

Witness Testimony: Jared Genser

Testimony Presented to the U.S. Commission on International Religious Freedom By Jared Genser
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Term Member, Council on Foreign Relations December 3, 2007, 2:30-4:30 PM I would like to thank the U.S. Commission on International Religious Freedom for holding this hearing today. I am pleased to have this opportunity to offer you my personal views on the current situation in Burma and to suggest ideas for future U.S. policy in this critical country in Southeast Asia. By way of some context, I have worked on Burma in one way or another for almost a decade, previously represented former Czech Republic President Václav Havel and Archbishop Desmond M. Tutu who commissioned my law firm to produce *Threat to the Peace: A Call for the UN Security Council to Act in Burma*, and currently, through my non-governmental organization Freedom Now, represent Daw Aung San Suu Kyi with regards to her ongoing house arrest in Burma. Nevertheless, to give me the widest latitude to express myself, I want to make clear the views I express today are wholly my own and not made on anyone else's behalf. In my testimony today, I will (1) provide some historical context for understanding the current situation in Burma; (2) assess the current UN mission led by Special Envoy Ibrahim Gambari; (3) analyze recent actions taken by the European Union, ASEAN, and China; and (4) recommend what further steps should be taken by the United States and others to advance the process of national reconciliation in Burma.

1. Historical Context It has been 17 years since Burma's 1990 democratic elections where the National League for Democracy and its allies won more than 80 percent of the parliamentary seats. And yet, as we sit here today, it is hard to answer the question as to whether we any closer to the restoration of democracy for the people of Burma. For decades Burma has posed a challenge to the international community torn between a sanction-based approach and constructive engagement. In reality, however, this is a false dichotomy, and what is likely required now is both more sanctions and more engagement. The sanction-based approach has been confined to Western democracies. The United States imposed a ban on new investment in 1997 and a ban on the import of many goods in 2003. The European Union, by contrast, has historically imposed more limited sanctions on the junta, though those sanctions have been recently extended to cover a broader class of imports. Rather than concluding economic sanctions have failed, however, it is more accurate to say they haven't really been tried in any meaningful way, except by the United States. In Asia, "constructive engagement" policies have prevailed. China, India, and Singapore, among others, have invested billions of dollars in the country. Most trade is centered around energy, timber, and gems. But this approach has demanded nothing in return from the Burmese junta. And little of this trade has yielded commensurate benefits for most Burmese. The military junta has built a new jungle capital, Naypidaw, and enjoyed a living standard far removed from the ordinary Burmese, who are among Asia's poorest citizens. The junta's mismanagement, ironically, led to the current impasse: Desperate for hard currency, the generals raised gas prices 500 percent overnight in August, triggering a self-inflicted crisis, and subsequent crackdown.

2. Assessment of Gambari Diplomatic Initiative If we are to believe the self-congratulatory predictions of UN Special Envoy to Burma Ibrahim Gambari, the military junta in the country has changed its tune from when it brutally cracked down on demonstrators in the country. He has urged Security Council Members to give his "diplomatic effort time to succeed." But of course, this is the same person who after a prior visit claimed the junta had "turned a new page" in its foreign relations in Burma. And then right after that visit, the junta extended Daw Aung San Suu Kyi's house arrest by another year. The history of the UN's relations with Burma over the past 17 years suggests good reason for a healthy skepticism of Mr. Gambari's pronouncements. Prior UN envoys to Burma from the former Commission on Human Rights and Human Rights Council have included Japanese academics Sadako Ogata and Yozo Yokota, former chief justice of Mauritius Rajsoomer Lallah, and Brazilian law expert Paulo Pinheiro. And then there were the special envoys sent by the Secretary-General himself, including Peruvian diplomat Alvar De Soto and Malaysian diplomat Razali Ismail. Most of these envoys were denied access to the country, and even those who ultimately had access ultimately gave up in frustration at their inability to make any real progress. A long-time Burma analyst Bertil Lintner has noted "[f]or the junta, manipulating the UN and sporadically giving false hopes to the international community buys it time while it moves to legitimize its hold on power . . . Razali's successor as special envoy, Gambari, has so far continued in the tradition of previous upbeat UN officials, who in the end achieved very little if nothing for the people of [Burma]." Indeed just today, in a rare press conference, Burmese Information Minister Kyaw Hsan said there was no role for the opposition in the drafting of a new constitution. "No assistance or advice from other persons is required," he said, adding that "it is not reasonable or fair to amend those principles adopted by the delegates." He went on to dismiss September's protests as "trivial for the whole country," blaming them on "bogus" monks and the involvement of foreign pro-democracy groups. Meanwhile in recent weeks the junta has kicked out UN Burma Coordinator Charles Petrie, continued rounding up and imprisoning pro-democracy activists, charged U Gambira with treason, and closed a monastery used as an AIDS hospice. In this context, I have yet to even see what Mr. Gambari recently described as "snail-paced progress" towards democratization. Nevertheless, I applaud Mr. Gambari's statement that the UN "want[s] time-bound, concrete and serious results" starting with the release of Daw Aung San Suu Kyi. But I do not believe this will happen until Mr. Gambari is empowered as an envoy with the full weight of the UN Security Council behind him.

3. Recent Actions by European Union, ASEAN, and China Historically, the European Union's Common Position on Burma was strong in rhetoric but weak on substance. In the wake of the recent crackdown, however, the Common Position has been substantially strengthened, including the addition of a ban on imports of timber, gemstones, and precious metals. It remains to be seen in implementing legislation if Burmese products that enter the European Union through third countries will also be banned. The Association of Southeast Asian Nations (ASEAN) has struggled to come to terms with how to deal with Burma. Individual members, including Indonesia, Malaysia, Singapore, and the Philippines, have been critical of Burma, even publicly saying that Burma is holding back the economic development of the bloc. This is because both the

EU and U.S. have indicated a desire to discuss the prospects of inking a free trade agreement with ASEAN, but both have said Burma could not be a part of the deal. ASEAN's difficulties - both because of its non-interference principle and its inability to compel action by other members - was highly visible at their recent summit in ASEAN. Singapore had requested that Mr. Gambari brief the bloc during its recent summit in their country. Despite the high-profile adoption of their new Charter, the meeting was marred by Burma's objections to such a briefing taking place, and ASEAN, which operates by consensus, was forced to relegate Mr. Gambari to a series of one-on-one sideline meetings. But ASEAN has also had some positive moments - from persuading the junta to stand down in chairing the organization in 2006 to publicly calling for Aung San Suu Kyi's release to condemning the recent September crack-down. Ultimately, however, even under its new Charter, Burma will remain a problem for ASEAN. The principle of non-interference remains intact, and the bloc has reluctantly remained a bulwark against Western criticism of Burma. China's role in Burma is paramount. Despite protestations that a country shouldn't interfere in the internal affairs of another, China has been the largest supplier of weapons to the Burmese junta to the tune of billions of dollars. In a large part, this has been to protect its own economic investments. A recent study by EarthRights International found that in the past decade more than 26 Chinese multinational companies have invested in 62 hydropower, oil and gas, and mining projects in Myanmar. But China also has important security concerns in Burma as well. Given its strong interests in maintaining its relationship with the Burmese junta intact, China has been one of the strongest defenders of the junta - both in the UN Security Council and beyond. In addition to vetoing a non-punitive resolution in the Security Council on Burma this past January, along with Russia, China has publicly and privately pressed for the junta to be given further time to proceed on its seven-step roadmap to democracy. That said, however, China has come under increasing pressure from the international community for its role in Burma and, especially given the junta's recent violent suppression of September's protests, has had to stand aside to some extent. At the same time, recognizing that it would be unable to withstand the pressure if Burma did not cooperate with the UN, I have heard China has also privately pressed the junta to allow Mr. Gambari and others to visit the country. Ultimately, however, China will continue to try and strike a balance between its desire to be viewed as a responsible actor on a global stage and its desire to secure its own interests in Burma. Unless pressure is kept on China, therefore, it will privately do what it can to secure the junta and its own interests as much as possible.

4. Recommendations

There are no easy answers as to how the United States and others can press for national reconciliation to proceed in Burma, but with so many moving pieces, there are some key things to keep in mind. First, it is unlikely that the Burmese junta will feel compelled to do anything meaningful until the Security Council is able to agree on a way forward. The question now is if the Security Council will be willing to adopt a resolution expressing a clear message to the junta of its need to act. This will be an uphill struggle, especially given China and Russia's seat at the table. But the United States and other countries can apply pressure on to the UN and Security Council Members to adhere to Mr. Gambari's comment that the UN "want[s] time-bound, concrete and serious results." Second, in the meantime, further sanctions should be applied, wherever possible, to increase the pressure on the regime. In particular, I hope the U.S. Congress will act quickly on HR3890, the Burma JADE Act, to extend U.S. financial sanctions to Burmese gems that pass through third countries on their way to the United States. This legislation would close a major loophole in the existing U.S. import ban. Similarly, the EU should implement its own import ban with similar provisions. In addition, the U.S., EU, Australia, Canada, and a number of other countries are beginning to make a serious move to implement financial sanctions against senior members of the Burmese junta. Such actions have real potential to make it more difficult for the junta to store its assets abroad. Anecdotally in conversations with diplomats from ASEAN countries, I know there is deep concern about the prospects of the United States doing to a state-owned bank what happened to Banco Delta Asia in Macau because of its laundering of North Korean funds. Third, the United States should press ASEAN, China, Russia, and India, among others, to themselves continue to press Burma for democratic reforms. Ultimately, my expectations are not high. But even merely persuading China to allow the Security Council to take non-punitive action could have a major impact. In conclusion, I would remind everyone here today that the Burmese people have, yet again, signaled to the world that they yearn to be free. The question remains as it has for years whether the international community will heed their cry for help.