Burma Briefing

What Next For EU Burma Policy?

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Current Issues

The European Union has a common foreign policy on Burma, know as a Council Decision. The Council Decision currently has to be renewed every April. EU countries are currently discussing what changes, if any, should be made to the Council Decision when it is renewed at the end of April 2011.

This paper looks at the two most pressing issues which the European Union has to address as it considers the renewal of the Council Decision. The first relates to sanctions. The seconds relates to serious violations of international law.

On sanctions, the European Union has to decide whether recent events in Burma, such as the rigged election, warrant a relaxation of sanctions. This paper examines the four key demands of the European Union when it renewed the Common Position in April 2010, and finds that none have come close to being met.

The European Union must also decide how to respond to the recent review of sanctions by the National League for Democracy (NLD). The NLD has asked for discussions on how and under what circumstances sanctions might be modified. In particular, the NLD asked for discussions on the setting of benchmarks, such as the release of all political prisoners. The European Union must engage the NLD in this discussion, and agree benchmarks.

On international law, the EU has still failed to officially support a UN Commission of Inquiry into war crimes and crimes against humanity in Burma. The UN Special Rapporteur on Burma has stated that failing to act on accountability will embolden the perpetrators. The EU's failure to support such an inquiry shames member states.

While this briefing looks at current sanctions and international law, there are many other issues the EU consistently fails to act on. Members of the European Burma Network issued a statement with recommendations, which is available at: http://www.burmacampaign.org.uk/index.php/news-and-reports/news-stories/European-Burma-Network-Statement/142

A more detailed overview of general EU policy on Burma is available in Burma Briefing No. 4, The European Union & Burma, available at: http://www.burmacampaign.org.uk/index.php/news-and-reports/burma-briefing/title/the-european-union-and-burma

The European Union has long been divided on Burma, with some countries favouring strong pressure on Burma's dictatorship to help promote reform, and others favouring a softer approach, often for commercial reasons.

Some EU members have used the November 2010 elections, the release of Aung San Suu Kyi, and the NLD announcement of a review of sanctions policy, to argue that the European Union should now relax some of its sanctions against Burma.

Others argue strongly that as the elections were a sham, and that although Aung San Suu Kyi has been released, more than 2,000 political prisoners remain, there has been no significant change in Burma that would justify the lifting of sanctions.

Key EU Demands

If the European Union is to abide by its own Conclusions when it last renewed the Common Decision on 26th April 2010, it is clear there is no justification for relaxing sanctions. (The conclusions are available at: http://burmacampaign.org.uk/images/uploads/EU-Common-Position-2010.pdf)

As usual, the EU stated its position that:

"*The Council underlines its readiness to revise, amend or reinforce the measures it has already adopted in light of developments on the ground. The EU stands ready to respond positively to genuine progress in Burma/Myanmar.*"

In summary, the position is to increase pressure if the situation in Burma gets worse, and to relax pressure if the situation gets better.

In its April 2010 Conclusion the EU made four specific requests which it wanted to see progress on:

"*The Council calls upon the authorities of Burma/Myanmar to take steps to bring about a peaceful transition to a democratic, civilian and inclusive system of government. The Council underlines that the political and socio-economic challenges facing the country can only be addressed through genuine dialogue between all stakeholders, including the ethnic groups and the opposition.*"

Burma's dictatorship has taken no steps to bring about a peaceful transition to democracy through genuine dialogue. In fact, if anything the opposite has happened. It has been years since there has been dialogue with Aung San Suu Kyi. And rather than genuine dialogue with ethnic ceasefire groups about a transition to democracy, the dictatorship is threatening military action if they do not submit to their armed wings coming under the control of the Burmese Army as Border Guard Forces.

In September 2010 an offer of dialogue from the Karen National Union, which does not have a ceasefire agreement with the dictatorship, was ignored by the regime. This is despite the KNU announcing a unilateral one-day ceasefire on the United Nations International Day of Peace, as a sign of its goodwill.

So, in regard to this request, the dictatorship has clearly failed to make any significant progress.

The EU's second request related to the elections held in November 2010, and political prisoners:

"*The Council expresses its serious concerns that election laws as published in early March do not provide for free and fair elections and notes that the authorities of Burma/Myanmar still have to take the steps necessary to make the planned elections later this year a credible, transparent and inclusive process. The Council reiterates its call for the release of the political prisoners and detainees, including Daw Aung San Suu Kyi.*"

The scale of restrictions and rigging of the election in November 2010 shocked even those favouring a softer approach towards the generals. The National League for Democracy was effectively banned, a major party representing the Kachin ethnic group was not allowed to register, extremely harsh conditions were announced by the electoral commission, and then the vote was rigged with ballot stuffing and widespread use of votes cast before the election day.

More than 80 percent of MPs come from the military or pro-military parties. In the new and all-powerful National Defence and Security Council, only one of its eleven members is genuinely civilian, and that member comes from the pro-military Union Solidarity and Development Party.

As Catherine Ashton, EU High Representative for Foreign Affairs and Security Policy, said in the official EU statement following the election:

"*The EU regrets therefore that the authorities did not take the necessary steps to ensure a free, fair and inclusive electoral process. Many aspects of these elections are not compatible with*

internationally accepted standards; notably in the bias against most opposition parties - such as the NLD - and their candidates, in terms of opportunities to campaign; in restrictions on their registration; in severe restrictions on freedom of expression and assembly; in limited access to the media; and in the lack of free and balanced reporting by the latter."

And despite the release of Aung San Suu Kyi, who should never have been detained in the first place, more than 2,000 political prisoners remain in jail. In addition, torture is still widespread, more than 150 of the political prisoners are unwell and being denied access to proper healthcare, and many have been moved to remote prisons to make it more difficult for family to visit, and bring them desperately needed food and medicine.

Clearly this request was not met.

The EU's third request to the dictatorship was:

"*The Council urges the government of Burma/ Myanmar to engage more with the international community, to work towards a peaceful transition to democracy.*"

Again the dictatorship has failed to act on this request. In particular, the EU special envoy on Burma, Piero Fassino, has repeatedly been denied a visa to enter Burma. The United Nations Special Rapporteur on Burma, Tomás Ojea Quintana, has also been unable to visit the country.

The fourth request related to international law:

"*The Council welcomes the adoption of Resolution 13/25 of the UN Human Rights Council, and endorses the Progress report by the UN Special Rapporteur, Mr Quintana. It calls upon the authorities of Burma/Myanmar to cooperate with him in a constructive manner and comply in full with the UN's recommendations, by taking urgent measures to put an end to violations of international human rights and humanitarian law.*"

In addition to refusing the special Rapporteur access to Burma, no action has been taken to end violations of international human rights and humanitarian law. The Special Rapporteur continues to call for a UN Commission of Inquiry into war crimes and crimes against humanity in Burma.

In its 2010 resolution on Burma, passed on 24th December, the United Nations General Assembly stated that it:

"*Expresses grave concern at the continuing practice of arbitrary detentions, enforced disappearances, rape and other forms of sexual violence, torture and cruel, inhuman or degrading treatment or punishment, and urges the Government of Myanmar to undertake without further delay a full, transparent, effective, impartial and independent investigation into all reports of human rights violations, and to bring to justice those responsible in order to end impunity for violations of human rights, and, regretting that previous calls to that effect have not been heeded, calls on the Government to do so as a matter of priority and, if necessary, drawing on the assistance of the United Nations.*"

And in January 2011, during the Universal Periodic Review on Burma's human rights record at the Human Rights Council, the dictatorship rejected 16 separate proposals for action relating to respecting international law, and investigating crimes committed.

With no progress on any of the key issues which the European Union highlighted, at the present time there are no grounds for relaxing EU sanctions.

Responding To The NLD Sanctions Policy Review

Another key issue influencing the debate on EU policy is the position on sanctions of the National League for Democracy. Governments which in the past ignored repeated requests from the NLD for stronger targeted sanctions, have suddenly decided that what the NLD says does matter. They have been using the NLD review of sanctions to argue that the EU should relax sanctions.

Now that the NLD has published its review, it is clear that there is no immediate justification for relaxing sanctions based on NLD policy.

Three key issues which dominate debate within the EU were addressed by the NLD review.

One relates to the effectiveness of sanctions. In Burma Briefing No. 4, The European Union & Burma, Burma Campaign UK has already highlighted problems with the type of EU sanctions and the way in which they have been applied. In addition, it would be wrong to conclude that because the dictatorship is still in power, that sanctions have failed. This would be judging sanctions against the wrong criteria, as it was never thought that sanctions alone would bring down the dictatorship.

The review from the NLD makes a measured and realistic assessment of sanctions, given the current political climate, arguing that: "*targeted sanctions serve as a warning that acts contrary to basic norms of justice and human rights cannot be committed with impunity even by authoritarian governments.*"

It points out that US financial sanctions have denied access to the US financial system to members of the junta and their associates, and helped prevent the laundering of black money and the siphoning off of revenues from the sale of gas and other resources.

Another hot debate within the EU is the impact of sanctions on ordinary people in Burma. EU governments wanting to relax sanctions increasingly use this argument to try to justify their position. The NLD review looked carefully at different areas, including trade, foreign direct investment, overseas aid and finance. They found that the evidence led to the conclusion that it is the policies of the dictatorship, not economic sanctions, which are responsible for the hardships faced by ordinary people in Burma.

The third issue being debated within the EU, especially in light of the elections and release of Aung San Suu Kyi, is what steps would need to be taken by the dictatorship to justify the lifting of sanctions.

The request of the NLD for discussions with those countries which have imposed sanctions to reach agreement on "*...when, how and under what circumstances sanctions might be modified in the interests of democracy, human rights and a healthy economic environment* " is designed to settle this debate.

Having clear benchmarks that need to be met before the lifting of certain sanctions will provide much needed clarity, and once agreed will allow EU members to focus more on other issues where it can have a positive impact.

NLD Vice-Chairman U Tin Oo: *"We would urge the countries that are helping Burma's democratic movement to maintain their targeted sanctions. There is no tangible progress toward Burma's democratic reforms."*

It will also clarify exactly what the EU means when it says it stands 'ready to respond positively to genuine progress'. It will make it much clearer to the dictatorship what practical steps they must take if they do want to see sanctions lifted. As detailed in Burma Briefing No. 4, in the past, sanctions have been applied as a punishment after an atrocity. Clearer benchmarks would put existing sanctions to work more actively in support of dialogue, using the lifting of sanctions as a carrot.

On three of the main areas of debate on sanctions within the EU, the NLD has made its assessment. On whether sanctions can have an impact, the answer is yes, but there must be realism about their role. On whether sanctions are hurting ordinary people, the evidence is no. And on what would justify the lifting of sanctions, a request for talks to agree on benchmarks, allowing the issue to be settled and attention given to other issues relating to Burma.

The EU must consult with the NLD, and other organisations, including genuine ethnic representatives, which have called for targeted sanctions, to work out a set of agreed benchmarks for their relaxation. As it is highly unlikely that the

dictatorship would take any dramatic steps, this is likely to involve a series of gradual steps removing individual sanctions in response to any positive steps taken by the dictatorship.

War Crimes and Crimes Against Humanity

The failure of the European Union to publicly support the recommendation of the UN Special Rapporteur on the Human Rights situation in Myanmar, that the UN establish a Commission of Inquiry into possible war crimes and crimes against humanity, is shocking. The lack of action despite full knowledge that crimes in violation of international law are being committed verges on complicity with those crimes.

Six months on from his original call for an Inquiry, in his report to the UN General Assembly, the Special Rapporteur stated: "*Failing to act on accountability in Myanmar will embolden the perpetrators of international crimes and further postpone long-overdue justice.*"

Almost a year has now passed without the EU officially supporting the recommendation for an inquiry. Given the continuing violations committed by the dictatorship, and its repeated refusal to end or to investigate these crimes, and the specific request by the EU to put an end to violations of international law in the Council Conclusions on April 2010, the EU must now publicly support a UN Commission of Inquiry in the Council Conclusions which will accompany the Common Decision renewal in April 2011.

Ten EU members are so far on the record publicly supporting an inquiry. They are Belgium, Czech Republic, Estonia, France, Hungary, Ireland, Lithuania, Netherlands, Slovakia, and UK.

Recommendations:

- There should be no relaxation of any sanctions until there is a genuine improvement in human rights and progress towards democratic change.
- The European Union should enter into dialogue with the NLD and other key organisations supporting targeted sanctions, with a view to establishing benchmarks that need to be met before sanctions begin to be lifted.
- Any benchmarks should also be co-ordinated with other countries which have imposed sanctions.
- The European Union should publicly support a UN Commission of Inquiry into war crimes and crimes against humanity in Burma.
- The European Union should include the establishment of such an inquiry in the draft 2011 UN General Assembly Resolution on Burma.

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