

# WebMemo



Published by The Heritage Foundation

No. 2560  
July 23, 2009

## U.S. Policy Regarding Burma: Making Virtue of Necessity

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Despite the Obama Administration's desire to "engage" recalcitrant, repressive regimes, three factors—the weight of circumstances, the force of law, and solid American values—dictate that its policy toward Burma differ little from that of the Bush Administration.

President Bush and large, bipartisan majorities in the U.S. House of Representatives and the U.S. Senate had Burma policy right. In October 2007, the U.S. State Department summed it up as follows:

Maintain maximum pressure on the regime, both bilaterally and multilaterally, to end the repression, release the prisoners, and initiate a genuine dialogue with Aung San Suu Kyi and the democratic opposition, and with the ethnic minority group, that leads to a peaceful transition to civilian, democratic rule [and]... coordinating closely with international partners to tighten sanctions on regime leaders and their cronies as part of a broader effort to build the strongest possible international diplomatic pressure on the regime.<sup>1</sup>

Nothing has changed that would warrant a change in this policy.

**Only Getting Worse.** The facts of the dreadful situation in Burma barely need repeating. Human Rights Watch summarizes them in their 2009 world report as systematic denial of basic freedoms (including freedom of expression, association, and assembly), regular imprisonment of political activists and human rights defenders, a doubling of the number of political prisoners to more than 2,150, violation of

civilian rights in ethnic conflict areas, extrajudicial killings, forced labor, and land confiscation without due process. And, there are no signs of the situation improving—let alone enough progress to warrant a change in U.S. policy toward Burma.

On May 14, Suu Kyi, leader of the National League for Democracy in Burma, was taken from her home just days before expiration of her house arrest and imprisoned. Several attempts to secure her release have been rebuffed, the latest denial made directly to U.N. Secretary General Ban Ki Moon who, after eight trips by his special envoy, made a trip himself early this month to press Burma's military government directly.

The secretary general appealed for the release of all political prisoners including Suu Kyi, the resumption of "substantive dialogue," and "the creation of conditions conducive to credible and legitimate elections." The trip was always a gamble and progress on the substantive issues a long shot; it was Ban Ki Moon's inability to secure a meeting with Suu Kyi that was the most serious affront.

**Regional Attitudes.** The Association of Southeast Asian Nations (ASEAN) has become increasingly critical of its member nation Burma, but such

This paper, in its entirety, can be found at:  
[www.heritage.org/Research/AsiaandthePacific/wm2560.cfm](http://www.heritage.org/Research/AsiaandthePacific/wm2560.cfm)

Produced by the Asian Studies Center

Published by The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002-4999  
(202) 546-4400 • [heritage.org](http://heritage.org)

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rebukes are nothing the Burmese military junta cannot handle.

Six years ago, ASEAN broke with its policy of non-interference in the internal affairs of its members following a violent attack on Suu Kyi and her National League for Democracy. In 2005, ASEAN members convinced the Burmese government to forgo its turn at the chair of ASEAN. In 2007, it condemned the junta's brutal crackdown on pro-democracy demonstrators and called for dialogue and release of all political prisoners. And just this week, ASEAN called on the Burmese government to "to hold free, fair and inclusive elections in 2010... and release all those under detention, including Daw Aung San Suu Kyi, thereby paving way for genuine reconciliation and meaningful dialogue involving all parties concerned and with a view to enabling them to participate in the 2010 General Elections."

Some ASEAN members have been more vocal than others. The Indonesian Foreign Ministry (DEPLU), under pressure from the Indonesian legislature and civil society—and emboldened by democratic reform at home—has led the way. Occasionally, DEPLU picks up some support from other members, most notably from the Philippines. But in both cases, when push comes to shove, these nations go along with the ASEAN lowest common denominator consensus.

Meanwhile, ASEAN's search for a systemic way of addressing the problem is foundering. The one mechanism that held some hope was establishing an ASEAN human rights commission as called for under the ASEAN charter. This week, however, ASEAN foreign ministers endorsed terms of reference that empower the commission to promote the *concept* of human rights—but not to monitor or investigate abuses, let alone punish them.

Punishing members is something that has been long-discussed by ASEAN members. The Eminent Persons Group (EPG) appointed by ASEAN to make recommendations on the content of its charter suggested penalties including "suspension of rights and

privileges." ASEAN chose not to include such authority in its charter not because it is a foreign concept but because of politics within ASEAN.

Even as it has become more vocal about abuses in Burma, ASEAN always falls back on the consensus nature of its decision-making process—something the EPG also counseled be changed—and its traditional reluctance to interfere in the internal affairs of its members. While ASEAN expressing its concern is welcomed, statements alone are not having any impact.

**The Right Response.** During the 1990s, the State Department leased out its Burma policy to Congress in the interest of other priorities. As a result, today, the executive branch does not completely control America's policy toward Burma.

A complex web of laws and executive orders constitute American policy. In fact, a State Department review of U.S.–Burma policy was barely underway when, on May 14, President Obama was compelled to extend by executive order the prohibition on new American investment in Burma. A 1997 law required the President to impose the prohibition if he determined that the government of Burma had "committed large-scale repression." And, according to the State Department's annual human rights reports—not to mention countless other sources—repression of the Burmese people continues unabated.

On July 22, the U.S. House of Representatives extended again for another year the ban on imports imposed by the Burmese Freedom and Democracy Act of 2003 and, as a result of last year's JADE Act, imports of Burmese jade and rubies through third countries.

U.S. law also requires:

- Restrictions on American support for assistance to Burma from international financial institutions such as the World Bank or the International Monetary Fund;
- A freeze on the Burmese regime's assets;
- A ban on visas for Burmese government officials and its supporters; and

1. Scot Marciel, "Crisis in Burma: Can the U.S. Bring About a Peaceful Resolution?" testimony before the Subcommittee on Asia, the Pacific, and the Global Environment, House Foreign Affairs Committee, U.S. House of Representatives, October 17, 2007, at <http://foreignaffairs.house.gov/110/mar101707.htm> (July 23, 2009).

- A prohibition on financial services.

Burma is caught up in a couple of other broader pieces of legislation as well: It has been designated as a “Tier 3 Country” under the Trafficking Victims Protection Act and “Country of Particular Concern” under the International Religious Freedom Act, both of which entail sanctions.

All of the above have rightly served to freeze Secretary of State Hillary Clinton’s review of U.S. Burma policy. By way of a carrot, however, she has offered to “open up opportunities” for U.S. investment in Burma if Suu Kyi is released.

Here the secretary has gotten ahead of herself. Not only is she likely to be rebuffed by the junta, but even if Suu Kyi is released tomorrow, the State Department is really in no position to take on Congress over Burma policy. Suu Kyi’s release would be hardly enough to convince Congress to overturn the extensive body of sanctions that are now a part of American law. Suu Kyi could be easily picked up the next day and put back in prison or house arrest. Is any company likely to invest under the circum-

stances that a general wakes up on the wrong side of the bed and decides to scuttle its investment by re-arresting Suu Kyi? But moreover, the ruling junta’s crimes are too great; Suu Kyi’s release alone would be too small a price to pay.

**The Promised Elections.** America’s Burma policy should turn on the elections promised by the junta next year. Those elections must take place in a climate where the following has occurred:

- All political prisoners have been released;
- The constitution has been amended to reduce the role of the military and permit full democratic participation, including that of a free Suu Kyi; and
- The junta has agreed to international election monitoring.

Between now and then, U.S. policy of maximum pressure should remain the same.

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