

Testimony of Hon. Thomas H. Andrews
UN Special Rapporteur on the situation of Human Rights in Myanmar

United States Senate Foreign Relations Committee
Subcommittee on East Asia, The Pacific and International Cybersecurity Policy
“U.S. Response to the Coup in Burma”
March 25, 2021

Chairman Markey, Ranking Member Romney, distinguished members of the Subcommittee, thank you for inviting me here today to discuss the crisis in Burma. I am here to report on factors that led to the coup, the current state of the crisis, and, most importantly, what actions the international community, and specifically, the United States can take to help return the country to a democratically-elected government.

As we sit here, the crisis in Burma is at an inflection point. Peaceful opposition to the illegal coup has been widespread and sustained since the February 1st takeover. Protesters have taken to the streets by the millions and civil servant and private sector workers have gone on strike. Their courage has not waivered despite the Burmese military and police having murdered at least 275 civilians, arbitrarily detained over 2,200, and tortured many.

Mr. Chairman, there are strong indications that the Burmese junta is engaging in crimes against humanity. And I fear this horrific crisis will get far worse in very short order without strong diplomatic intervention from the United States and other members of the international community. I believe that to date, actions by the international community, including those of the United States, have fallen short of what is required to head off this deepening crisis.

In the face of widespread and systematic murders, tortures, and disappearances, there is a great deal of pressure on the opposition leadership in Burma, including pressure to take up arms against the Burmese military. I understand the pull to go down this path. But, I believe that such a path would lead to a disastrous outcome for the people of Burma with untold numbers of civilians caught in a protracted, bloody civil war. The United States and its allies should do everything in their collective power to avoid this outcome by providing the peaceful opposition movement in Burma the opportunity to succeed.

In my view, the actions needed now include the imposition of strong, coordinated sanctions to impede the flow of funds to the junta and to demonstrate that its criminal acts will be met by meaningful retaliation. I also believe that the international community, with leadership from the United States, must engage in a diplomatic offensive, that would include the convening of an emergency summit with representatives of the duly elected leadership of Burma, Burma’s neighbors and influential states in the region, including China.

A critical step will be a united effort among states to stop the flow of revenue into the illegal junta's coffers. This can happen now. Coordinated bilateral sanctions should be imposed on the junta's major sources of revenue, including military owned and controlled enterprises and the oil and gas sector. The military directly owns two major conglomerates, Myanmar Economic Holding Limited (MEC), and Myanmar Economic Corporation (MEHL). These conglomerates and their subsidiaries provide untold millions in off budget revenue to the military. Meanwhile, the oil and gas sector accounts for the single largest source of revenue to the state, overseen by the Myanmar Oil and Gas Enterprise (MOGE), which is now effectively controlled by a murderous criminal enterprise.

While the Biden administration prevented the junta from taking \$1 billion in Burmese state funds from the Federal Reserve Bank in New York immediately after the coup, the US, EU, and other states have since focused sanctions largely on individuals and some limited companies that do not provide significant revenue to the military. MEC, MEHL, and MOGE remain untouched by sanctions despite a chorus of calls for sanctions on these entities by hundreds of civil society organizations from Burma. The United States must sanction these entities and their subsidiaries to meaningfully degrade the junta's sources of revenue.

Mr. Chairman, in my view the time for incremental steps has long passed. The U.S. should work to bring key allies together to establish a coordinated sanctions regime so that sanctions add up to a powerful whole that will have maximum impact on this murderous regime.

The people of Burma and opposition leaders must be able to recognize that the international community is working towards a diplomatic solution in support of the peaceful Civil Disobedience Movement, and that this combined course of action—domestic peaceful resistance and international diplomatic momentum—will have a greater chance for success than taking up arms.

To this end I believe that an emergency summit on Burma that includes the Committee Representing Pyidaungsu Hluttaw (CRPH), the body that represents the duly elected leaders of Burma, and the Association of Southeast Asian Nations (ASEAN) is critical. The United States should work with ASEAN, in particularly Indonesia and Malaysia who have been seeking a unified approach to the crisis, to hold this summit and bring to the fore robust and creative diplomatic initiatives to both support the Civil Disobedience Movement and also open a channel with the junta to identify terms for it to relinquish power.

Again, unless there is a new, concerted approach taken on Burma in the very near term, I fear we will see a dramatic escalation of bloodshed.

Mr. Chairman, allow me to step back and address some of the other points the Subcommittee has requested I speak to today, namely the factors that led to the coup,

how to navigate justice for the Rohingya, and how to achieve the safe informed and voluntary repatriation for the Rohingya.

This coup was precipitated by the very structure of the Burmese state that the military constructed in its 2008 constitution. While the military ceded certain governing responsibilities to an elected government, it retained substantial power. Command and control of the military and police was kept in the military chain of command with no civilian oversight, the military gave itself one quarter of the seats in the Burmese parliament which gave it veto power over any constitutional reform measures, and it retained direct ownership over the most lucrative business conglomerates in the country. The constitution also contained provisions that allowed for the President to cede total control of the country to the military in times of national crisis. With this continued power, autonomy, and quick path to control, the military was able to quickly re-exert its control over the levers of power.

Against this backdrop, on November 8, 2020, national elections were held throughout Burma. The National League for Democracy won an outright majority, winning 396 out of 476 seats, with the military-backed party, the Union Solidarity and Development Party, winning only 33. The USDP alleged massive fraud and the military demanded the Union Election Commission (UEC) investigate allegations of voting irregularities. The UEC responded that there was no evidence to support the claim and resolved to certify the election. With the UEC having certified the election results, the new parliament was prepared to convene on February 1st. But, in the pre-dawn hours of February 1st, before parliament met, Burma's military conducted an unlawful coup d'état, seizing all levers of power in the country, consolidating control over the legislative, judicial and executive branches of government and arresting dozens of the government's civilian leadership, including State Counselor Aung San Suu Kyi, and President U Win Myint.

Mr. Chairman, even if election irregularities did exist, there was, and is, no justification for declaring a state of emergency, arresting the civilian leadership, and attempting to destroy Burma's fledgling democracy. It is notable that the military junta even failed to follow its own rules for taking control of the country as specified in the 2008 constitution that the military itself drafted. This coup is truly illegal in every sense of the word.

Whatever its thinking was in advance of the coup, it is clear that the junta badly misjudged the response from the people of Burma. For nearly two months now, despite draconian bans on gatherings, and knowing the history of the military's violent suppression of their right to expression, assembly, and association, millions of people all over the country have taken to the streets calling for a restoration of democracy. A general strike was called for days after the coup and has been successful in grinding the economy to a near halt. Not knowing how to fight these weapons of peace, the junta has responded in much the same way it has for decades against ethnic groups throughout the country, including the Rohingya, with brutality and violence.

On the question of how to seek justice for the Rohingya, and I would broaden that to all of the people of Burma who have come under attack by the military. One option is for the

UN Security Council to refer the situation in Myanmar to the International Criminal Court so that these crimes can be investigated and those who are responsible prosecuted. That outcome is at this time unlikely given that Russia and China would probably veto such a proposal. In lieu of that, I have encouraged nations around the world with universal jurisdiction provisions of law to bring crimes against humanity and genocide cases against the Burmese military leadership in their own courts. We have seen this tack employed in many European countries in the Syrian context. I believe it can be an effective route. Moreover, the Gambia has brought a genocide suit against the Government of Myanmar at the International Court of Justice for its atrocity crimes against the Rohingya. The United States could consider signing on to this case.

And finally, with respect to the nearly one million Rohingya currently languishing in refugee camps in Bangladesh and in internally displaced persons camps inside Burma, the junta claimed that they will continue repatriation efforts of the Rohingya from Bangladesh and that they will pursue the return of Rohingya IDPs in central Rakhine State in an “instant manner.” This is deeply disturbing as this is the very same leadership that oversaw the slaughter and displacement of the Rohingya.

In reality, Rohingya civilians displaced by mass atrocity crimes in 2012, 2016, and 2017 appear no closer to returning home to rebuild their lives. The same would apply to Arakanese (Rakhine) and Chin civilians displaced by armed conflict in recent years in Rakhine State. Moreover, a quick repatriation of Rohingya to Rakhine State under current conditions would conflict with the principles of a safe, dignified, voluntary, and sustainable return. But the Rohingya need our support. Just this week, massive fires at camps in Cox’s Bazaar, Bangladesh resulted in the destruction of over 10,000 shelters, confirmed deaths of 15, with over 400 missing and 500 injured.

Mr. Chairman, the people of Burma are rising up from all walks of life, every ethnic and religious background, and from every corner of the nation as a diverse yet powerfully unified whole. They are doing so to demand democracy, human rights, an immediate end to the violence and an end to an illegitimate junta. The nonviolent civil disobedience movement, or CDM, is drawing its growing, organic power from the unrelenting commitment of the Myanmar people. But, they need our help and they need it now.

Mr. Chairman, it is my sincere hope that the United States and the international community will rise to the occasion of this historic moment, that we will follow the lead and inspiration of the people of Myanmar and that we will join together in support of their courageous struggle for justice, democracy and their children’s future. They deserve no less.

Thank you.

Please note: Nothing in these remarks should be understood to be a waiver, express or implied, of the privileges and immunities of the United Nations, its officials or experts on mission, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations