

AMENDMENT TO RULES COMM. PRINT 115-70

OFFERED BY MR. ENGEL OF NEW YORK

At the appropriate place in title XII, insert the following new subtitle:

1 **Subtitle _____—Matters Relating to**
2 **Burma**

3 **SEC. 12 ___ 1. LIMITATION ON SECURITY ASSISTANCE AND**
4 **SECURITY COOPERATION.**

5 (a) **LIMITATION ON MILITARY AND SECURITY SEC-**
6 **TOR COOPERATION.**—Except as provided in subsection
7 (b), for the 8-year period beginning on the date of the
8 enactment of this Act, the United States may not provide
9 any security assistance or engage in any security coopera-
10 tion with the military or security forces of Burma until
11 the date on which the Secretary of State certifies to the
12 appropriate congressional committees with respect to secu-
13 rity assistance, as such term is defined in section 502B(d)
14 of the Foreign Assistance Act of 1961 (22 U.S.C.
15 2304(d)), and, in consultation with the Secretary of De-
16 fense, with respect to security cooperation programs and
17 activities of the Department of Defense, as such term is
18 defined in section 301 of title 10, United States Code, that
19 the military and security forces of Burma have dem-

1 onstrated significant progress in abiding by international
2 human rights standards and are undertaking meaningful
3 and significant security sector reform, including reforms
4 that enhance transparency and accountability, to prevent
5 future abuses, such as the following:

6 (1) The Burmese military and security forces
7 adhere to international humanitarian law, dem-
8 onstrate significant progress in abiding by inter-
9 national standards for human rights, and pledge to
10 stop future human rights abuses.

11 (2) The Burmese military and security forces
12 support efforts to carry out meaningful and com-
13 prehensive investigations of alleged abuses and are
14 taking steps to hold accountable those members of
15 such military and security forces responsible for
16 human rights abuses.

17 (3) The Government of Burma, including the
18 military and security forces, allow immediate and
19 unfettered humanitarian access to communities in
20 areas affected by conflict, including Rohingya com-
21 munities in the State of Rakhine.

22 (4) The Government of Burma, including the
23 military and security forces, cooperates with the
24 United Nations High Commissioner for Refugees
25 and organizations affiliated with the United Nations

1 to ensure the protection of displaced persons and the
2 safe, voluntary, and dignified return of refugees and
3 internally displaced persons.

4 (5) The Burmese military and security forces
5 cease their attacks against ethnic minority groups
6 and constructively participate in the conclusion of a
7 credible, nationwide ceasefire agreement, political ac-
8 commodation, and constitutional change, including
9 the restoration of the citizenship of the Rohingya.

10 (6) The Government of Burma, including the
11 military and security forces, defines a transparent
12 plan with a timeline for professionalizing the mili-
13 tary and security forces and includes a process by
14 which the military withdraws from private-sector
15 business enterprises and ceases involvement in the il-
16 legal trade in natural resources and narcotics.

17 (7) The Government of Burma establishes ef-
18 fective civilian control over the finances of its mili-
19 tary and security forces, including by ensuring that
20 the military does not have access to off-budget in-
21 come and that military expenditures are subject to
22 adequate civilian oversight.

23 (b) EXCEPTIONS.—

24 (1) CERTAIN EXISTING AUTHORITIES.—The
25 Secretary of Defense shall retain the authority to

1 conduct consultations with Burma pursuant to the
2 authorization under section 1253 of the Carl Levin
3 and Howard P. “Buck” McKeon National Defense
4 Authorization Act for Fiscal Year 2015 (22 U.S.C.
5 2151 note).

6 (2) HOSPITALITY.—The Secretary of State and
7 the United States Agency for International Develop-
8 ment may provide assistance authorized under part
9 I of the Foreign Assistance Act of 1961 (22 U.S.C.
10 2151 et seq.) to provide hospitality during research,
11 dialogues, meetings, or other activities by the parties
12 attending the Union Peace Conference 21st Century
13 Panglong or related processes seeking inclusive, sus-
14 tainable reconciliation.

15 (c) MILITARY REFORM.—The certification required
16 under subsection (a) shall include a written justification
17 in unclassified form that may contain a classified annex
18 describing the Burmese military’s efforts to implement re-
19 forms, end impunity for human rights abuses, and in-
20 crease transparency and accountability.

21 (d) REPORT.—

22 (1) IN GENERAL.—Not later than 180 days
23 after the date of the enactment of this Act, and an-
24 nually thereafter, the Secretary of Defense and the
25 Secretary of State shall submit to the appropriate

1 congressional committees a report, in unclassified
2 form with a classified annex, on the strategy and
3 plans for military-to-military engagement between
4 the United States Armed Forces and the military
5 and security forces of Burma.

6 (2) ELEMENTS.—The report required under
7 paragraph (1) shall include the following elements:

8 (A) A description and assessment of the
9 Government of Burma's strategy for security
10 sector reform, including plans to withdraw the
11 military from owning or controlling private-sec-
12 tor business entities and end involvement in the
13 illicit trade in jade and other natural resources,
14 reforms to end corruption and illicit drug traf-
15 ficking, and constitutional reforms to ensure ci-
16 vilian control.

17 (B) A list of ongoing military activities
18 conducted by the United States Government
19 with the Government of Burma, and a descrip-
20 tion of the United States strategy for future
21 military-military engagements between the
22 United States and Burma's military and secu-
23 rity forces, including the military of Burma, the
24 Burma Police Force, and armed ethnic groups.

1 (C) An assessment of the progress of the
2 military and security forces of Burma towards
3 developing a framework to implement human
4 right reforms, including—

5 (i) cooperation with civilian authori-
6 ties to investigate and prosecute cases of
7 serious, credible, or gross human rights
8 abuses;

9 (ii) steps taken to demonstrate respect
10 for and implementation of the laws of war;
11 and

12 (iii) a description of the elements of
13 the military-to-military engagement be-
14 tween the United States and Burma that
15 promote such implementation.

16 (D) An assessment of progress on the
17 peaceful settlement of armed conflicts between
18 the Government of Burma and ethnic minority
19 groups, including actions taken by the military
20 of Burma to adhere to cease-fire agreements,
21 allow for safe and voluntary returns of dis-
22 placed persons to their homes, and withdraw
23 forces from conflict zones.

24 (E) An assessment of the Burmese's mili-
25 tary recruitment and use of children as soldiers.

1 (F) An assessment of the Burmese’s mili-
2 tary’s use of violence against women, sexual vio-
3 lence, or other gender-based violence as a tool
4 of terror, war, or ethnic cleansing.

5 (e) **REGULAR CONSULTATIONS.**—Any new program
6 or activity carried out under this section shall be subject
7 to prior consultation with the appropriate congressional
8 committees.

9 **SEC. 12 __ 2. IMPOSITION OF SANCTIONS WITH RESPECT**
10 **TO CERTAIN FOREIGN PERSONS.**

11 (a) **IN GENERAL.**—For the 8-year period beginning
12 on the date that is 270 days after the date of the enact-
13 ment of this Act, the President shall impose the sanctions
14 described in subsection (b) with respect to each foreign
15 person that the President determines—

16 (1) is a current or former senior official of the
17 military or security forces of Burma who know-
18 ingly—

19 (A) perpetrated or is responsible for order-
20 ing or otherwise directing serious human rights
21 abuses in Burma; or

22 (B) has taken significant steps to impede
23 investigations or prosecutions of serious human
24 rights abuses allegedly committed by one or
25 more subordinates of such official, including

1 against the Rohingya community in the state of
2 Rakhine;

3 (2) is an entity owned or controlled by any per-
4 son described in paragraph (1);

5 (3) has knowingly provided or received signifi-
6 cant financial, material, or technological support to
7 or from a foreign person, including the immediate
8 family members of such person, described in para-
9 graph (1) for any of the acts described in subpara-
10 graph (A) or (B) of such paragraph.

11 (b) SANCTIONS.—The sanctions described in this sec-
12 tion are the following:

13 (1) ASSET BLOCKING.—Notwithstanding the re-
14 quirements of section 202 of the International
15 Emergency Economic Powers Act (50 U.S.C. 1701),
16 the exercise of all powers granted to the President
17 by such Act to the extent necessary to block and
18 prohibit all transactions in all property and interests
19 in property of a person the President determines
20 meets one or more of the criteria described in sub-
21 section (a) if such property and interests in property
22 are in the United States, come within the United
23 States, or are or come within the possession or con-
24 trol of a United States person..

1 (2) ALIENS INELIGIBLE FOR VISAS, ADMISSION,
2 OR PAROLE.—

3 (A) VISAS, ADMISSION, OR PAROLE.—An
4 alien who the Secretary of State or the Sec-
5 retary of Homeland Security (or a designee of
6 one of such Secretaries) knows, or has reason
7 to believe, meets any of the criteria described in
8 subsection (a) is—

9 (i) inadmissible to the United States;

10 (ii) ineligible to receive a visa or other
11 documentation to enter the United States;
12 and

13 (iii) otherwise ineligible to be admitted
14 or paroled into the United States or to re-
15 ceive any other benefit under the Immigra-
16 tion and Nationality Act (8 U.S.C. 1101 et
17 seq.).

18 (B) CURRENT VISAS REVOKED.—

19 (i) IN GENERAL.—The issuing con-
20 sular officer, the Secretary of State, or the
21 Secretary of Homeland Security (or a des-
22 ignee of one of such Secretaries) shall re-
23 voke any visa or other entry documentation
24 issued to an alien who meets any of the

1 criteria described in subsection (a) regard-
2 less of when issued.

3 (ii) EFFECT OF REVOCATION.—A rev-
4 ocation under clause (i)—

5 (I) shall take effect immediately;
6 and

7 (II) shall automatically cancel
8 any other valid visa or entry docu-
9 mentation that is in the alien's pos-
10 session.

11 (3) EXCEPTION TO COMPLY WITH UNITED NA-
12 TIONS HEADQUARTERS AGREEMENT.—Sanctions
13 under paragraph (2) shall not apply to an alien if
14 admitting the alien into the United States is nec-
15 essary to permit the United States to comply with
16 the Agreement regarding the Headquarters of the
17 United Nations, signed at Lake Success June 26,
18 1947, and entered into force November 21, 1947,
19 between the United Nations and the United States,
20 or other applicable international obligations.

21 (c) PENALTIES.—Any person that violates, attempts
22 to violate, conspires to violate, or causes a violation of this
23 section or any regulation, license, or order issued to carry
24 out subsection (b) shall be subject to the penalties set
25 forth in subsections (b) and (c) of section 206 of the Inter-

1 national Emergency Economic Powers Act (50 U.S.C.
2 1705) to the same extent as a person that commits an
3 unlawful act described in subsection (a) of that section.

4 (d) IMPLEMENTATION.—The President may exercise
5 the authorities provided under section 203 and 205 of the
6 International Emergency Economic Powers Act (50
7 U.S.C. 1702 and 1704) to carry out this section.

8 (e) WAIVER.—

9 (1) IN GENERAL.—The President may annually
10 waive the application of sanctions required by sub-
11 section (a) with respect to a person if the Presi-
12 dent—

13 (A) determines that such waiver is in the
14 national interest of the United States; and

15 (B) not later than the date on which such
16 waiver will take effect, submits to the congres-
17 sional committees listed in paragraph (2) a no-
18 tice of and justification for such waiver.

19 (2) CONGRESSIONAL COMMITTEES LISTED.—
20 The congressional committees listed in this para-
21 graph are the following:

22 (A) The Committee on Foreign Affairs, the
23 Committee on Appropriations, and the Com-
24 mittee on Financial Services of the House of
25 Representatives.

1 (B) The Committee on Foreign Relations,
2 the Committee on Appropriations, and the
3 Committee on Banking, Housing, and Urban
4 Affairs of the Senate.

5 (f) DEFINITIONS.—In this section:

6 (1) ADMITTED; ALIEN.—The terms “admitted”
7 and “alien” have the meanings given those terms in
8 section 101 of the Immigration and Nationality Act
9 (8 U.S.C. 1001).

10 (2) FOREIGN PERSON.—The term “foreign per-
11 son” means a person that is not a United States
12 person.

13 (3) KNOWINGLY.—The term “knowingly”
14 means, with respect to conduct, a circumstance, or
15 a result, means that a person has actual knowledge,
16 or should have known, of the conduct, the cir-
17 cumstance, or the result.

18 (4) UNITED STATES PERSON.—The term
19 “United States person” means—

20 (A) a United States citizen, an alien law-
21 fully admitted for permanent residence to the
22 United States, or any other individual subject
23 to the jurisdiction of the United States; or

24 (B) an entity organized under the laws of
25 the United States or of any jurisdiction within

1 the United States, including a foreign branch of
2 such entity.

3 **SEC. 12 ___ 3. RESPONSIBILITY AND TRANSPARENCY IN THE**
4 **MINING SECTOR.**

5 (a) LIST OF PARTICIPATING ENTITIES.—

6 (1) IN GENERAL.—Not later than 120 days
7 after the date of the enactment of this Act, and not
8 less than annually thereafter until the date described
9 in subsection (e), the Secretary of State shall submit
10 to the appropriate congressional committees a list of
11 the entities described in each of subparagraphs (A)
12 and (B) of paragraph (2) that—

13 (A) participate in Burma's mining sector;

14 (B) meet the criterion described in sub-
15 section (b)(1); and

16 (C) meet or have made significant progress
17 towards meeting the criteria in subsections
18 (b)(2) through (b)(5).

19 (2) ENTITIES DESCRIBED.—The entities de-
20 scribed in this paragraph are the following:

21 (A) Entities that produce or process pre-
22 cious and semiprecious gemstones.

23 (B) Entities that sell or export precious
24 and semiprecious gemstones from Burma or ar-
25 ticles of jewelry containing such gemstones.

1 (b) CRITERIA DESCRIBED.—The criteria described in
2 this subsection are the following with respect to an entity:

3 (1) The entity publicly discloses beneficial own-
4 ership, as such term is defined for purposes of the
5 Myanmar Extractive Industry Transparency Initia-
6 tive (Myanmar EITI), and the entity is not owned
7 or controlled, either directly or indirectly, by the
8 Burmese military or security forces, any current or
9 former senior Burmese military officer, or any per-
10 son sanctioned by the United States pursuant to any
11 relevant sanctions authority.

12 (2) The entity publicly discloses any politically
13 exposed persons, as defined by the Myanmar EITI,
14 who are beneficial owners, as defined under the
15 Myanmar EITI.

16 (3) The entity publicly discloses valid authoriza-
17 tion, license, or permit to produce, process, sell, or
18 export minerals or gemstones, as applicable.

19 (4) The entity publicly discloses payments to
20 the Government of Burma, including tax and non-
21 tax, license, or royalty payments, and other pay-
22 ments or contract terms as may be required under
23 Myanmar Extractive Industry Transparency Initia-
24 tive standards.

1 (5) The entity undertakes robust due diligence,
2 in line with the OECD Due Diligence Guidance for
3 Responsible Supply Chains of Minerals from Con-
4 flict-Affected and High-Risk Areas, including public
5 reporting.

6 (c) PUBLICATION OF LIST.—The Secretary of State
7 shall publish the list under subsection (a) and shall peri-
8 odically update such list as appropriate.

9 (d) GUIDANCE.—The Secretary of State shall issue
10 guidance to relevant companies regarding supply-chain
11 due diligence best practices applicable to importation of
12 gemstones or minerals that may be of Burmese origin or
13 articles of jewelry containing such gemstones to mitigate
14 the potential risks associated with the importation of such
15 items.

16 (e) TERMINATION.—The requirement under sub-
17 section (a) shall terminate on the date on which the Presi-
18 dent certifies to the appropriate congressional committees
19 that the Government of Burma has taken substantial
20 measures to reform the mining sector in Burma, including
21 the following:

22 (1) Requiring the mandatory disclosure of pay-
23 ments, permit and license allocations, project reve-
24 nues, relevant contract terms, and beneficial owner-
25 ship, including identifying any politically exposed

1 persons who are beneficial owners, consistent with
2 the approach agreed under the Myanmar EITI and
3 with due regard for civil society participation.

4 (2) Separating the commercial, regulatory, and
5 revenue collection responsibilities within the
6 Myanmar Gems Enterprise and other key state-
7 owned enterprises to remove existing conflicts of in-
8 terest.

9 (3) Monitoring and undertaking enforcement
10 actions, as warranted, to ensure that entities fully
11 adhere to environmental and social impact assess-
12 ment and management standards in accordance with
13 international responsible mining practices, the coun-
14 try's environmental conservation law and other ap-
15 plicable laws and regulations, and that they uphold
16 occupational health and safety standards and codes
17 of conduct that are aligned with the core labor
18 standards of the International Labour Organisation
19 and domestic law.

20 (4) Actively seeking a comprehensive peace
21 agreement that addresses the transparent and fair
22 distribution of benefits from natural resources, in-
23 cluding local benefit-sharing, taking into consider-
24 ation proposals on fiscal federalism for new govern-
25 ance arrangements in resource-rich regions.

1 (5) Implementing on a timely basis policy re-
2 forms aligned with the recommendations of the
3 multi-stakeholder Jade and Gemstone Support Com-
4 mittee and reporting regularly on such reforms.

5 (6) Reforming the process for valuation of
6 gemstones at the mine-site, including developing an
7 independent valuation system to prevent undervalu-
8 ation and tax evasion.

9 (7) Requiring companies bidding for jade and
10 ruby permits to be independently audited upon the
11 request of Myanmar Gems Enterprise or the Min-
12 ister of Natural Resources and Environmental Con-
13 servation, and making the results of all such audits
14 public.

15 (8) Establishing a credible and transparent per-
16 mitting process that closely scrutinizes applicants,
17 including based on past performance, and prevents
18 unscrupulous entities from gaining authorized access
19 to concessions or the right to trade in minerals or
20 gemstones.

21 (9) Establishing effective oversight of state-
22 owned enterprises operating in such sector, including
23 through parliamentary oversight or requirements for
24 independent financial auditing.

1 **SEC. 12** 4. DETERMINATION AND REPORT ON ACCOUNT-
2 **ABILITY FOR ETHNIC CLEANSING, CRIMES**
3 **AGAINST HUMANITY, AND GENOCIDE IN**
4 **BURMA.**

5 (a) IN GENERAL.—Not later than 180 days after the
6 date of the enactment of this Act, the Secretary of State
7 shall submit to the appropriate congressional committees
8 a report that—

9 (1) describes—

10 (A) allegations of ethnic cleansing, crimes
11 against humanity, and genocide in Burma; and

12 (B) potential transitional justice mecha-
13 nisms in Burma; and

14 (2) includes a determination whether the events
15 that took place in the state of Rakhine in Burma,
16 starting on August 25, 2017, constitute ethnic
17 cleansing, crimes against humanity, or genocide.

18 (b) ELEMENTS.—The report required under sub-
19 section (a) shall include—

20 (1) a description of—

21 (A) incidents that may constitute ethnic
22 cleansing, crimes against humanity, or genocide
23 committed by the Burmese military against the
24 Rohingya minority and the identities of any
25 other actors involved in such incidents;

1 (B) the role of the civilian government in
2 the commission of such incidents;

3 (C) incidents that may constitute ethnic
4 cleansing, crimes against humanity, or genocide
5 committed by violent extremist groups or anti-
6 government forces;

7 (D) incidents that may violate the principle
8 of medical neutrality and, to the extent possible,
9 the identities of any individuals who engaged in
10 or organized such incidents; and

11 (E) to the extent possible, a description of
12 the conventional and unconventional weapons
13 used for such crimes and the sources of such
14 weapons;

15 (2) a description and assessment by the Depart-
16 ment of State, the United States Agency for Inter-
17 national Development, the Department of Justice,
18 and other appropriate Federal departments and
19 agencies of programs that the United States has al-
20 ready undertaken or is planning to undertake to en-
21 sure accountability for ethnic cleansing, crimes
22 against humanity, and genocide perpetrated against
23 the Rohingya by the military and security forces of
24 Burma, the state government of Rakhine, Buddhist

1 militias, and all other armed groups fighting in
2 Rakhine, including programs to—

3 (A) train civilian investigators within and
4 outside of Burma and Bangladesh on how to
5 document, investigate, develop findings of, and
6 identify and locate alleged perpetrators of eth-
7 nic cleansing, crimes against humanity, or
8 genocide in Burma;

9 (B) promote and prepare for a transitional
10 justice process or processes for the perpetrators
11 of ethnic cleansing, crimes against humanity,
12 and genocide occurring in the State of Rakhine
13 in 2017; and

14 (C) document, collect, preserve, and pro-
15 tect evidence of ethnic cleansing, crimes against
16 humanity, and genocide in Burma, including by
17 providing support for Burmese, Bangladeshi,
18 foreign, and international nongovernmental or-
19 ganizations, the United Nations Human Rights
20 Council's investigative team, and other entities
21 engaged in such investigative activities; and

22 (3) a detailed study of the feasibility and desir-
23 ability of potential transitional justice mechanisms
24 for Burma, including a hybrid tribunal, to address
25 ethnic cleansing, crimes against humanity, and geno-

1 cide perpetrated in Burma, including recommenda-
2 tions on which transitional justice mechanisms the
3 United States should support, why such mechanisms
4 should be supported, and what type of support
5 should be offered.

6 (c) PROTECTION OF WITNESSES AND EVIDENCE.—
7 The Secretary of State shall take due care to ensure that
8 the identification of witnesses and physical evidence are
9 not publicly disclosed in a manner that might place such
10 persons at risk of harm or encourage the destruction of
11 evidence by the Government of Burma.

12 (d) AUTHORIZATION TO PROVIDE TECHNICAL AS-
13 SISTANCE.—

14 (1) IN GENERAL.—The Secretary of State is
15 authorized to provide assistance to support appro-
16 priate entities that are undertaking the efforts de-
17 scribed in paragraph (2) with respect to ethnic
18 cleansing, crimes against humanity, and genocide
19 perpetrated by the military and security forces of
20 Burma, the state government of Rakhine, Buddhist
21 militias, and all other armed groups fighting in
22 Rakhine State.

23 (2) EFFORTS AGAINST HUMAN RIGHTS
24 ABUSES.—The efforts described in this paragraph
25 are the following:

1 (A) Identifying suspected perpetrators of
2 ethnic cleansing, crimes against humanity, and
3 genocide.

4 (B) Collecting, documenting, and pro-
5 tecting evidence of such crimes and preserve the
6 chain of custody for such evidence.

7 (C) Conducting criminal investigations.

8 (D) Supporting investigations conducted
9 by other countries, as appropriate.

10 (3) **ADDITIONAL SUPPORT.**—The Secretary of
11 State, taking into account any relevant findings in
12 the report required by subsection (a), is authorized
13 to support the creation and operation of transitional
14 justice mechanisms, including a potential hybrid tri-
15 bunal, to prosecute individuals suspected of commit-
16 ting ethnic cleansing, crimes against humanity, or
17 genocide in Burma.

18 **SEC. 12__5. APPROPRIATE CONGRESSIONAL COMMIT-**
19 **TEES.**

20 In this subtitle, the term “appropriate congressional
21 committees” means—

22 (1) the Committee on Armed Services and the
23 Committee on Foreign Relations of the Senate; and

1 (2) the Committee on Armed Services and the
2 Committee on Foreign Affairs of the House of Rep-
3 resentatives.

