

BACKGROUND

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Crafting a Successful U.S. Strategy toward Burma: Beyond the Rohingya Crisis

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Abstract

Since August 25, 2017, close to 688,000 Rohingya fled violence in Burma to seek refuge in Bangladesh. At the very least, the Rohingya are victims of ethnic cleansing. The Trump Administration should act quickly to develop a sanctions program that is adapted to the current political environment in Burma and that addresses severe human rights abuses as well as backslides in the reform process. It should also lead the charge in providing humanitarian assistance and relief to the Rohingya. The U.S. should maintain diplomatic ties to Burma, foster the reform process, and provide assistance to those in urgent need.

Introduction

The political climate in Burma is tenuous. Since August 25, 2017, close to 688,000 Rohingya fled violence in Burma to seek refuge in Bangladesh.¹ Violence carried out by the Burmese military in response to an alleged attack from the Arakan Rohingya Salvation Army (ARSA) far exceeded any justified response. At the very least, the Rohingya are victims of ethnic cleansing. Some human rights groups believe it may amount to genocide.² Yet as horrific as it is, the current crisis is a symptom of deeper problems with reform in Burma—problems which were insufficiently accounted for in U.S. policy as it developed in the second term of the Obama Administration.

Burma has inarguably experienced significant political changes in recent years, starting with the largely flawed 2010 elections and the still flawed but substantially better elections in 2015 that brought Aung San Suu Kyi and the National League for Democracy (NLD) to power.³ The 2015 elections, while imperfect, were a prom-

KEY POINTS

- U.S. leadership in the coming months is critical to ensuring that Rohingya continue receiving assistance even after the 24-hour news cycle moves on from their plight.
- The U.S. should consider careful implementation of measures targeted at the Burmese military, its impunity, and the continuing obstacle it poses to political reform.
- In light of the current humanitarian crisis, the U.S. should also develop a comprehensive humanitarian assistance plan, developed in conjunction with the international community.
- The Rohingya crisis is a regrettable reminder that the U.S. needs to reexamine its policy toward Burma.
- The country is clearly not the success story that many anticipated, but the political transformation that took place in Burma previously was substantive—and offered hope that Burma could move toward meaningful political reform.

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ising development that seemed to signal that Burma was on a path toward substantive political change. The elections and a number of other indicators led to the decision by the U.S. to lift sanctions on Burma in October 2016.⁴

Increasingly warm relations between the U.S. and Burma under the Obama Administration were welcome, but many of the actions taken were too much, too soon. The lifting of sanctions sacrificed much-needed leverage over the political reform process at the precise moment when Burma had the best prospects for achieving peace and political transformation.⁵ The sweeping removal of sanctions, which included targeted measures levied against military personnel and military-linked enterprises, disadvantaged the forces of peaceful, democratic change. It did nothing to curb the power of the military—a stakeholder in the Burmese political system that already enjoys control and wields it with impunity.

Given the emergence of elected civilian government in Burma, it would not be appropriate to reinstitute the U.S. sanctions program as developed over 20 years under more dire circumstances. The U.S. should instead consider careful implementation of measures targeted at the Burmese military, its impunity, and the continuing obstacle it poses to political reform.

In light of the current humanitarian crisis, the U.S. should also develop, in conjunction with the international community, a comprehensive humanitarian

assistance plan. The U.S. already increased humanitarian aid to address the Rohingya crisis, first by \$32 million and later by an additional \$47 million, bringing total U.S. assistance to \$151 million in 2017.⁶ This falls far short of the \$434 million in funding requested by the U.N. Office for the Coordination of Humanitarian Affairs (UNOCHA).⁷ U.S. leadership in the coming months is critical to ensuring that Rohingya continue receiving assistance even after the 24-hour news cycle moves on from their plight.

The Rohingya crisis is an unfortunate reminder that the U.S. needs to reexamine its policy toward Burma. The country is clearly not the success story that many anticipated, but the political transformation that previously took place in Burma was substantive—and offered hope that Burma could move toward meaningful political reform.

The Trump Administration should act quickly to develop a sanctions program that is adapted to the current political environment in Burma and that addresses severe human rights abuses committed by the Burmese military as well as backslides in the reform process. It should also lead the charge in providing humanitarian assistance and relief to Rohingya.

The Current Crisis in Burma

The Rohingya have faced persecution in Burma for decades. A citizenship law passed in 1982 effectively nullified Rohingya citizenship, triggering a string of exclusionary policies. In Burma today, Rohingya

1. International Organization for Migration, "Rohingya Displacement," last updated January 27, 2018, <https://data.humdata.org/event/rohingya-displacement> (accessed January 28, 2018).
2. Diana Guevara, Rachel Wolpert, and Olivia Enos, "U.S. Puts Pressure on Burma, Joins Chorus Against Rohingya Ethnic Cleansing," *Heritage Foundation Commentary*, November 7, 2017, <https://www.heritage.org/global-politics/commentary/us-puts-pressure-burma-joins-chorus-against-rohingya-ethnic-cleansing>.
3. The Carter Center, *Observing Myanmar's 2015 General Elections: Final Report*, 2015, https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/myanmar-2015-final.pdf (accessed February 1, 2018).
4. Barack Obama, "Termination of Emergency with Respect to the Actions and Policies of the Government of Burma," Executive Order No. 13742, October 7, 2016, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/burma_eo_termination.pdf (accessed February 1, 2018), and news release, "Treasury Implements Termination of Burma Sanctions Program," U.S. Department of the Treasury, October 7, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0569.aspx> (accessed February 1, 2018).
5. Olivia Enos and Hunter Marston, "It's Time for the U.S. to Pressure Burma on Human Rights Once Again," *The Washington Post*, July 18, 2017, https://www.washingtonpost.com/news/democracy-post/wp/2017/07/18/its-time-for-the-u-s-to-pressure-burma-on-human-rights-once-again/?utm_term=.4efdb4fb388e (accessed February 14, 2018).
6. U.S. Department of State, "U.S. Humanitarian Assistance in Response to the Crisis in Rakhine State, Burma," September 20, 2018, <https://www.state.gov/r/pa/prs/ps/2017/09/274283.htm> (accessed February 1, 2018), and U.S. Department of State, "United States Assistance to Burma," November 15, 2017, <https://www.state.gov/r/pa/prs/ps/2017/11/275606.htm> (accessed February 1, 2018).
7. U.N. Office for the Coordination of Humanitarian Affairs, "Rohingya Refugee Crisis," <https://www.unocha.org/rohingya-refugee-crisis> (accessed February 2, 2018).

are referred to as Bengali—a derogatory reference to their assumed Bangladeshi lineage.⁸ Rohingya have lived in Burma for many years—some say centuries or even millennia.⁹ And the vast majority of the current Rohingya population were born in Burma. In spite of this, Burma claims that they are Bangladeshi.

Even after the passage of the 1982 citizenship law, Rohingya were given “white” identity cards that enabled them to operate as partial citizens, but ahead of 2015 elections, those cards were voided.¹⁰ As non-citizens, Rohingya operate outside the protections of Burmese law. Many do not have access to basic amenities, including food and adequate shelter. They are often denied access to health care and schooling as well. While they previously enjoyed voting rights, when white cards were revoked, voting privileges were taken away.¹¹ Burma also has a *de facto* “two-child policy” in place—almost exclusively targeted at religious and ethnic minorities, including Rohingya.¹² Burma’s race and religion laws passed in 2015 also severely restrict religious freedom by requiring people of minority faiths to report their religion to the government.¹³

Many Rohingya live in internally displaced persons (IDP) camps. In May 2016, the population in IDP camps was estimated at 140,000; that number is now reduced to 120,000.¹⁴ Conditions in these camps

are often squalid. Time Magazine documented newborn babies dying of starvation due to lack of access to food.¹⁵ Like Rohingya outside the camp, IDPs lack access to adequate food and medical care, and their freedom of movement is more severely restricted than Rohingya outside the camps.¹⁶

Prior to August 2017, most Rohingya resided in Rakhine State in the western region of Burma. However, this is far from the first time that Rohingya fled that region. Almost every year over the past decade, Rohingya have fled by boat to neighboring countries. The mass exodus culminated in 2015 in the Southeast Asian Migrant Crisis, when an estimated 8,000 Rohingya refugees and Bangladeshi migrants fled by sea to neighboring Thailand, Malaysia, and Indonesia.¹⁷ Prior to the crisis, over one million Rohingya lived outside Burma, with the largest numbers living in Pakistan, Saudi Arabia, and Malaysia.¹⁸

An estimated 688,000 Rohingya have fled Burma to Bangladesh since August 2017.¹⁹ In total, Bangladesh houses close to one million Rohingya refugees.²⁰ Such a mass exodus has strained humanitarian assistance and made it one of the most rapid refugee crises in history. The pace of the Rohingya refugee outflow exceeds, for example, the exodus of refugees after the Rwandan genocide, when it is estimated that at least

8. The Rohingya have not assumed this lineage; other Burmese often simply assume they are from Bangladesh.
9. Megan Specia, “The Rohingya in Myanmar: How Years of Strife Grew into A Crisis,” *New York Times*, September 13, 2017, <https://www.nytimes.com/2017/09/13/world/asia/myanmar-rohingya-muslim.html> (accessed February 9, 2018).
10. “Myanmar Scraps Temporary ID Cards Amid Protests Targeting Ethnic Minorities without Citizenship,” ABC, February 12, 2015, <http://www.abc.net.au/news/2015-02-12/myanmar-scraps-temporary-id-cards-for-ethnic-minorities/6087544> (accessed February 1, 2018).
11. Wai Wai Nu, “Barring Burma’s Muslims from the Polls,” *The Wall Street Journal*, November 5, 2015, <https://www.wsj.com/articles/barring-burmas-muslims-from-the-polls-1446747368> (accessed on February 1, 2018).
12. Olivia Enos, “U.S. Government Should Not Stand by While Government in Burma Undermines Religious Liberty,” Heritage Foundation *Issue Brief* No. 4373, April 3, 2015, <http://www.heritage.org/asia/report/us-should-not-stand-while-government-burma-undermines-religious-liberty>.
13. *Ibid.*
14. Fortify Rights, United to End Genocide, “Supporting Human Rights in Myanmar: Why the U.S. Should Maintain Existing Sanctions Authority,” May 2016, p. 3, http://www.fortifyrights.org/downloads/Fortify_Rights_and_UEG_Supporting_Human_Rights_in_Myanmar_May%202016.pdf (accessed February 2, 2018), and International Crisis Group, “Myanmar’s Rohingya Crisis Enters a Dangerous New Phase,” December 7, 2017, p. 8, <http://www.refworld.org/country,,,MMR,,5a28f7bb4,0.html> (accessed February 2, 2018).
15. Jason Motlagh, “These Aren’t Refugee Camps, They’re Concentration Camps, and People Are Dying in Them,” *Time*, June 17, 2014, <http://time.com/2888864/rohingya-myanmar-burma-camps-sittwe/> (accessed February 2, 2018).
16. Fortify Rights, “Supporting Human Rights in Myanmar,” p. 3.
17. Olivia Enos, “Achieving Resolution in the Southeast Asian Migrant Crisis,” Heritage Foundation *Issue Brief* No. 4420, June 15, 2015, <http://www.heritage.org/asia/report/achieving-resolution-the-southeast-asian-migrant-crisis>.
18. Shakeeb Asrar, “Rohingya Crisis Explained in Maps,” *Al Jazeera*, October 28, 2017, <http://www.aljazeera.com/indepth/interactive/2017/09/rohingya-crisis-explained-maps-170910140906580.html> (accessed February 2, 2018).
19. U.N. High Commissioner for Refugees, “Bangladesh, Operational Update,” December 8, 2017, <https://reliefweb.int/report/bangladesh/unhcr-bangladesh-operational-update-8-december-2017> (accessed February 14, 2018).
20. *Ibid.*

111,000 people fled per week.²¹ Now, the Crisis Group estimates that 85 percent of the Rohingya population in Maungdaw, Buthidaung, and Rathedaung townships have fled, leaving a mere 100,000 to 150,000 Rohingya back in Burma.²²

The groundwork for the current crisis was laid in 2012 when severe communal violence between Muslims and Buddhists took place in Rakhine state after accusations were made that a Muslim man raped a Buddhist woman.²³ The violence resulted in the death of at least 78 individuals.²⁴ The incident deepened discord that already existed between the predominantly Buddhist Burman population and the minority Rohingya Muslims.

More radical Buddhist elements of Burmese society, including the Ma Ba Tha or 969 movement, led by the so-called Osama bin Laden of Buddhism, Ashin Wirathu, seized upon the unrest to foment more violence and hatred toward Muslims in Burma.²⁵ While Wirathu claims to be a peaceful actor, his hate-filled messages, which include calling on Burmese to boycott Muslim-owned businesses, stirred up underlying prejudice against Muslims among the majority Buddhist Burman population.²⁶ Wirathu was previously imprisoned in 2003 for inciting vio-

lence against the Muslim population, but was later released under a general amnesty in 2012.²⁷ His rhetoric allegedly inspired a significant spate of violence against Rohingya in 2012 that resulted in the death of more than 200 and displacement of an estimated 150,000 Rohingya.²⁸

Violence once again flared in October 2016, right before the U.S. lifted sanctions on Burma and almost a year to the day of Burma's 2015 elections.²⁹ Like the recent unrest in Burma, the October 2016 violence began with attacks on Burmese security outposts perpetrated by ARSA, which was then called Harakah al-Yaqin and consisted of members of the Rohingya diaspora from Saudi Arabia.³⁰ The violence in October 2016 foreshadowed what was to come in August 2017—especially because the Burmese military's response was disproportionate to the threat posed by Harakah al-Yaqin. The violence resulted in the death of nine police officers.³¹ The military's retaliation led to the displacement of 87,000 Rohingya, as well as massive internal displacement.³²

The violence in October 2016, however, pales in comparison to the systematic operation carried out in August 2017. In response to attacks by ARSA on Burmese security posts, the Burmese military began

21. Daily Chart, "The Rohingya Refugee Crisis Is the Worst in Decades," *The Economist*, September 21, 2017, <https://www.economist.com/blogs/graphicdetail/2017/09/daily-chart-13> (accessed February 2, 2018).
22. International Crisis Group, "Myanmar's Rohingya Crisis Enters a Dangerous New Phase," p. 8.
23. Human Rights Watch, "The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma's Arakan State," July 31 2012, <https://www.hrw.org/report/2012/07/31/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan> (accessed February 2, 2018).
24. Priscilla Clapp, "Communal Violence in Burma," United States Institute of Peace, June 27, 2012, <https://www.usip.org/publications/2012/06/communal-violence-burma> (accessed February 2, 2018).
25. Sarah Kaplan, "The Serene-Looking Buddhist Monk Accused of Inciting Burma's Sectarian Violence," *The Washington Post*, May 27, 2015, https://www.washingtonpost.com/news/morning-mix/wp/2015/05/27/the-burmese-bin-laden-fueling-the-rohingya-migrant-crisis-in-southeast-asia/?utm_term=.d28372c95a2d (accessed February 2, 2018).
26. U.S. Commission on International Religious Freedom, Annual Report 2017, "USCIRF-Recommended Countries of Particular Concern: Burma," 2017, <http://www.uscirf.gov/sites/default/files/Burma.2017.pdf> (accessed February 2, 2018).
27. Alex Bookbinder, "969: The Strange Numerological Basis for Burma's Religious Violence," *The Atlantic*, April 9, 2013, <https://www.theatlantic.com/international/archive/2013/04/969-the-strange-numerological-basis-for-burmas-religious-violence/274816/> (accessed February 2, 2018).
28. Thomas Fuller, "Extremism Rises among Myanmar Buddhists," *The New York Times*, June 20, 2013, <http://www.nytimes.com/2013/06/21/world/asia/extremism-rises-among-myanmar-buddhists-wary-of-muslim-minority.html> (accessed February 2, 2018).
29. News release, "Treasury Implements Termination of Burma Sanctions Program," U.S. Department of Treasury, October 7, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0569.aspx> (accessed February 2, 2018).
30. International Crisis Group, "Myanmar: A New Muslim Insurgency in Rakhine State," December 15, 2016, <https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state> (accessed February 2, 2018).
31. Michael F. Martin, Rhoda Margesson, and Bruce Vaughn, "The Rohingya Crisis in Bangladesh and Burma," Congressional Research Service, November 8, 2017, <https://fas.org/sgp/crs/row/R45016.pdf> (accessed February 2, 2018).
32. Ibid.

a systematic campaign to push Rohingya out of Rakhine state. The scale and scope of violence had not been seen in the country before. The U.N. says the Burmese military's action is a textbook case of ethnic cleansing.³³ Human Rights Watch says that some of the activities carried out may constitute crimes against humanity—especially the massive scale of sexual violence and rape against Rohingya women and girls.³⁴ And Fortify Rights and the U.S. Holocaust Memorial Museum (USHMM) claim that what occurred may constitute genocide.³⁵ (USHMM released a report indicating early warning signs of genocide against Rohingya in 2015.)³⁶ Amnesty International suggests that it could also constitute apartheid.³⁷ Whatever label is used to describe what happened to the Rohingya, it is clear that it is a violation of international law with grave consequences to the personal safety and security of the nearly 700,000 refugees that fled.

What remains is massive displacement; physical, mental, and emotional wounds in need of healing; and a humanitarian crisis of infinite proportion. The severity of the crisis and the long history that led to the current situation demands strong leadership if there is to be any hope of resolution. The U.S. should consider the interests it has in Burma and the range of policy tools it has to alleviate human suffering in the midst of what will likely be an intractable crisis.³⁸

U.S. Interests in Burma

The U.S. has a host of long-term interests in Burma. For example, the U.S. does not want another weak, pseudo-democracy in Southeast Asia. Burma already has democratically weak neighbors (Thailand and Cambodia). Having another weak democ-

racy in the Association of Southeast Asian Nations waters down the institutional effectiveness of the collective strength of the 10 countries. The U.S. is also interested in seeing the promotion of freedom in the region, including a respect for religious freedom, the end of human trafficking in Burma, and the promotion of human rights. At present, Burma has a consistently poor track record in all of these areas.

While interests endure, some of the policy objectives shifted during various administrations. The Obama Administration had a vested interest in making Burma a success story in Southeast Asia because it was a part of the U.S.'s broader Asia pivot strategy. The decision to lift sanctions in December 2016 was intended to signal a near-complete reset of U.S.–Burma relations, one that still recognized the potential threat to Burma's stability posed by the Burmese military but that also signaled that the U.S. would come alongside the country as it pursued political reform. While the Administration's intentions were right, the decision to lift sanctions was the last of many political miscalculations in charting the course for future U.S.–Burma relations.

The Trump Administration shares many of the interests and objectives of the Obama Administration. Rex Tillerson, for example, affirmed U.S. interests in seeing peaceful political transition in Burma, reiterated a U.S. desire to see a cease-fire among the various ethnic armed groups, and affirmed U.S. intentions to provide humanitarian support to communities in need.³⁹

The Trump Administration's engagement on Burma prior to the Rohingya crisis was limited but relevant. The Administration dispatched U.S. Amba-

33. Zeid Ra'ad Al Hussein, "Darker and More Dangerous: High Commissioner Updates the Human Rights Council on Human Rights Issues in 40 Countries," U.N. Human Rights Office of the High Commissioner, September 11, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E> (accessed February 2, 2018).

34. Human Rights Watch, "Burma: Widespread Rape of Rohingya Women, Girls," November 16, 2017, <https://www.hrw.org/news/2017/11/16/burma-widespread-rape-rohingya-women-girls> (accessed February 2, 2018).

35. Fortify Rights, "They Tried to Kill Us All: Atrocity Crimes Against Rohingya Muslims in Rakhine State, Myanmar," *Bearing Witness Report*, United States Holocaust Memorial Museum, 2017, http://www.fortifyrights.org/downloads/THEY_TRIED_TO_KILL_US_ALL_Atrocity_Crimes_against_Rohingya_Muslims_Nov_2017.pdf (accessed February 2, 2018).

36. *Ibid.*

37. Amnesty International, "Caged without a Roof: Apartheid in Myanmar's Rakhine State," 2017, <https://www.amnestyusa.org/wp-content/uploads/2017/11/Caged-without-a-Roof-Apartheid-in-Myanmar-Rakhine-State-FINAL.pdf> (accessed February 2, 2018).

38. Olivia Enos, David Inerra, and Joshua Meservey, "The U.S. Refugee Admissions Program: A Roadmap for Reform," *Heritage Foundation Backgrounder* No. 3212, July 5, 2017, <http://www.heritage.org/immigration/report/the-us-refugee-admissions-program-roadmap-reform>.

39. News release, "Efforts to Address Burma's Rakhine State Crisis," U.S. Department of State, November 22, 2017, <https://www.state.gov/secretary/remarks/2017/11/275848.htm> (accessed February 2, 2018).

sador for North Korea Policy, Joseph Yun, to Yangon earlier this year to talk with Burmese civilian and military officials about their support for North Korea.⁴⁰ Burma conducted numerous arms deals and allegedly received assistance from North Korea in the past.⁴¹

But it is not merely a thing of the past. According to a leaked report from the U.N., North Korea profited \$200 million in 2017 from exports of “coal, iron, lead, textiles, seafood, and ballistic missiles or missile technology to Myanmar [Burma is also known as Myanmar] and Syria.”⁴² While Burma claims to have severed its military ties with North Korea, evidence suggests otherwise. Additionally, Burma and North Korea have a shared history of drug trafficking, counterfeiting, and money laundering. Yun made it clear that the U.S. would not formally normalize ties to the Burmese military if it continues to support North Korea.⁴³ Since North Korea is arguably the top foreign policy priority for the Trump Administration, it will likely seek to maintain leverage with the Burmese government—leverage that would be better maintained if Burma were a stable democracy rather than a faltering pseudo-democracy facing a major humanitarian crisis.

Long-term interests and the policy priorities of the Trump Administration should—and have—prompted U.S. government action.

The Current U.S. Response to the Rohingya Crisis

The current U.S. government response to the Rohingya crisis has been limited.

Congress

Congress plays a critical role in crafting U.S. policy toward Burma. In fact, Congress created current U.S. government sanctioning authorities, which President Trump could invoke today under the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act.⁴⁴ Congress is currently considering key pieces of legislation that would enhance U.S. humanitarian assistance to Rohingya and hold military officials accountable.

The Senate Foreign Relations Committee recently passed S. 2060,⁴⁵ the Burma Human Rights and Freedom Act of 2017, which would appropriate \$104 million in humanitarian assistance as well as an additional \$27.4 million for reconciliation assistance in 2018; prohibit military-to-military training; re-instate import restriction on jade from Burma; and institute a visa ban and economic sanctions against known perpetrators of violence against Rohingya. The bill specifically lists Senior General Min Aung Hlaing, Major General Maung Maung Soe, Major General Khin Maung Soe, and “any senior official of the military or security forces of Burma for which there are credible allegations that the official has aided, participated, or is otherwise implicated in gross human rights abuses in Burma, including sexual and ethnic- or gender-based violence” as potential candidates to be placed on the Specially Designated Nationals (SDN) list.⁴⁶ The SDN list is a catch-all for foreign nationals that the U.S. has sanctioned apart from a country-specific program.⁴⁷ Since the Obama

40. Olivia Enos, “Congress, Don’t Further Normalize Military Relations with Burma,” *Forbes*, August 22, 2017, <https://www.forbes.com/sites/oliviaenos/2017/08/22/congress-dont-further-normalize-military-relations-with-burma/#1b744934971> (accessed February 2, 2018).

41. Bertil Lintner, “Could U.S. Reset Sanctions on Myanmar Over North Korea?” *Asia Times*, July 20, 2017, <http://www.atimes.com/article/us-reset-sanctions-myanmar-north-korea/> (accessed February 2, 2018), and Jeffrey Lewis and Catherine Dill, “Myanmar’s Unrepentant Arms Czar,” *Foreign Policy*, May 9, 2014, <http://foreignpolicy.com/2014/05/09/myanmars-unrepentant-arms-czar/> (accessed February 2, 2018).

42. Bertil Lintner, “North Korea, Myanmar in a Sanctions-Busting Embrace,” *Asia Times*, February 8, 2018, <http://www.atimes.com/article/north-korea-myanmar-sanctions-busting-embrace/> (accessed February 9, 2018).

43. Antoni Slodkowski, David Brunnstrom, and Matt Spetalnick, “Exclusive: U.S. Presses Myanmar to Cease Military Ties with North Korea,” Reuters, July 21, 2017, <https://www.reuters.com/article/us-northkorea-myanmar-usa/exclusive-u-s-presses-myanmar-to-cease-military-ties-with-north-korea-idUSKBN1A62PG> (accessed February 2, 2018).

44. Tom Lantos Block Burmese Jade Act of 2008, Public Law 110-286.

45. News release, “McCain, Cardin Bill on Burma Accountability Passes Senate Foreign Relations Committee,” U.S. Senate, February 7, 2018, <https://www.mccain.senate.gov/public/index.cfm/press-releases?ID=D358D0C0-3906-4B6C-9009-764EB61782DD> (access February 9, 2018).

46. Burma Human Rights and Freedom Act of 2017, S. 2060, 115th Congress, 1st Sess., § 2060; and Olivia Enos, “Resetting U.S. Policy Toward Burma,” Heritage Foundation *Issue Brief* No. 4816, February 2, 2018, <https://www.heritage.org/asia/report/resetting-us-policy-toward-burma> (accessed February 9, 2018).

47. U.S. Department of Treasury, “Specially Designated Nationals and Blocked Persons List (SDN) Human Readable Lists,” February 2, 2018, <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> (accessed February 2, 2018).

Administration discontinued the Burma sanctions program, the SDN list is the primary option for sanctioning Burmese military officials. Helpfully, the legislation also includes criteria for removing officials from the SDN list.

The annual 2018 appropriations bill passed by the House of Representatives in the fall of 2017 includes similarly strong language on Burma, restricting bilateral economic assistance and prohibiting the receipt of allocated assistance by entities controlled by the Burmese military and a complete prohibition on receiving assistance through the International Military Education and Training and Foreign Military Financing programs. It also bans assistance to “any individual or organization...that has committed a gross violation of human rights.”⁴⁸ These measures are currently pending.

Several Members of Congress have introduced resolutions on Burma. These include, but are not limited to, resolutions introduced by Senator Richard Durbin (D-IL) that condemn violence against the Rohingya and call on Aung San Suu Kyi to end the humanitarian crisis, another calling for international accountability for crimes against humanity committed by the Burmese military against Rohingya, and another commending Bangladesh for accepting refugees from Burma.⁴⁹ Senator Jeff Merkley (D-OR) also issued a resolution commending Ban-

gladesh for supporting Rohingya refugees and urging Bangladesh not to forcibly repatriate Rohingya.⁵⁰ Several House resolutions have also condemned the violence against Rohingya.⁵¹

In short, congressional leadership on Burma is critical to ensuring an adequate U.S. response to the crisis.

Executive Branch

In the immediate aftermath of the August 2017 attacks, the White House and the State Department condemned the violence against Rohingya and commended Bangladesh for hosting Rohingya refugees.⁵²

The first significant response by the U.S. was to increase humanitarian assistance to Burma on September 20, 2017.⁵³

Then, on October 23, 2017, the State Department announced new restrictions on Burma, including invoking JADE Act authorities and refusing to waive travel restrictions previously in place for current and former senior Burmese military officials, as well as restricting participation of military officials in U.S. assistance programs.⁵⁴ The announcement also communicated that the U.S. government was considering various targeted financial measures to use against Burmese officials, including making use of Global Magnitsky sanctioning authorities, which enables the U.S. government to place individu-

48. Make America Secure and Prosperous Appropriations Act of 2018, H.R. 3354, 115th Congress, 1st Sess., <https://www.congress.gov/115/bills/hr3354/BILLS-115hr3354pcs.pdf> (accessed February 14, 2018).

49. Calling for International Accountability for the Crimes Against Humanity Committed by the Burmese Military Against the Rohingya in Burma, S. Res. 360, 115th Cong., 1st Sess., December 13, 2017, <https://www.congress.gov/bill/115th-congress/senate-resolution/360/text?q=%7B%22search%22%3A%5B%22burma%2C+Rohingya%22%5D%7D&r=2> (accessed February 2, 2018), and A Resolution Commending the Government of Bangladesh for its Compassion During the Rohingya Humanitarian Crisis and Commending Pope Francis for his Message of Peace, S. Res. 359, 115th Cong., 1st Sess., December 13, 2017, <https://www.congress.gov/bill/115th-congress/senate-resolution/359/text?q=%7B%22search%22%3A%5B%22burma%2C+Rohingya%22%5D%7D&r=3> (accessed February 2, 2018).

50. Jeff Merkley, “Merkley, Young, Kaine, McCain Introduce Bipartisan Resolution Condemning Burmese Ethnic Cleansing, Calling for Safe Repatriation of Rohingya,” January 23, 2018, <https://www.merkley.senate.gov/news/press-releases/merkley-young-kaine-mccain-introduce-bipartisan-resolution-condemning-burmese-ethnic-cleansing-calling-for-safe-repatriation-of-rohingya> (accessed February 14, 2018).

51. Denouncing the Ongoing Violence Against the Rohingya People of Burma, H.R. 591, 115th Congress, 1st Sess., November 29, 2017, <https://protect-us.mimecast.com/s/m0PwCQW5EIC6ZoDntkvIzF?domain=congress.gov> (accessed February 2, 2018), and Condemning Horrific Acts of Violence Against Burma’s Rohingya Population and Calling on Aung San Suu Kyi to Play an Active Role in Ending This Humanitarian Tragedy, H.R. 528, 115th Congress, 1st Sess., November 29, 2017, <https://protect-us.mimecast.com/s/Gd0FCV00MqUIQg4VikP8FD?domain=congress.gov> (accessed February 2, 2018).

52. News release, “Statement by the Press Secretary on the Violence in Burma,” The White House, September 11, 2017, <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-violence-burma/> (accessed February 2, 2018), and news release, “Bangladesh Hosting of Rohingya,” U.S. Department of State, September 9, 2017, <https://www.state.gov/r/pa/prs/ps/2017/09/273929.htm> (accessed February 2, 2018).

53. U.S. Department of State, “U.S. Humanitarian Assistance in Response to the Crisis in Rakhine State, Burma.”

54. News release, “Accountability for Human Rights Abuses in Rakhine State, Burma,” U.S. Department of State, October 23, 2017, <https://www.state.gov/r/pa/prs/ps/2017/10/275021.htm> (accessed February 2, 2018).

als on the SDN list on human rights or corruption grounds.⁵⁵

On November 22, 2017, Rex Tillerson declared the crisis “ethnic cleansing,” pledging to hold those responsible for crimes committed accountable, calling for an investigation into the crisis, and again calling for sanctions against known perpetrators of the violence against Rohingya.⁵⁶ So far, only one Burmese official, Maung Maung Soe, who oversaw the so-called clearance operations that led to the mass displacement of Rohingya, was sanctioned when Global Magnitsky designations were issued on December 21, 2017.⁵⁷

Things to Watch for in the Months Ahead

While the pace of the exodus of Rohingya from Burma has slowed substantially, the refugee crisis is far from over. In the coming months, the U.S. and the international community should watch closely for a number of potentially worrisome developments.

Stalled Political Reform Process. Political reform is critical to ensuring that the civilian government possesses the ability to govern. Aung San Suu Kyi is in a difficult political position that only partly explains her timid approach to condemning violence against Rohingya.

The current construction of the Burmese constitution grants disproportionate power to the military. At present, the Burmese military controls the Ministry of Home Affairs, the Ministry of Defense, the Ministry of Border Affairs, and the General Administrative Department. The constitution allocates one-quarter of all parliamentary seats to the military, which gives the military a *de facto* veto over constitutional amendments that require approval from 75 percent of the parliament to pass. The 2008 constitution also grants the commander-in-chief of the armed forces the right to declare a state of national emergency and

retake political power whenever he deems it necessary to preserve national unity. The relative power of the military to the civilian government has, in many ways, hamstrung Aung San Suu Kyi and the NLD.⁵⁸

Nonetheless, Suu Kyi has failed thus far to usher in promised economic reforms or broker a ceasefire agreement among ethnic groups and separatist movements in Burma. All of these much-needed reforms are critical to ensuring the long-term transformation of Burma. They are likely to be stalled as Suu Kyi is rightfully forced to devote substantial political capital to addressing the Rohingya crisis.

Were Aung San Suu Kyi to put into motion the response required to adequately address the mass atrocities committed by the Burmese military against Rohingya, she would risk jeopardizing political stability in Burma. Quite frankly, such actions could result in the military arbitrarily declaring a state of emergency and seizing power from Suu Kyi and the NLD. Additionally, strong support for Rohingya does not play well with her domestic audience, which is not sympathetic to the Rohingya’s plight.

Suu Kyi is in an unenviable political bind that makes it all the more necessary for the U.S. to continue to express support for political reform and take steps that regain leverage over the military to force their hand in addressing the plight of Rohingya. Any U.S. and international actions should be taken without sacrificing Suu Kyi’s leverage over the civilian government.

Limited Humanitarian Assistance. As with all dire situations, humanitarian resources are necessarily under strain. Given the pace of the Rohingya exodus from Burma, there is an added layer of complexity. According to the UNOCHA, humanitarian partners have requested an estimated \$434 million in funding to meet humanitarian needs.⁵⁹

55. Ibid.

56. News release, “Efforts to Address Burma’s Rakhine State Crisis,” U.S. Department of State, November 22, 2017, <https://www.state.gov/secretary/remarks/2017/11/275848.htm> (accessed February 2, 2018).

57. News release, “Issuance of Global Magnitsky Executive Order; Global Magnitsky Designations,” U.S. Department of Treasury, December 21, 2017, <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20171221.aspx> (accessed February 2, 2018), and “Rohingya Crisis: Myanmar General Hit By US Sanctions,” BBC News, December 21, 2017, <http://www.bbc.com/news/world-asia-42447510> (accessed February 2, 2018).

58. Olivia Enos and Hunter Marston, “It’s Time for the U.S. to Pressure Burma on Human Rights—Once Again,” *The Washington Post*, July 18, 2017, https://www.washingtonpost.com/news/democracy-post/wp/2017/07/18/its-time-for-the-u-s-to-pressure-burma-on-human-rights-once-again/?utm_term=.8aef289816f3 (accessed February 2, 2018).

59. U.N. Office for the Coordination of Humanitarian Affairs, “Rohingya Refugee Crisis.”

The international community pledged over \$344 million in emergency assistance for the Rohingya crisis in October 2017, but needs are likely to increase as the notion of long-term displacement becomes a likely reality.⁶⁰ So far, the U.S. has been the largest contributor of assistance. Nonetheless, there remains close to \$150 million in unfulfilled financial obligations according to the UNOCHA.⁶¹

Total U.S. assistance to Burma (not just for the Rohingya crisis) is limited, but important. According to the State Department, U.S. assistance highlights include:

- \$151 million in assistance to address the Rohingya crisis;
- \$68 million in assistance since 2013 to strengthen the democratic process; and
- \$60 million since 2012 to support the reform process, which includes fostering respect for religious and ethnic difference and working with civil society, ethnic armed groups, and political parties to address underlying causes of conflict in Burma.⁶²

The Burma Human Rights and Freedom Act proposes an additional \$104 million be appropriated to assist Rohingya in Rakhine State and in Bangladesh.⁶³ This will still fall far short of the UNOCHA funding request.

Given the scale and scope of the crisis and the need to serve communities in both Rakhine State and in Bangladesh, there will likely need to be even more funds appropriated. At present, human rights organizations, like Amnesty International and the U.N. High Commissioner for Refugees (UNHCR), are reporting food shortages and severe malnutrition, especially among children; a lack of access to appropriate health care and counseling for victims of sexual abuse and violence; and health outbreaks, including diphtheria.⁶⁴ All of these challenges will demand additional humanitarian assistance and support.

Forced Repatriation. Bangladesh and Burma signed a repatriation agreement on November 23, 2017, that encouraged voluntary repatriation of Rohingya refugees to Burma.⁶⁵ Repatriation of Rohingya was slated to begin two months after the agreement was signed. However, the Bangladeshi government delayed the start of repatriation, much to the chagrin of Burmese counterparts who claim they are prepared to receive upwards of 300 refugees per day in newly established transitory refugee camps.⁶⁶

Human rights groups are urging Bangladesh to reconsider the repatriation agreement entirely.⁶⁷

Voluntary repatriation mere months after Rohingya initially fled is untenable, principally because the conditions that led refugees to flee in the first place have not changed.

As Brad Adams, Asia Director at Human Rights Watch, said:

60. "Rohingya Crisis: Donors Pledge \$344 Million at U.N.-Backed Conference to Support Aid Efforts," U.N. News Centre, October 23, 2017, <http://www.un.org/apps/news/story.asp?NewsID=57940> (accessed February 2, 2018).

61. Financial Tracking Service, "Bangladesh: Rohingya Refugee Crisis 2017," <https://fts.unocha.org/appeals/628/summary> (accessed February 2, 2018).

62. U.S. Department of State, "United States Assistance to Burma," November 15, 2017, <https://www.state.gov/r/pa/prs/ps/2017/11/275606.htm> (accessed February 2, 2018).

63. Burma Human Rights and Freedom Act of 2017, S. 2060, 115th Congress, 1st Sess., § 2060.

64. Amnesty International, "Caged without a Roof: Apartheid in Myanmar's Rakhine State," and U.N. High Commissioner for Refugees, "Bangladesh, Operational Update."

65. President's Office, "The Republic of the Union of Myanmar and the People's Republic of Bangladesh Signed the Agreement on Return of Displaced Persons From Rakhine State," The Republic of the Union of Myanmar, <http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8028> (accessed February 2, 2018).

66. President's Office, "Ready to Begin Repatriation: Government," January 23, 2018, The Republic of the Union of Myanmar, <http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8387> (accessed February 2, 2018).

67. Human Rights Watch, "Burma/Bangladesh: Return Plan Endangers Refugees," January 23, 2018, <https://www.hrw.org/news/2018/01/23/burma/bangladesh-return-plan-endangers-refugees> (accessed February 2, 2018); Amnesty International, "Bangladesh: Returning Rohingya to Myanmar Illegal and Premature," January 16, 2018, <https://www.amnesty.org/en/latest/news/2018/01/bangladesh-returning-rohingya-to-myanmar-illegal-and-premature/> (accessed February 2, 2018); and Fortify Rights, "Myanmar/Bangladesh: Prevent Premature Repatriation, Ensure Rights for Rohingya," January 22, 2018, <http://www.fortifyrights.org/publication-20180122.html> (accessed February 2, 2018).

Rohingya refugees shouldn't be returned to camps guarded by the very same Burmese forces who forced them to flee massacres and gang rapes, and torched villages. The repatriation plan appears to be a public relations ploy to hide the fact that Burma has not taken measures to ensure safe and sustainable returns.⁶⁸

While the agreement forged between Bangladesh and Burma encourages voluntary repatriation (the form Rohingya would be required to fill out upon repatriation would ask them to check a box verifying that the return to Burma is voluntary), in practice, it would be anything but voluntary.⁶⁹ Forcible repatriation is a violation of the U.N. Refugee Convention, which lays out the principle of *non-refoulement* or the notion that governments cannot forcibly send individuals back to a country where they have a well-founded fear of persecution, regardless of whether they are a registered or unregistered refugee.⁷⁰ Although Bangladesh is not a signatory to the Refugee Convention, this is a standard largely accepted by the international community, and Bangladesh could face repercussions if it is found that repatriations violate the principle of *non-refoulement*.

Impacts on Burma's Domestic Economic Development. In the wake of the Rohingya crisis, Burma has rightly been under heightened scrutiny from the international community. This was a significant break from the largely positive treatment Burma received after the 2015 elections. As the U.S. government considers implementing various strategies, it is critical that it bear in mind the long-term economic development and prosperity of Burma.

First, strategies instituted to address the Rohingya crisis should necessarily be targeted toward holding accountable those individuals who directly carried out mass atrocities against Rohingya. These efforts should not be undertaken to the detriment of

the average Burmese citizen. Aiming sanctions too broadly at Burma could adversely impact the economic well-being of the Burmese people.

Second, U.S. efforts to address crimes committed primarily by the Burmese military should make clear that the U.S. sees a distinction between the civilian government and the military. When sanctions are considered, they should be targeted financial measures, as opposed to broad-based sanctions with the potential to substantially impede economic reform in Burma.

Third, the U.S. should recognize the risks that it runs in instituting sanctions and be clear-eyed about the way such sanctions may be perceived by the Burmese people, especially since they will be reinstated so shortly after sanctions were removed under the Obama Administration. Furthermore, instituting sanctions on behalf of the Rohingya has the potential to foment anger amongst the domestic Burmese population, many of whom have little to no regard for Rohingya.⁷¹ Even the use of the term Rohingya is politically sensitive in Burma. Therefore, the U.S. should adopt a holistic policy toward Burma that clearly communicates U.S. support for the civilian government and the political reform process.

Heightened Risk to Human Trafficking and Human Smuggling, Among Other Vulnerabilities. In years past, Rohingya have fled in large numbers by boat to other countries including Thailand, Malaysia, and Indonesia in Southeast Asia. In 2015, when several thousand Rohingya refugees and Bangladeshi economic migrants fled in this manner, it became known as the Southeast Asian migrant crisis.⁷² The crisis involved both human smuggling and human trafficking and cost countless individuals their lives. In the midst of the crisis mass graves were discovered on the Thai–Malaysia border containing the bodies of 139 predominantly Rohingya refugees.⁷³

68. Human Rights Watch, "Burma/Bangladesh: Return Plan Endangers Refugees."

69. U.N. High Commissioner for Refugees, "Bangladesh, Operational Update."

70. U.N. Refugee Agency, "Note on the Non-Refoulement," August 23, 1977, <http://www.unhcr.org/en-us/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html> (accessed February 2, 2018).

71. Krishnadev Calamur, "The Misunderstood Roots of Burma's Rohingya Crisis," *The Atlantic*, September 25, 2017, <https://www.theatlantic.com/international/archive/2017/09/rohingyas-burma/540513/> (accessed February 2, 2018).

72. Olivia Enos, "Achieving Resolution in the Southeast Asian Migrant Crisis," Heritage Foundation *Issue Brief* No. 4420, June 15, 2015, <https://www.heritage.org/asia/report/achieving-resolution-the-southeast-asian-migrant-crisis>.

73. Olivia Enos, "Things to Watch in the 2017 Trafficking in Persons Report," *Forbes*, April 27, 2017, <https://www.forbes.com/sites/oliviaenos/2017/04/27/things-to-watch-in-the-2017-trafficking-in-persons-report/#23ffdb9a31ef> (accessed February 2, 2018).

Even though the crisis received more attention in 2015, the reality is that a cycle of Rohingya refugees fleeing by boat—often at peril of their lives—occurred annually for several years prior. The perfect maelstrom of factors, including persecution of Rohingya inside Burma, contributed to what was at the time considered a mass exodus of Rohingya refugees. Displacement during the Southeast Asian crisis now pales in comparison to Rohingya displacement in 2018.

If the Southeast Asian migrant crisis of 2015 is any indication, the international community should expect another exodus of Rohingya fleeing beyond Bangladesh and into third countries in Southeast Asia.

It is possible that the boat crisis may be on a smaller scale than one would expect due to mitigating factors, including that many Rohingya are now registered refugees with the UNHCR receiving the benefits enshrined in that refugee status. While the status would not necessarily be voided by fleeing to third countries, it may not carry the same protections, depending on the various domestic laws of the third countries to which they flee. Additionally, after the 2015 crisis, several of the countries that previously received Rohingya refugees via boat now have policies in place to turn boats away. Thailand and Malaysia, for example, turned away boats, and reported new arrivals decreased substantially thereafter.⁷⁴ In spite of those factors, desperate conditions inside both Burma and Bangladesh may mean that these mitigating factors will not sufficiently deter desperate persons from fleeing to third countries.

The Way Forward in Burma

Apart from U.S. leadership, there may be little to no accountability for individuals responsible for the Rohingya refugee crisis. It is critical that both the Executive Branch and Congress press for a holistic response to the Rohingya crisis, one that situates the U.S. response to humanitarian challenges within a broader restructuring of U.S. policy toward Burma and recognizes Burma's important role in Southeast Asia. In short, U.S. policy toward Burma should be situated within the broader context of the Trump Administration's nascent, emerging strategy toward Asia.

The Administration should consider the following as it sets its policy toward Burma in 2018:

■ **Congress and the Executive Branch should evaluate relevant financial tools to craft an over-arching sanctions policy toward Burma.**

The Obama Administration's approach toward the country sacrificed much-needed leverage with Burma at a moment of critical change. That leverage needs to be regained and that is best accomplished through the re-implementation of financial measures targeted at the Burmese military and others posing obstacles to political reform. A few things should be born in mind as Congress crafts legislative measures to hold the Burmese military accountable.

- Treasury should use its pre-existing authorities under the JADE Act to sanction individuals in the Burmese military for their role in instigating violence leading to the mass displacement and severe abuse of Rohingya. The JADE Act specifically includes four categories of individual who fall under potential sanctions authorities. These include: “(A) Former and present leaders of the [State Peace and Development Council] SPDC, the Burmese military, or the USDA[;] (B) Officials of the SPDC, the Burmese military, or the USDA involved in the repression of peaceful political activity or in other gross violations of human rights in Burma or in the commission of other human rights abuses, including any current or former officials of the security services and judicial institutions of the SPDC[;] (C) Any other Burmese persons who provide substantial economic and political support for the SPDC, the Burmese military, or the USDA[; and] (D) The immediate family members of any person described in subparagraphs (A) through (C).”⁷⁵
- While JADE Act legislation was instituted with the express purpose of countering anti-democratic forces in the country, its authori-

74. “Malaysia and Thailand Turn Away Hundreds on Migrant Boats,” *The Guardian*, May 14, 2015, <https://www.theguardian.com/world/2015/may/14/malaysia-turns-back-migrant-boat-with-more-than-500-aboard> (accessed February 2, 2018).

75. Tom Lantos Block Burmese Jade Act of 2008.

ties were broad enough so as to encompass other actors might be over-looked if the designation categories were tailored more narrowly. For example, the JADE Act authorities enabled the U.S. government to sanction entities like the Myanmar Economic Corporation and Myanmar Economic Holdings Limited (military-linked conglomerates that provided financial support that contributed to the military's ability to carry out human rights abuses).⁷⁶ Legislative and executive branch efforts to craft sanctions legislation should be broad enough to encompass scenarios beyond the violence that has already been perpetrated against Rohingya *and* expect that additional similar (or even worse) human rights abuses may be carried out in the future. Sanctions authorities should also be broad enough to encompass entities that materially or financially paved the way for the Burmese military to commit atrocities against Rohingya.

- Legislation should direct the Treasury Department to use all available tools to hold the Burmese military to account. In addition to placing individuals and entities on the SDN list, anti-money-laundering and counterterrorism sanctions can be applied. Global Magnitsky authorities can also be used to target individuals on human rights and corruption grounds.⁷⁷ (Current legislation specifies only SDN authorities.)
- Congress should require the State Department to issue a report every six months identifying key entities or individuals in Burma who are either directly responsible for human rights abuses or who enable them, including atrocities committed against Rohingya. This would serve as a useful benchmark against which to measure the executive branch's response.

□ Just as sanctions should include a clear “on-ramp,” or directive, for designating individuals and entities for their role in atrocities, there should be an equally clear “off-ramp.” Current legislation lays out criteria under which sanctions could be removed. This is essential to any effective sanctions regime.

- **The U.S. government should refuse to engage in any military-to-military exchanges, training programs, or assistance for the foreseeable future.** The U.S. has little to gain from engaging the Burmese military, and there are three critical reasons why the U.S. should not pursue normalization at this time.⁷⁸

First, engagement lends undeserved respectability to the Burmese military—an element of the government that has proven subversive to Burma's democratic transformation, that already possesses significant power, and that has a track record of using that power for ill rather than good. Second, the proposed expansion of military-to-military ties would not have the intended effect of countering China's influence in Burma: China's ties are built on a history of engagement, threat, proximity, and interests that are not susceptible to American disruption. Third, the U.S. previously stated that it would not pursue complete normalization of ties with the Burmese until the U.S. demonstrates that Burma has discontinued military-to-military engagement with North Korea.

While the Trump Administration has already made it clear that military-to-military cooperation and exchanges are already off the table for the time being, Congress has still intermittently expressed its intent to expand cooperation with the Burmese military. The Burmese Human Rights and Democracy Act that recently passed the Senate Foreign Relations Committee makes

76. International Trade Alert, “Burma Sanctions Lifted: Political and Reputational Risks Remain,” Akin Gump Strauss Hauer & Feld LLP, October 11, 2016, <https://www.akingump.com/en/news-insights/burma-sanctions-lifted-political-and-reputational-risks-remain.html> (accessed February 2, 2018).

77. Donald J. Trump, “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,” Executive Order, December 21, 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-blocking-property-persons-involved-serious-human-rights-abuse-corruption/> (accessed February 1, 2018).

78. Olivia Enos and Walter Lohman, “Why Congress Should Not Pursue Normalization of Military Ties with Burma,” Heritage Foundation *Issue Brief* No. 4759, September 5, 2017, <https://www.heritage.org/defense/report/why-congress-should-not-pursue-normalization-military-ties-burma>.

an exception for military engagement outlined and permitted in the 2015 National Defense Authorization Act. Given the military's demonstrated role in atrocities against Rohingya and its track record of abuse and impunity against other ethnic and religious minorities in the country, until the Burmese military truly makes progress, Congress should avoid engaging with the Tatmadaw entirely. Current legislation helpfully outlines the criteria for evaluating any change.

- **U.S. government messaging should continue to affirm the legitimacy of the civilian government and express support for the continuation of the peace process.** Such rhetoric should encourage Aung San Suu Kyi and the NLD to act responsibly and develop a more comprehensive response to the Rohingya crisis. It should also voice continued U.S. support for the Burmese people and recognize that the Burmese people possess the right to self-determination in forging future political outcomes. The U.S. government should especially encourage ongoing efforts by Aung San Suu Kyi to implement recommendations made in the Annan Commission report on Rohingya.⁷⁹
- **The U.S. government should take the lead in funding and organizing international support for humanitarian assistance.** The U.S. should continue to lead as the primary provider of humanitarian assistance to address the Rohingya crisis. The Trump Administration has expressed an interest in supporting refugees overseas rather than pursuing higher levels of resettlement. It can demonstrate the sincerity of those claims by putting significant funding towards alleviating suffering in what is today the world's largest refugee camp in Bangladesh. After all, resettling one refugee to the U.S. is about 12 times costlier than providing for that refugee in a camp closer to his home for five years.⁸⁰ Proposed funding from the international community and the U.S. falls short of what humanitarian agencies say is necessary. The U.S. should work with humanitarian agencies to ensure efficient allocation of resources and take the lead in ensuring that basic needs of refugees and internally displaced persons in both Burma and Bangladesh are being met.
- **The U.S. government should press the Burmese government to permit access to humanitarian actors and journalists to Rakhine State and all other areas of concern.** The Burmese government has proven a significant impediment to humanitarian access. It has refused visas to U.N. officials hoping to conduct a fact-finding mission in Burma and refused most humanitarian aid groups from providing much-needed assistance to Rohingya left behind in Rakhine State. The Burmese government has also historically restricted humanitarian access in Kachin State.⁸¹ The U.S. should clearly communicate that there may be diplomatic and political repercussions in the U.S.–Burma relationship if access is continually denied to various humanitarian actors.
- **The U.S. government should continue to condemn efforts to prematurely repatriate Rohingya refugees and reiterate that repatriation must be voluntary for it to be viewed as legitimate by the international community.** At this point, Bangladesh should reconsider its commitment to the repatriation agreement it agreed to with Burma. It is too premature to consider repatriation as a viable option for Rohingya. If Rohingya return to Burma, they void their refugee status, ceding the protections that status affords.⁸² Given how receptive Bangladesh has

79. Advisory Commission on Rakhine State, "Toward A Peaceful, Fair, and Prosperous Future for the People of Rakhine," Final Report, August 2017, http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf (accessed February 9, 2018).

80. Karen Zeigler and Steven A. Camarota, "The High Cost of Resettling Middle Eastern Refugees," Center for Immigration Studies, November 2015, <http://cis.org/High-Cost-of-Resettling-Middle-Eastern-Refugees> (accessed October 7, 2016).

81. Amnesty International, "Myanmar: Lift Restrictions Immediately on Humanitarian Aid," Center for Immigration Studies *Background*, October 20, 2016, <https://www.amnesty.org/en/latest/news/2016/10/myanmar-lift-restrictions-immediately-on-humanitarian-aid/> (accessed February 9, 2018).

82. U.S. Citizenship and Immigration Services, "Can I Travel Back to the Country from Which I Claimed Persecution Once I Have Been Granted Permanent Residence Based on a Grant of Asylum?" <https://my.uscis.gov/helpcenter/article/can-i-travel-back-to-the-country-from-which-i-claimed-persecution-once-i-have-been-granted-permanent-residence-based-on-a-grant-of-asylum> (accessed February 2, 2018).

been to sheltering those in need, the U.S. should work closely with the Bangladeshi government, UNHCR, and other relevant humanitarian actors to ensure that refugees receive the assistance and care they need.

- **The U.S. should consider granting Priority 2 (P-2) refugee status to Rohingya refugees.** Refugee resettlement is one of the few ways that the U.S. can meaningfully support countries in the midst of intractable crises. The U.S. Refugee Admissions Program is a useful humanitarian initiative with which the U.S. engages the world and provides relief for a select few during international crises. It supports U.S. interests by enabling the U.S. to assert leadership in foreign crises, assist in the midst of intractable crises, and help allies and partners in need. It also strengthens U.S. public diplomacy and tangibly alleviates human suffering. 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 that they belong to a group with known, established grounds of persecution, like genocide.⁸³ Refugees granted P-2 status are included, not 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
- **Burma should continue to be listed as a “country of particular concern” (CPC) in the**

International Religious Freedom report for its persecution of Rohingya and other religious minorities in the country. Critically, it should also receive *unique* sanctions for violating religious freedom. CPCs are guilty of severe forms of persecution including torture, discrimination, and denial of religious freedom. Despite Burma’s designation as a CPC, sanctions under the International Religious Freedom Act (IRFA) have been waived and subsumed under sanctions that have been imposed pursuant to the Jackson–Vanik Amendment. This strategy has failed to garner compliance. Due to Burma’s ongoing violations of religious freedom, it should remain a country of particular concern and face sanctions under the IRFA specifically for its violations of religious freedom.

- **The 2017–2018 Rohingya crisis should factor into determinations regarding Burma’s ranking in the State Department’s *Trafficking in Persons* report, and Burma should be put back on the Child Soldiers List.** The Trump Administration’s failure to list Burma on the Child Soldiers Prevention Act List in the 2017 Trafficking in Persons (TIP) report violated U.S. law. The Administration could have exercised national security waiver authority. This would have allowed the Administration to waive sanctions or any other diplomatic repercussions for Burma’s designation on the Child Soldiers List. The State Department, the U.N., and other non-governmental organizations documented the presence of child soldiers in Burma just months prior to the release of the TIP report, making it impossible to make the case that Burma should not be included on the list.⁸⁶

83. Office of U.S. Senator Tom Cotton, “Fact Sheet: Religious Persecution Relief Act of 2016,” March 17, 2016, <http://www.cotton.senate.gov/files/documents/160316FactSheetonReligiousPersecutionReliefAct.pdf> (accessed April 4, 2016), and Refugee Council USA, “Priority Categories,” <http://www.rcusa.org/priority-categories> (accessed April 4, 2016).

84. Jie Zong and Jeanne Batalova, “Refugees and Asylees in the United States,” Migration Policy Institute, October 28, 2015, <http://www.migrationpolicy.org/article/refugees-and-asylees-united-states> (accessed April 4, 2016).

85. Refugee Council USA, “Priority Categories.”

86. Human Rights Watch, “U.S.: Return Burma, Iraq to Child Soldier List,” June 26, 2017, <https://www.hrw.org/news/2017/06/26/us-return-burma-iraq-child-soldier-list> (accessed June 30, 2017); United Nations, “Myanmar: 849 Children and Young People Released from Tatmadaw Since 2012,” Office of the Special Representative of the Secretary-General for Children and Armed Conflict, June 23, 2017, <https://childrenandarmedconflict.un.org/press-release/myanmar-849-children-and-young-people-released-from-tatmadaw-since-2012/> (accessed June 30, 2017); and United Nations Security Council, “Children and Armed Conflict,” April 20, 2016, https://www.un.org/ga/search/view_doc.asp?symbol=s/2016/360&referer=/english/&Lang=E (accessed June 30, 2017).

- **The U.N. High Commissioner for Human Rights should conduct a Commission of Inquiry report on the Rohingya crisis, paying special attention to identifying perpetrators of violence.** On March 24, 2017, the U.N. Human Rights Council decided to undertake a fact-finding mission in Burma.⁸⁷ Thus far, the Burmese government refused to grant access to the U.N. fact-finding mission.⁸⁸ In spite of this, the U.N. should consider stepping up efforts for accountability by undertaking a Commission of Inquiry (COI) into the situation in Burma. Such an undertaking has the potential to fundamentally shift the policy debate over human rights conditions in Burma. The COI report conducted by the U.N. regarding human rights conditions in North Korea resulted in a fundamental transition in policymakers' approach toward North Korea—in many ways forcing policymakers to address human rights and humanitarian challenges in addition to the security threat posed by the Kim regime. In contrast to the fact-finding mission, the COI in North Korea did not require access to geographic North Korea, but rather involved in-depth interviews with defectors or refugees from North Korea. A COI in Burma may result in a similar shift in discourse that could be helpful to shaping perceptions and policymaking toward Burma. Perhaps most critically, it could bring clarity to the question of what type of crimes against humanity were committed in Burma and by what actors.

Conclusion

U.S. action over the coming months may have critical implications for the Rohingya crisis. If policy changes are done well, however, their ripple effects will not just be felt in the coming months but will help shape U.S. policy toward Burma for the foreseeable future.

Policymakers should make changes to U.S. policy toward Burma now, before the country backslides much further. It is in U.S. interests to maintain strong diplomatic ties to Burma, continue fostering the reform process, and provide assistance to those in urgent need. It is the American way to do this, and it should continue if the U.S. is to have any hope for freedom and a bright, democratic future for Burma.

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87. Office of the High Commissioner, "Independent International Fact-Finding Mission on Myanmar," U.N. Human Rights, <http://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/Index.aspx> (accessed February 2, 2018).

88. Mike Ives, "Myanmar Vows to Block U.N. Investigators From Entering," *The New York Times*, June 30, 2017, <https://www.nytimes.com/2017/06/30/world/asia/myanmar-united-nations-rohingya.html> (accessed February 2, 2018), and Office of the High Commissioner, "Myanmar Refuses Access to UN Special Rapporteur," December 20, 2017, U.N. Human Rights, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22553&LangID=E> (accessed February 2, 2018).