as well as to persons who qualify as refugees in the midst of the coup. Refugee resettlement is one of the few ways that the U.S. can meaningfully support countries during intractable crises. P-2 status holders do not need to prove "individualized" persecution or be referred by the United Nations Commissioner for Human Rights. They are processed on the basis of their belonging to a group with known, established grounds of persecution, like genocide.⁸³

At present, refugees granted P-2 status are included in, not classed as being in addition to, the quota set by the President. Subsequently, the same number of refugees would be admitted on an annual basis, regardless of whether or not they are processed through P-2 status. Current P-2s include Iraqis who have worked for the U.S., Burmese refugees in Thailand and Malaysia, and politically persecuted Cubans, among others.⁸⁴ P-2 status has been granted to individuals previously subject to genocide, including Congolese in Rwanda.⁸⁵

Conclusion

The U.S. has an opportunity to send a clear signal to the Burmese military that they will not get away with a coup without paying a price. The Administration should do what it can to support the will of the Burmese people, and this will require a comprehensive approach to sanctions implementation and enforcement—an approach that targets revenues generated through secondary sources and leaves no option unexplored when it comes to targeting specific lucrative industries.

By themselves, however, sanctions do not a policy make. Additional steps are needed to increase aid and assistance to the Civil Disobedience Movement in tandem with punitive measures, and safe haven should be extended to those who are in imminent danger.

The most successful approach will include all Burmese voices and will be carried out with support from the international community. As a global defender of freedom, the U.S. must do everything it can to address the deteriorating conditions in Burma.

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