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Burma/Myanmar: internal issues and regional and international responses

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Introduction

Burma's military government dominates the country's politics and its economy.¹ It has continued to repress political opponents (including Aung San Suu Kyi) and its record in economic development and human rights is considered widely to be poor. While a number of Western governments have condemned the Burma regime's policies, its relations with neighbouring countries (most notably China) have facilitated the regime in resisting external influence. The government has recently unveiled a new Constitution and has declared that elections will be held in 2010. Attention will focus in the next two years on whether the proposed elections will simply result in the consolidation of the military's dominance or provide an avenue for some change. This Background Note outlines major recent developments in relation to Burma and Australia's policies towards it.

Background

Burma (also known as Myanmar) gained independence from Britain in 1948 and after a period of multi-party democracy has been ruled since 1962 by successive military regimes.² Burma is a multi-ethnic country and after 1948 up to thirty ethnic armed groups were involved in resistance against the central government, dominated by the majority Burman people. The Burmese Communist Party (BCP) also resisted the government, with Chinese assistance.³ From 1989, with the fragmentation of the BCP, the government reached ceasefire agreements with most groups. These agreements included economic concessions and considerable autonomy and brought peace to much of the country, but did not resolve the political status of the groups in relation to the Burmese state.⁴ The Karen National Union has been the largest group continuing armed resistance to the government. In 2009, however, the government has also been in conflict with other ethnic groups (see below).

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1. The author wishes to thank Trevor Wilson (Visiting Fellow, Department of Political and Social Change, Australian National University) and Nigel Brew, Ravi Tomar and Richard Webb (Parliamentary Research Branch) for their comments on drafts of this paper.
 2. The country was named the 'Union of Burma' until 1989 when the military government renamed it the 'Union of Myanmar'. Many opposition groups do not recognise the new name and continue to refer to 'Burma'. A number of international organisations refer to 'Myanmar', including the Association of Southeast Asian Nations (ASEAN), the United Nations and the World Trade Organization. The Australian government refers to 'Myanmar' in multilateral contexts, but otherwise uses the name 'Burma'. This paper refers to the country as 'Burma' and also refers to the government of 'Myanmar'.
 3. On Burma's ethnic politics see M Smith, *State of Strife: the dynamics of ethnic conflict in Burma*, Policy Studies 36, the East-West Center, Washington D.C., 2007. The ethnic communities comprise about one-third of the estimated population of 55 million, with the Burman community constituting the majority; Smith, op. cit., p. 8.
 4. *ibid*, pp. 38–47.

During August–September 1988 widespread public dissatisfaction with the government culminated in large-scale protests which were repressed with the loss of over three thousand lives. The government subsequently called multi-party elections in May 1990 which were won by the National League for Democracy (NLD) led by Aung San Suu Kyi (the daughter of the independence leader, General Aung San). The military regime refused to recognise the results, the proposed parliament never met and many NLD members, including Ms Suu Kyi, were held in detention, while others fled the country to form a sizeable pro-democracy diaspora.⁵

The regime faced further mass protests in 2007. In August and September a series of demonstrations against the government was led by Buddhist monks. In the days after 17 September, protests by monks and by supporters of the NLD were repressed violently by the regime: at least 31 people were killed and thousands arrested.⁶ This repression resulted in widespread international criticism, including from Burma's fellow members of ASEAN, whose foreign ministers (on 27 September 2007) expressed their 'revulsion' at the use of violence against peaceful demonstrators.⁷

The government also faced major international criticism over its response to Cyclone Nargis, which struck the Irrawaddy delta on 2–3 May 2008, causing much destruction and the loss of at least 140 000 lives. The regime initially restricted access to information about the situation and rejected many offers of assistance from foreign governments and non-government organisations (NGOs). After some days delay, the regime accepted aid relief teams from ASEAN members and countries such as Australia. ASEAN was then able to organise a donors conference and mediated cooperation between the government and the international community including the United Nations.⁸

The regime (which terms itself the State Peace and Development Council, SPDC) is both highly autocratic and secretive. In 2005 it moved the country's capital abruptly from Rangoon to the inland location of Naypyidaw and has spent large sums in developing the new centre.⁹ While

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5. On the 1990 elections see D Tonkin, 'The 1990 Elections in Myanmar: Broken Promises or a Failure of Communication?', *Contemporary Southeast Asia*, vol. 29, no. 1, April 2007, pp. 33–54.
 6. R Taylor, 'Myanmar in 2007: Growing pressure for change but the regime remains obdurate', *Southeast Asian Affairs 2008*, Institute of Southeast Asian Studies, Singapore, 2008, pp. 247–273.
 7. 'Statement by ASEAN Chair, Singapore's Minister for Foreign Affairs George Yeo, New York, 27 September 2007'.
 8. R Weitz, 'Cyclone Nargis exacerbated ASEAN's Myanmar dilemma', *World Politics Review*, Hudson Institute, Stanford University, 30 June 2008, viewed 29 September 2009, <http://www.worldpoliticsreview.com/article.aspx?id=2360>
 9. M Vatikiotis, 'Southeast Asia in 2005: Strength in the face of adversity', *Southeast Asian Affairs 2006*, Institute of Southeast Asian Studies, Singapore, 2006, p. 11.

Burma is rich in natural resources, most of the economy is dominated by the military and its allies.¹⁰ Poor governance and corruption discourage foreign investment and much export activity (including in narcotic drugs) is conducted illegally across the country's porous borders.¹¹ While the military and their allies gain substantial wealth, social spending is low and per capita GDP in 2007 was estimated to have been only US\$334, the lowest in Southeast Asia.¹²

Human rights conditions are also very poor. In recent annual surveys, Amnesty International and Human Rights Watch stated that the Myanmar government denies citizens basic freedoms, including freedom of expression, association and assembly.¹³ The regime regularly imprisons political activists and human rights defenders. Amnesty International stated that in 2008 the number of political prisoners nearly doubled to more than 2100. In eastern Burma, the regime's conflict with ethnic Karen involved what Amnesty argued were '...widespread and systematic violations of international human rights and humanitarian law...'. Violations included torture, forced labour, forced displacement and enforced disappearances. At the end of 2008, Amnesty stated, there were over 500 000 internally displaced people in Burma.¹⁴

The regime has on occasions released numbers of prisoners, including some political prisoners (for example in mid-September 2009), but releases have been counter-balanced by additional arrests and large numbers of political prisoners remain in detention.¹⁵ In a report in September 2009, Human Rights Watch stated that the number of political prisoners had grown to 2250 and provided details of a number of cases in which political activists had been given especially harsh prison sentences (of 65 years in gaol).¹⁶

Recent political developments

Recent developments have been seen in the context of the government's determination to maintain tight control in the country to bolster its position as it approaches the elections, which it has announced will be held next year.

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10. B McCartan, 'On the march to do business in Myanmar', *Asia Times Online*, 26 August 2009, viewed 29 September 2009, http://www.atimes.com/atimes/Southeast_Asia/KH26Ae01.html
 11. M Smith, 'Conflict and illegality as a way of life', *IIAS Newsletter*, Autumn 2006.
 12. Economist Intelligence Unit, 'Myanmar (Burma), Country Profile 2008', London, 2008, p. 23.
 13. Human Rights Watch, *World Report 2009, Burma*, viewed 29 September 2009, <http://www.hrw.org/en/node/79297>; Amnesty International, *Amnesty International Report 2009: Myanmar*, viewed 29 September 2009, <http://report2009.amnesty.org/en/regions/asia-pacific/myanmar>
 14. Amnesty International, op. cit.
 15. Saw Yan Naing, 'Release of prisoners a token gesture', *The Irrawaddy*, 21 September 2009, viewed 30 September 2009, http://www.irrawaddymedia.com/article.php?art_id=16828
 16. Human Rights Watch, 'Burma's forgotten prisoners', 16 September 2009, viewed 27 September 2009, <http://www.hrw.org/node/84743>

The constitutional referendum: May 2008

The military regime, which rejected the outcome of the last elections in May 1990, has initiated a process of constitutional development which it claims will lead to a re-developed and democratic order. In 2003, the regime outlined a 'Roadmap to Democracy' involving seven stages. These were:

- the convening of the National Convention for constitutional development
- taking the necessary steps to establish a democracy after the National Convention is concluded
- the drafting of a constitution based on the principles laid down by the National Convention
- a national referendum to approve the re-drafted constitution
- holding free and fair elections for a Parliament
- convening of Parliament, and
- the building of a modern, developed and democratic nation by leaders elected by the Parliament.¹⁷

The regime reconvened the National Convention in 2004 with delegates handpicked by the regime. Some political parties including the NLD boycotted the Convention, while a number of other parties participated in it. A new Constitution was released in April 2008. Although Cyclone Nargis struck on 2–3 May, the regime went ahead with the referendum (held on 10 and 24 May). Criticism of the text of the Constitution or of the referendum was illegal in the lead-up to the vote. The regime duly declared that the turnout had been 98.12 per cent and that the 'yes' vote had been 92.48 per cent.¹⁸ With this claimed mandate, the regime has announced elections for 2010 although the precise date has not yet been indicated.

Continued detention of Aung San Suu Kyi

Burma's most prominent political prisoner, Aung San Suu Kyi, has remained in detention for 14 of the past 20 years. She has remained a symbol of democratic resistance to the military regime, both inside Burma and internationally. In May 2009, the regime placed further pressure on Aung San Suu Kyi when she was charged with violating the terms of her home detention after an (apparently eccentric) American, John Yettaw, swam across a lake and entered

17. Department of Foreign Affairs and Trade, 'Burma Country Brief', DFAT webpage, viewed 29 September 2009, http://www.dfat.gov.au/geo/burma/burma_brief.html.

18. Tin Maung Maung Than, 'Myanmar in 2008: Weathering the storm', *Southeast Asian Affairs 2009*, Singapore, Institute of Southeast Asian Studies, 2009, pp. 195–222.

unexpectedly into Ms Suu Kyi's house. Ms Suu Kyi was charged with violating the terms of her house arrest (by permitting Yettaw to stay for a short period) and was convicted in August and sentenced to three years gaol: this sentence was immediately 'reduced' by Burma's senior leader General Than Shwe to eighteen months home detention. After a visit to Burma by US Senator James Webb in mid-August, Yettaw was released by the government, but Ms Suu Kyi remains under house arrest.¹⁹

The latest sentence of eighteen months house arrest has been seen as convenient for the regime in the context of the proposed elections in 2010. While Ms Suu Kyi would not in any case be eligible under the 2008 Constitution to run for the Presidency (see below) her sentence would mean she was unable to stand as a candidate or to pursue any activities in support of opposition campaigns during the envisaged period of the elections.

Although still under house arrest, Aung San Suu Kyi remains a significant figure in national politics. In late September she wrote to Senior General Than Shwe, offering her cooperation to have Western sanctions on Burma lifted. In early October Ms Suu Kyi held two meetings with Aung Kyi, the Minister for Labour and the official liaison contact between her and the ruling junta. Ms Suu Kyi was subsequently granted permission to meet with representatives from the United States, Britain and Australia to discuss Western sanctions: the meeting was held on 9 October. The British Ambassador Andrew Heyn commented after the meeting (in an interview with the BBC) that, 'She was very very engaged with the subject, very interested in going into detail on what she wanted to talk about and she seemed as ever very eloquent.' Australia also welcomed the meeting, which was the first opportunity for substantive discussions between Australian officials and Ms Suu Kyi since February 2003 (see below). It is not yet clear whether these opportunities for communication for Ms Suu Kyi will be continued by the regime: it was reported that a meeting between her and Senior General Than Shwe might be in prospect, but at the time of writing no such meeting had been announced.²⁰

Additional conflict with ethnic groups

There has also been increased tension between the Myanmar government and some ethnic groups. As part of its preparations for the forthcoming elections, the government declared in April 2009 that it would require the ethnic 'ceasefire groups', which have made a number of arrangements to cease conflict in return for considerable autonomy, to reduce the size of their armed forces and agree to join a Burma army-administered Border Guard Force. As Brian McCartan ('Asia Times Online') has argued, 'The transformation of autonomous militias to

19. L Jagan, 'Suu Kyi's detention splits East and West', *Asia Times Online*, 13 August 2009, viewed 27 September 2009, http://www.atimes.com/atimes/Southeast_Asia/KH13Ae02.html

20. 'Agence France Presse: Suu Kyi back in Myanmar's political arena: analysts-Didier Lauras', *Burmanet News*, 13 October 2009, viewed on 14 October 2009, <http://www.burmanet.org/news/2009/10/13/agence-france-presse-suu-kyi-back-in-myanmars-political-arena-analysts-%e2%80%93-didier-lauras/>

state-controlled border guards would require the various ethnic political organisations battling for autonomy in their regions to lose their armed wings and effectively diminish their negotiating leverage vis-a vis the regime'.²¹ As a result, many groups have rejected the proposal and have preferred to attempt to maintain existing arrangements until after the proposed elections, when they could negotiate with a new government.²²

In this sensitive environment, tensions increased and clashes occurred in May 2009 between the army and ethnic groups near both the Chinese and Thai borders.²³ In August, further conflict broke out between Burmese army forces and the forces of one of the ceasefire groups, the Chinese-speaking Kokang. The regime's forces are understood to have overwhelmed the Kokang forces and 37 000 people sought refuge across the border in China's Yunnan province. The conflict with the Kokang produced discussion as to whether the Myanmar government might be contemplating further attempts to challenge the armed forces of other groups, such as the better armed Wa and Kachin ethnic groups. However it is not clear that the regime has the capacity to do this, especially when it would wish to maintain forces near major urban areas to forestall any further major outbreaks of protest such as those in 2007.²⁴ For the moment, the recent conflict has added new elements of uncertainty in relation to Burma.

International and regional relations

Policies towards Burma by major international actors have varied substantially, from strong criticism backed up by sanctions, to ongoing economic and political engagement. This variation in approach has given the regime substantial leeway to pursue its own policies while resisting external criticism it does not wish to accept.

Since the crackdown on dissent in 1988 and the regime's rejection of the outcome of the 1990 elections, a number of states have had critical stances towards the government. The United States imposed sanctions after the violence in 1988, including a ban on the export of financial services and a freeze on the assets of some institutions. Additional sanctions were imposed after the repression of dissent by the regime in September 2007.²⁵ Sanctions also have been

21. B McCartan, 'China, Myanmar border on a conflict', *Asia Times Online*, 10 September 2009, viewed 29 September 2009, http://www.atimes.com/atimes/Southeast_Asia/KI10Ae01.html

21. *ibid.*

23. International Crisis Group, 'China's Myanmar Dilemma', *Asia Report* no. 177, 14 September 2009, p. 12, viewed 29 September 2009, <http://www.crisisgroup.org/home/index.cfm?id=6308&l=1>

24. *ibid.*, p. 12–13. B McCartan, 'China, Myanmar border on a conflict', *op. cit.*

25. L A Nicksch, 'Burma-US relations', *CRS Report for Congress*, United States Congressional Research Service, Washington D. C., 4 October 2007.

maintained by the European Union and countries including Australia and Canada, but moves to seek United Nations Security Council support for sanctions in 2005 failed.²⁶

The United Nations (UN) has been involved with Burma since the repression of dissent in 1988 and since 1991 the General Assembly has passed seventeen resolutions deploring the situation and calling for democratic change.²⁷ The UN since 1995 has sent envoys to attempt to promote political dialogue and to encourage democratic reform, but with little evident progress. While the UN was able to contribute to negotiations and approaches which enabled assistance to be provided after the devastation of Cyclone Nargis in 2008, efforts towards political dialogue have been resisted by the regime. UN Secretary General Ban Ki-moon visited the country in early July 2009 and held talks with senior leaders including senior General Than Shwe, but he was not allowed to see Aung San Suu Kyi.²⁸

Burma has been a member of ASEAN (the Association of Southeast Asian Nations) since 1997.²⁹ Burma has normal economic relations with its ASEAN neighbours and several bilateral relationships are substantial, including with Thailand, to which Burma exports natural gas, and Singapore. ASEAN (as noted above) was highly critical of the repression in 2007 and ASEAN has used its regular dialogues to advocate political liberalisation and the release of political detainees. Burma has signed (along with all ASEAN members) the new ASEAN Charter, under which the Association will establish a mechanism to oversight human rights in the region. So far, however, Burma has been able to continue as an ASEAN member while resisting the Association's attempts to promote political liberalisation.

Burma's relations with China and India have contributed greatly to the regime's capacity to resist unwanted external influences. China has maintained an ongoing political dialogue with Burma and trade and investment have been substantial. China has used its status as a permanent member of the United Nations Security Council to prevent any strong UN positions or sanctions being adopted in relation to Burma. China is building pipelines for gas and oil which will run from Burma's coast to Yunnan province, thus potentially reducing

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26. European Commission External Relations, 'Myanmar Burma', viewed 27 September 2009, http://ec.europa.eu/external_relations/myanmar/index_en.htm. Department of Foreign Affairs and Internal Trade, Canada, 'Canada's policy on Burma', October 2008. Viewed 2 October 2009, http://www.canadainternational.gc.ca/thailand-thailande/bilateral_relations_bilaterales/canada-burma-birmanie.aspx
 27. International Crisis Group, 'China's Myanmar Dilemma', *Asia Report*, no. 177, 14 September 2009, p. 4.
 28. *ibid.*, pp. 4–9.
 29. See F Frost, *ASEAN's regional cooperation and multilateral relations: recent developments and Australia's interests*, Parliamentary Library Research Paper, no. 12 2008–09, Canberra, 2008, pp. 17–20, viewed 29 September 2009, <http://www.aph.gov.au/library/pubs/rp/2008-09/09rp12.pdf>

China's dependence on the Malacca Straits for access to energy supplies.³⁰ India has been concerned that China should not have predominant influence in Burma. India has accordingly also maintained active relations with Burma, which have included investment, supplies of arms and cooperation on border control issues, but its influence is much less than China's.³¹

While China has been Burma's closest international partner, the military regime has been determined to retain its independence and to resist outside 'interference' in its affairs. The International Crisis Group argued in a report in September 2009 that: 'The insular and nationalistic leaders in the military government do not take orders from anyone, including Beijing'.³²

United States policy review: September 2009

The regime's resistance to influence poses ongoing challenges for external states. US Secretary of State Hillary Clinton said in February 2009 that the 'unfortunate fact' is that 'Burma seems impervious to influence from anyone'.³³ The extent of the regime's resistance to influence, along with its capacity to utilise its relations with neighbouring states to counter the impact of sanctions, has led to debate about whether the role of sanctions should be reassessed and more emphasis placed by Western governments on engagement and economic assistance.³⁴

The Obama Administration in 2009 conducted a review of its policies towards Burma to consider whether a modification of its approach might offer any better prospects of encouraging productive change.³⁵ As a result of this review, on 28 September 2009 US Assistant Secretary of State Kurt Campbell announced that the US would modify the

30. International Crisis Group, 'China's Myanmar Dilemma', *Asia Report*, no. 177, 14 September 2009, p 14–33, viewed on 29 September 2009, <http://www.crisisgroup.org/home/index.cfm?id=6308&l=1>

31. *ibid*, p. 28–29.

32. *ibid*, p. i.

33. 'Hillary Rodham Clinton, United States Secretary of State, Remarks with Indonesian Foreign minister Noer Hassan Wirajuda, Jakarta, Indonesia, February 18, 2009', viewed 27 September 2009 <http://www.state.gov/secretary/rm/2009a/02/119424.htm>

34. See International Crisis Group, 'Myanmar/Burma: time to normalise aid relations', *Asia Report* No 161, 20 October 2008, viewed 27 September 2009, http://www.crisisgroup.org/library/documents/asia/burma_myanmar/161_burma_myanmar_after_nargis_time_to_normalise_aid_relations.pdf; D Tonkin, 'West's hardline policy has been a disaster', *The Independent*, 25 September 2009.

35. Saw Yan Naing '250 political prisoners expected to be freed', *The Irrawaddy*, 18 September 2009.

emphases in policies towards Burma.³⁶ The US would leave its current sanctions in place until concrete progress is made on democratic reforms. However the US will establish a process of direct dialogue with the Burma regime and will increase humanitarian assistance. Assistant Secretary Campbell stated that the US would appoint a special envoy to coordinate diplomacy with Burma, with initial talks to be held in New York at the time of the meetings of the UN General Assembly (in late September-early October). The talks would focus on issues including combating the trade in drugs, cooperation to recover remains of US servicemen who died in Burma during World War II, and the need to sever military links between Burma and North Korea. The US will press Burma for the immediate and unconditional release of all political prisoners including Aung San Suu Kyi, to improve its human rights record, to pursue peace with armed ethnic minority groups, to comply with its international commitments on non-proliferation, and to begin a credible process of national reconciliation with the country's political opposition and ethnic minorities. The US would maintain current sanctions and would discuss easing sanctions '... only if they take actions on our current concerns.' In pursuing these goals, the US would increase engagement with international partners to promote change inside Burma. Campbell said that,

If Burma makes meaningful progress towards these goals, it will be possible to improve the relationship with the United States in a step-by-step process. We recognise that this will likely be a long and difficult process, and we are prepared to sustain our efforts on this front. Burma's continued estrangement from the international community harms the country and has direct negative consequences beyond Burma's borders. Burma's engagement with the outside world has the potential to encourage new thinking, reform and participation in the work of the international community.³⁷

Brian McCartan ('Asia Times Online') commented just after the US announcement that:

The question going forward is whether Myanmar's rulers are serious about reaching out to the US or simply employing another of their diversionary tactics to draw attention away from other issues in the lead up to the elections... And its not clear to most the generals will accept any compromise suggested by the US that weakens their hold on power.³⁸

A Burmese nuclear program?

Another element of uncertainty was added during July and August 2009 by reports that the Burma regime might be seeking to develop a nuclear weapons capability. This issue has been associated with the development of linkages between Burma and East Asia's other isolated

36. K M Campbell, Assistant Secretary, Bureau of East Asian and Pacific Affairs, 'U.S. policy towards Burma', Washington D.C., 28 September 2009, viewed 30 September 2009, <http://www.state.gov/p/eap/rls/rm/2009/09/129698.htm>; C. Lynch, 'U.S. planning new overtures to Burma', *The Washington Post*, 29 September 2009.

37. Campbell, *ibid.*

38. B. McCartan, 'US takes a radical turn on Burma', *Asia Times Online*, 30 September 2009, viewed on 30 September 2009, <http://www.atimes.com/atimes/Southeast Asia/KI30Ae01.html>

and highly autocratic regime, North Korea. US Secretary of State Clinton directed attention to Burma-North Korea connections during her attendance at the ASEAN Ministerial Meetings in late July. Secretary Clinton said that the US was taking ‘very seriously’ reports of conventional military cooperation between the two states. She also said that the US was worried that there might be transfers of nuclear technology from North Korea to Burma.³⁹

At the beginning of August 2009, reports in Australia publicised research by Professor Desmond Ball (Australian National University) and Phil Thornton (an American journalist) which drew on material provided by Burmese defectors. The reports suggested that Burma might be constructing two nuclear reactors. One was to be developed with Russian assistance and is to be subject to safeguards through the International Atomic Energy Agency. A second and ‘secret’ reactor might be being developed with North Korean assistance at Naung Laing near Mandalay for the purpose of developing nuclear weapons.⁴⁰

The degree of secrecy commonly maintained by the Burma regime makes assessment of these issues very difficult. A report by Dr Andrew Selth for the Australian Strategic Policy Institute (in September 2009) suggested that the available evidence about a Burma nuclear weapons program is not yet conclusive and noted that no government or international organisation has yet made any official statement specifically on this subject.⁴¹ In an article in September 2009, Professor Ball commented about the reports of Burma-North Korea cooperation: ‘Precisely what they are doing together at Naung Laing, at this time in 2009, is impossible to determine. But if a secret North Korean reactor is indeed being installed, as the defectors attest, then the closest scrutiny by all sorts of means is warranted’.⁴² Confirmation of a Burmese nuclear weapons program would be a major international and regional issue. It would place the country directly in conflict with its partners in ASEAN, who have all signed a treaty barring acquisition of such weapons, and would be likely to see Burma expelled from the Association.⁴³

The 2008 Constitution and the proposed 2010 elections

Much attention is now being focused on the prospect of the elections which the government has announced will be held in 2010. The Constitution adopted in 2008 appears in many ways to be designed to maintain the dominant position of Burma’s military rulers.

39. ‘N Korea, Burma in league: Clinton’, *The Australian*, 21 July 2009.

40. ‘Burma’s nuclear secrets’, *The Sydney Morning Herald*, 1 August 2009.

41. A Selth, ‘Burma and North Korea: smoke or fire?’, *Policy Analysis* no. 47, Australian Strategic Policy Institute, 24 August 2009, viewed 27 September 2009, http://www.aspi.org.au/publications/publication_details.aspx?ContentID=222&pubtype=9.

42. D Ball, ‘Burma’s nuclear program: the defectors’ story’, *Defence and Foreign Affairs Special Analysis*, Vol XXVII, no 49, 8 September 2009.

43. Selth, *op. cit.*, p. 8.

The Constitution establishes a presidential system of government with a bi-cameral national parliament. There will also be seven ethnic states and seven regions, each with a legislature and a chief minister appointed from the legislature by the President. A number of features of the Constitution endorse and bolster the position of the military in Burmese politics:⁴⁴

- the military will have complete autonomy to manage its own affairs
- twenty-five percent of all seats in both houses of the national parliament will be reserved for the military, and members will be appointed by the military commander-in-chief
- the military will have one-third of the seats in the 14 state and regional assemblies
- the ministers and deputy ministers of defence, home affairs and border issues will be nominated by the commander-in-chief
- the President, after coordinating with the National Defence and Security Council, may declare a state of emergency and hand over power to the commander-in-chief
- the President must have twenty years domicile in Burma, must have parents with full citizenship status, and the candidate along with one parent, his/her spouse and any children must not be a subject or a citizen of another country (provisions which would bar Aung San Suu Kyi, given that her late husband was British and her two children have British citizenship)
- amendment of any of the major provisions of the Constitution can only be adopted with more than 75 per cent of the votes in the national parliament together with over 50 per cent of voters in a national referendum, and
- an ‘immunity clause’ protects the military junta and all government personnel from being prosecuted for any act carried out in the pursuit of their duties.

As the International Crisis Group has argued, in a recent analysis of the Constitution and the proposed elections, much remains to be clarified about the elections and how they may be conducted. Major legislation for the elections has not yet been produced and it is not clear to what extent individuals and parties with differing views to the ruling regime will be able to participate and campaign. As the Group’s report noted, the prospect of the elections will pose some difficult challenges for some opposition parties, notably the NLD. The NLD has based its position on its status as the legitimate winner of the last elections in 1990.⁴⁵ The

44. The summary below draws from Tin Maung Maung Than, ‘Myanmar in 2008: Weathering the storm’, *Southeast Asian Affairs 2009*, Institute of Southeast Asian Studies, Singapore, 2009, pp. 201–202.

45. International Crisis Group, ‘Myanmar: towards the elections’, *Asia Report* no. 174, 20 August 2009, pp. 16–18, viewed 27 September 2009, <http://www.crisisgroup.org/home/index.cfm?id=6280&l=1>

party now faces the dilemma of standing aside from the 2010 polls and foregoing a potential opportunity to gain representation and possible influence, or taking the risk of participating in elections when its leadership and organisation have been weakened by years of repression, and when its chances for future electoral success might accordingly have been reduced.⁴⁶

Opinions about the potential significance and character of the proposed elections differ widely, both within and outside Burma. There are widespread suspicions that the military regime will utilise the elections to re-package its rule, and that little can be expected to change.

In a commentary published in *The Washington Post* on 9 September 2009, U Win Tin (a founder and senior member of the NLD, and a political prisoner from 1989 to 2008) rejected the validity and prospects for the elections:

[T]he showcase election planned by the military regime makes a mockery of the freedom sought by our people and would make military dictatorship permanent.

In our last free election, the Burmese people rejected military rule in a landslide, awarding our National League for Democracy party more than 80 per cent of the seats in parliament. Yet the military has refused to allow the NLD to form a government. In the 19 years since that election, Burmese democracy activists have faced imprisonment, intimidation, torture and death as they have peacefully voiced demands for justice, individual and ethnic rights, and a democratic form of government that is representative of all Burmese people ...

The regime is seeking to place a veneer of legitimacy on itself through showcase 'elections' and claimed that 'disciplined democracy' will be instituted next year. Some international observers view next year's planned elections as an opportunity. But under the circumstances imposed by the military's constitution, the election will be a sham.⁴⁷

The International Crisis Group, by contrast, has suggested that while the prospective elections will be flawed, they may offer some avenues for influence and possible change:

The 2008 constitution is the flawed product of a flawed process. The political situation is not likely to improve before the elections, and it may even deteriorate. The international community must take a principled stand in response. But it is vital that criticism does not equal disengagement, in order not to miss what may be an important opportunity to influence the direction of change.

The Myanmar political opposition must also carefully consider how to balance its anger over the process and the failure of the regime to implement the results of the 1990 elections

46. 'Elder of Burmese opposition grapples with election dissonance', *The New York Times*, 30 September 2009.

47. U Win Tin, 'An "election" Burma's people don't need', *The Washington Post*, 9 September 2009, viewed 27 September 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/08/AR2009090802959.html>

with the risks of opting out of the elections entirely. There is no contradiction in condemning the process while at the same time attempting to take the best strategic advantage of it.⁴⁸

Australia's policies

Australia has diplomatic relations with Burma and both countries have diplomatic missions in each other's capitals. As the Department of Foreign Affairs and Trade has noted: 'Australia's relations with Burma have been overshadowed and constrained by the actions of Burma's military regime. Australia has grave concerns about the Burmese regime's suppression of the democratic aspirations of the Burmese people and its disrespect for their human rights'.⁴⁹

Australia has supported the need for political reform and national reconciliation. Australia protested strongly against the suppression of peaceful demonstrations in Burma in September 2007. In 2009, Australia also protested against the conviction and sentencing of Aung San Suu Kyi in August to a further eighteen months detention. At the direction of the Minister for Foreign Affairs Stephen Smith, the Burmese Ambassador was called in to receive Australia's protest. At the same time it was also announced that Radio Australia would commence broadcasts to Burma and that Australia would consider extending its targeted financial sanctions to include members of the judiciary.

Australia has supported international measures in relation to Burma. For example, after the regime's crackdown on dissent in 2007, Australia implemented financial sanctions on 24 October 2007. Under these sanctions, transactions involving the transfer of funds or payments to, or on behalf of, specified regime figures and supporters are prohibited without the specific approval of the Reserve Bank of Australia. Australia maintains travel restrictions against senior regime figures, their associates and supporters and also maintains a longstanding ban on defence exports to Burma. Australia has supported the good offices role of the UN Secretary General in relation to Burma and participates in the Secretary General's Group of Friends on Burma (along with 13 other countries), which meets in New York.⁵⁰

Australia does not prohibit trade and investment relations with Burma although these have been limited by Burma's poor economic performance and unsuitability as an investment destination (in 2008, bilateral merchandise trade amounted to A\$51 million). Australia's

48. International Crisis Group, 'Myanmar: towards the elections', *Asia Report* no. 174, 20 August 2009, p. 26.

49. Department of Foreign Affairs and Trade, 'Burma Country Brief', DFAT webpage, viewed 30 September 2009, http://www.dfat.gov.au/geo/burma/burma_brief.html. The section below draws from this source.

50. The members of the Group are Australia, China, France, India, Indonesia, Japan, Norway, Russia, Singapore, Thailand, the United Kingdom, the United States, Vietnam and the country holding the presidency of the European Union; see L K Jha, 'UN chief to hold "friends of Burma" meeting', *The Irrawaddy*, 5 August 2009.

commercial relations with Burma attracted some controversy in September 2009 when the non-governmental organisation 'Burma Campaign Australia' initiated a campaign to discourage Australian companies from involvement in Burma. The group received support from Sharan Burrow (President of the Australian Council of Trade Unions). 'Burma Campaign Australia' directed attention towards several companies in relation to their involvement in Burma, including the Australian airline Jetstar (which has a 49 percent stake in 'Jetstar Asia', which operates flights to Burma from Singapore). Jetstar's managing director rejected the criticism. Ms Burrow said that the ACTU would increase pressure on the Australian government to take a clearer stand against trade and investment in Burma.⁵¹ In October 2009, a major retail company, Specialty Fashion Group, announced that it would cease trading with Burma and it was also reported that QBE Insurance and an engineering company, Downer EDI, had withdrawn from activities in Burma earlier in the year.⁵²

Australia has not granted economic assistance to Burma since 1988, but has provided humanitarian assistance to the Burmese people in programs which amount to A\$29 million in 2009–10. After the impact of Cyclone Nargis Australia supported the international efforts towards relief, and is providing a total of A\$55 million in assistance.⁵³

Australia has a small program in Burma in which the Australian Centre for International Agricultural Research works to increase food security and farmer livelihoods. Australia provides some assistance to Burma through its multilateral assistance programs to ASEAN, of which Burma is a member. The Australian Federal Police has a limited program of cooperation with the Burma police focusing on counter-narcotics, and on the countering of child-sex tourism and people trafficking, and money-laundering.

Australia's policies towards Burma are continuing to attract interest and attention.⁵⁴ On 5 October 2009 the Executive Director of the US-based NGO Human Rights Watch, Kenneth Roth, in a letter to the Minister for Foreign Affairs Stephen Smith, offered comment and suggestions about Australia's Burma policies.⁵⁵ The letter commended Australia's support

51. D Snow, 'Jetstar denies link to Burma rights abuse', *The Sydney Morning Herald*, 28 September 2009; see also 'Burma Campaign Australia' website, viewed on 1 October 2009, <http://www.aucampaignforburma.org/>

52. 'Burmese goods out of fashion', *The Daily Telegraph*, 13 October 2009.

53. See Australian Agency for International Development, 'Burma', AusAID webpage, viewed 27 September 2009
<http://www.aid.gov.au/country/country.cfm?CountryID=8493641&Region=EastAsia>

54. See N Farrelly, 'Repositioning on sanctions', *The Canberra Times*, 10 October 2009, viewed on 16 October 2009,
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22media%2Fpressclp%2FU6WU6%22>

55. 'Human Rights Watch, Letter to Australian Foreign Minister Stephen Smith on a Burma policy review', New York 5 October 2009, viewed on 15 October 2009,

for democracy in Burma and made some proposals for additional policy adaptations; these included additional consultations with neighbouring governments on Burma issues (including with ASEAN members), appointing a special envoy for Burma issues, supporting the initiation of a 'contact group' of interested states to regularly discuss diplomatic engagement with the Burma government on a range of issues, extending sanctions to cover companies owned or controlled by the military, and extending assistance to internally-displaced people in Burma. At the time of writing, the Australian government had not announced a formal response to this letter.

Australia's official dialogues in relation to Burma were continued on 9 October 2009 when Australia's Charge d'Affaires in the country, Simon Starr, along with British and US representatives, was able to meet with Aung San Suu Kyi. Ms Suu Kyi had sought the meeting to obtain information about the sanctions policies of the Australian and United States governments and of the European Union. The meeting lasted one hour and Burmese officials were also present. On the day of the meeting, the Department of Foreign Affairs and Trade stated in a media release that Australia saw the meeting as a '... a positive step by both the Burmese authorities and Aung San Suu Kyi':

During today's meeting, Australia's representative conveyed a message from the Prime Minister which expressed the support of the Government and people of Australia for Aung San Suu Kyi and for her struggle for democracy in Burma. The message expressed the hope that her sacrifice would, in time, lead to a better Burma.

Aung San Suu Kyi appeared to be in good health and welcomed the message of support.

The Government hopes that this constructive meeting may lay the groundwork for further contact. Australia is willing to contribute in ways that assist further dialogue and progress towards national reconciliation, democratic reform, and the long-term security and stability of Burma.⁵⁶

Outlook

The situation in Burma presents an ongoing quandary for the international community. The military regime continues to dominate the country and is highly resistant to external influence. Its close relations with neighbouring states have enabled the regime to withstand the impact of the sanctions which some states maintain. As the country approaches the elections proposed for 2010, one key issue will be whether the regime will be able to manage the process of political and constitutional change it has initiated without encountering further internal opposition and instability, both among the majority Burman community and the

<http://www.hrw.org/en/news/2009/10/05/letter-australian-foreign-minister-stephen-smith-burma-policy-review>

56. Department of Foreign Affairs and Trade, 'Meeting with Daw Aung San Suu Kyi', Media Release, 9 October 2009, viewed on 14 October 2009, <http://www.dfat.gov.au/media/releases/department/091009.html>

ethnic groups. A second major issue will be whether the process of elections and the advent of a new government results merely in a reaffirmation of the current situation of military dominance, or whether the adapted political system will permit some widening of civilian participation which might open up some new prospects for improving the current pattern of very poor economic and political governance.

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