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## Burma's new threat to global security

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Despite the recognition it is receiving, Burma's new government is in thrall to the military (Reuters)

For over forty years, Burma's military rulers have ignored the rules of law that govern civilized nations. General Than Shwe and his fellow perpetrators enjoyed an unfettered rule by crime only because of the global community's long standing "whine and wait" policy towards Burma.



However, the latest power play by the military – establishing a “civilian” sovereign state without sovereign powers – makes such inaction untenable. Given its lack of sovereign powers, control over its people, laws, and territory, Burma's new “civilian” government is illegitimate. The most fundamental and accepted law of nations obliges all states to treat Burma's constitution and the elections arising from it as “null and void.”

Let me explain how this happened and why Burma's form of government is a new threat to global peace and security.

Burma's new constitution, implemented on 31 January 2011, establishes the sovereign state of “the Republic of the Union of Myanmar” as being composed exclusively of the executive, legislative, and judicial branches. The military (“Defense Services”) is a separate, legally autonomous entity, outside of and supreme over the sovereign state. The new government of Burma, represented by the Head of State President Thein Sein, is incapable – even if willing – to enforce any laws, civil or criminal, against the military. All military affairs, civil or criminal, are under the exclusive control of the commander-in-chief. No law applies to the commander-in-

chief, not the constitution or any rules spanning from controlling finances to nuclear development.

This bold attempt to establish a permanent “law free zone” for the military has escaped the notice of the global community. In fact, the influential International Crisis Group goes even further, enthusiastically describing Burma’s constitution and elections as “improv[ing] the prospects for incremental reform.” Nothing could be further from the truth. The military’s stranglehold over Burma is impervious to political reform given its constitutional basis.

Even if Aung San Suu Kyi were President of Burma tomorrow, she would lack the legal capacity to be able to enforce compliance with Chapter VII Security Council Resolutions, the Nuclear Non-proliferation Treaty, the Genocide and Geneva Conventions, the ASEAN Charter, and international laws regulating trade when they apply to military-owned companies in Burma. Neither the executive nor judiciary can end the constitutionally-guaranteed impunity of the military for past and present war crimes and genocide, including the use of rape as a weapon of war and child soldiers.

Although the military currently lacks nuclear capability, its fixation on mimicking the “North Korea model” of using the potential of nuclear weapons as a bargaining tool on the world stage is a serious threat. The military’s access to mineable uranium and billions of dollars are strengthened by a constitutional structure that ensures their legal autonomy and control over Burma’s energy development projects, including nuclear power.

The issuance and implementation of this illegal constitution is an act of state of the utmost gravity under international law, violating the most central premise of the United Nations Charter; that all Member States are able and willing to comply with Security Council mandates necessary to secure global peace and security.

Burma now must incur the legal consequences of its “serious breach of peremptory norms.” Under international law all states are under an absolute obligation not to recognise the constitution and its subsequent elections and to take all measures possible, both collectively and individually, to ensure Burma revokes its constitution and invalidates the elections. This intransgressible legal duty of non-recognition cannot be ignored in favor a political strategy that accepts the validity of the 2010 elections. This was made plain by the Security Council in 1984 when it enforced this sanction of non-recognition mandating states treat the South African apartheid constitution and elections as null and void.

Enforcing the most fundamental law of nations is critical for the people of Burma for whom the new constitution legitimises their permanent status as prisoners of their own county. Equally important is for the world community to stop treating Burma as immune from consequences for its illegal acts. Continuing a “whine and wait” policy towards Burma, or worse, supporting the new illegal regime, should not be considered as viable political options.

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