

US FOREIGN POLICY AND MYANMAR: A (MIS)TARGETED SANCTIONS APPROACH TOWARDS IMPROVING HUMAN RIGHTS AND DEMOCRACY

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Introduction

The so-called 8888 mass uprising in 1988 and the general election in 1990 were two political events that marked the beginning of a major shift in US foreign policy towards the Republic of the Union of Myanmar (also known, and hereinafter referred to, as Burma). What began as a series of political protests calling for a multi-party democracy erupted into a full-fledged mass uprising led by students, monks and political activists. It was quickly and violently suppressed by the then-existent State Law and Order Restoration Council (SLORC), resulting in the deaths of hundreds, if not thousands, of civilians. The results of the 1990 general election, in which the main opposition party, the National League for Democracy (NLD), won a significant majority of the contested parliamentary seats, were also declared void, and SLORC swiftly moved to imprison or exile leaders of the NLD, most notably Daw Aung San Suu Kyi (hereinafter referred to as Suu Kyi), thus finalizing the country's transition into a military dictatorship.

The brutal violence and naked aggression of the military junta reported by the media shocked the international community. The US, in response to the gross violation of human rights stemming from the two events, cut off diplomatic ties and placed several sanctions on the regime over the past two decades, many of which are still in place. However, the effectiveness of these sanctions as a foreign policy instrument has become an issue of debate; the military junta is still very much in control of the country; incidents of large-scale human rights abuses, trafficking and evidence of nuclear weapons program have been reported by the media. The Special Rapporteur for Burma had also called for

a Commission of Inquiry to investigate allegations of war crimes and crimes against humanity at the UN General Assembly and the Human Rights Council (HRC), which has yet to come into fruition.¹ This article seeks to analyze the effectiveness of sanctions on Burma employed by the US as a foreign policy tool to achieve its political objectives.

This article is comprised of three parts. The first section will provide a brief synopsis of the legislative and executive enactments and define the policy objectives of US bilateral sanctions imposed on Burma from 1990 - 2010. It will also cover the scope and targets of the sanctions, which will be organized into the following categories: targeted visa bans, freezing assets of specific individuals, banning new investment and financial services by US entities with legal entities in Burma affiliated with the junta, restricting US economic assistance and restricting Burmese imports to the US. The second section will analyze the effectiveness and impact of the sanctions and identify factors that limited its ability to achieve their objectives. The final section will conclude with a number of policy options that the US could pursue to achieve gains, however modest, in achieving their objectives. This paper will argue that while the US-adopted sanctions policy is comprehensive in scope, it lacks coordination and is imprecise; such ambiguity can provide legal loopholes which may limit the effects of the sanctions. This paper will also argue that the enacted sanctions have largely ignored the underlying structure of the Burmese economy and both domestic and regional geopolitical configurations. Sanctions have either achieved modest results or have been counterproductive by reducing US influence over the Burmese government or by increasing the political influences of other geopolitical actors at the expense of its own. The final section will argue that current US policy towards Burma needs to adopt the more effective elements of the constructive engagement approach favored by other regional actors, as well as adjust its current sanctions policy to increase its effectiveness in pressuring the junta. The US government also needs to take a more inclusive approach and coordinate its efforts with both domestic and regional actors in multilateral settings to address both human rights violations and other cross-cutting issues.

1 Progress Report of the Special Rapporteur on the situation of human rights in Myanmar, United Nations General Assembly, 13th Session of the Human Rights Council A/HRC/13/48, March 10, 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/119/15/PDF/G1011915.pdf?OpenElement> (accessed April 25, 2011); Thomas Avery, "Accountability in Burma: Movement towards a UN Commission of Inquiry," *The Human Rights Brief: Center for Human Rights and Humanitarian Law*, February 12, 2011, <http://hrbrief.org/2011/02/accountability-in-burma-movement-towards-a-un-commission-of-inquiry/> (accessed February 23, 2011).

Political Objectives of US Bilateral Sanctions 1990 - 2010

In his article, Donald M. Seekins observed that US bilateral sanctions have been enacted over the past 20 years with the purpose of achieving two political objectives: “to express disapproval of the regime’s objectionable behavior, giving moral support to the democratic opposition [...] and to force the regime, through negative reinforcements, to change that behavior”² Summarizing the proponents’ rationale for enacting sanctions against Burma, Seekins notes that some hard-line advocates believe that the impact of sanctions could potentially cause the regime to collapse and instigate a popular uprising against the military regime. While such a scenario should not be discounted, it is highly unlikely, given the tremendous military advantage the regime has over potential challengers. The legislation and executive orders enacted by the US discussed below also make no reference towards encouraging the destabilization of the regime; rather, the sanctions focus on pressuring the junta to make substantial and measureable progress in the areas of human rights and democratic governance, as well as “punishing” the regime for its numerous human rights abuses, particularly specific events such as the violent crackdown on protests in 1988 and 2007 and the arrest and imprisonment of Suu Kyi. The range of sanctions implemented to achieve these two objectives will be addressed below.

Scope of US Bilateral Sanctions

The comprehensive set of sanctions the US has employed over the past two decades consist of federal laws enacted by Congress or legislative acts containing provisions that specifically target Burma, and a series of Presidential Executive Orders (EOs) that cover a broad range of activities. These activities can be roughly categorized into the following elements: visa bans on specific individuals tied with the military junta, restrictions on financial services between US entities and entities operating in Burma, the freezing of assets belonging to specific individuals deemed to be government officials or persons/entities operating on behalf of the junta, restrictions on Burmese imports, bans on new investments in entities operating in Burma by US persons or entities, and restrictions and suspensions of bilateral and multilateral assistance to the Government.

While differing in terms of their nature and scope, Section 570 of the 1997 Foreign Operations, Export Financing, and Related Programs Appropria-

² Donald M. Seekins, “Burma and U.S. Sanctions: Punishing an Authoritarian Regime,” *Asian Survey* 45, no. 3 (May - June 2005): 440.

tions Act, the 2003 Burmese Freedom and Democracy Act (BFDA), and the 2008 Tom Lantos Block Burmese Junta's Anti-Democracy Efforts (JADE) Act (H.R. 3890) have enacted visa bans against senior officials of the State Development and Peace Council (SDPC) and the Union Solidarity and Development Association (USDA), individuals having ties to, or acting on behalf of, the aforementioned organizations.³ These sanctions prevent the above mentioned individuals from entering the US and can be renewed indefinitely until the President, upon determining that progress has been made in improving human rights and democratic governance, requests the appropriate congressional committee to lift the sanctions. The 2008 JADE Act also stipulates that the military junta must allow humanitarian access to people residing in conflict-affected areas in order for sanctions to be lifted.⁴ As stipulated in Sec. 5(2) of the 2008 JADE Act, the President may also, at his discretion, issue a temporary or permanent waiver if he determines that the waiver is "... in the national interests of the United States." In this sense, the waiver allows the President to exercise a certain degree of flexibility and responsiveness in applying sanctions and to act more pragmatically when it is in the President's interest to do so. It also provides an incentive for the junta to comply with the sanctions by creating an open channel for future negotiation with the US government.

EO 13047, issued under Sec. 570 of the 1997 Foreign Operations Act, EO 13310 issued in 2003, and the 2008 JADE Act also have provisions that restrict US entities or persons from providing certain types of financial services. Provisions in sections 1 - 3 in EO 13047 stipulated that U.S. persons were prohibited from engaging in transactions with foreign individuals that would constitute as new investment in Burma, with the exception of those companies who had already had prior agreements before 21 May 1997, when the order was officially signed.⁵ These particular sanctions were aimed at preventing US entities from assisting the military junta in transferring assets that may have been gained from illicit activities and blocking remittances from US entities that may directly or indirectly support the regime. By exempting US entities operating in Burma before the above said date, the US was able to place sanctions on the regime without endangering US business interests. This order was later amended by the Bush administration under E.O. 13310. Section 2 of the order also sought

3 Michael F. Martin, Congressional Research Service [CRS] Report for Congress, "U.S. Sanctions on Burma," Congressional Research Service, July 16, 2010: 6.

4 Martin, "U.S. Sanctions on Burma," 7.

5 Presidential Executive Order 13047, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1997_register&docid=fr22my97-169.pdf (accessed April 25, 2011).

to block “the exportation or re-exportation, directly or indirectly, to Burma of any financial services” by US entities or coming from the US. Exemptions from EO 13047 still apply, and personal transfers of less than 300 dollars to and from Burma between “ordinary” citizens were allowed, “provided that the funds are not being sent by, to or on behalf of a blocked party.”⁶ Exemptions from EO 13047 fine-tuned previous sanctions in order to more accurately target those associated with the junta, while sparing Burmese citizens from the impact of the sanctions. The 2008 JADE Act further strengthened the previous sanctions by prohibiting any financial transactions with specific individuals tied to, or acting on behalf of, the SPDC, USDA or the Burmese military.

Provisions within EO 13310, EO 13448, and EO 13464 also called for the freezing of assets of specific individuals with ties to the military junta or its proxy organizations such as the SPDC and the USDA. Provisions within EO 13464, which is seen as an amended and updated version of the two previous above mentioned orders, stipulated that it would block the “transfer, payment, export, or withdrawal of all property and interests in property of sanctioned persons, if said property is in or comes into the United States, or said property or interests in property are or come within possession or control of U.S. persons” EO 13464 also provided a list of individuals targeted by the sanctions and granted the Secretary of Treasury the authority to amend the list upon his/her discretion and in consultation with the Secretary of State.⁷ Notably, under Section 4 of EO 13464, the President authorized the prohibition of any form of donations to entities specified on the sanctions list, up to and including humanitarian assistance.⁸ The 2008 JADE Act also includes provisions on freezing assets that are identical to those stipulated in EO 13464, but with the added effect of tying sanctioned individuals to the visa ban list. The 2008 JADE Act, however, does not apply restrictions to contracts or financial transactions for humanitarian NGOs in Burma and allows the Secretary of Treasury to authorize exceptions for tourism, official diplomatic business and compliance with international agreements. This is most likely due to the fact that the tourism industry probably has a stronger record of directly benefiting ordinary Burmese citizens who have small-scale operations. The 2008 JADE Act also allows the President to exercise the right to waiver, and after determining and certifying with the appropriate congressional committee, that the waiver would serve national in-

6 Larry A. Niksch and Martin A. Weiss, CRS Report for Congress. “Burma: Economic Sanctions,” Congressional Research Service, August 3, 2009: 5.

7 Martin, “U.S. Sanctions on Burma,” 11.

8 Presidential Executive Order 13464.

terests.⁹

Sanctions restricting Burmese products imported into the US are mainly covered by the 2003 BFDA and the 2008 JADE Act. These sanctions were introduced to prevent the military junta from benefiting from direct access to US markets; Burmese exports from the garment industry, as explained later, were believed to be reliant on US markets and by cutting off access, the US hoped to exploit the fact to pressure the junta to comply. Sec. 3(a)(1) stipulates that the President “shall ban the importation of any article that is a product of Burma,” as well as any imported goods from specific companies or organizations such as the USDA, SPDC, the Union of Myanmar Economic Holdings Incorporated (UMEHI), the Myanmar Economic Corporation (MEC), and any of their successor entities.¹⁰ The 2008 JADE Act amended the 2003 BFDA by banning the importation of jadeite, rubies or any articles of jewelry containing jadeite or rubies mined or extracted from Burma.¹¹ As specified in Sec. 3(a)(3) of the 2003 BFDA, the ban on Burmese imports would only be lifted if the SPDC makes “substantial and measureable progress to end violations of international recognized human rights [...] and the Secretary of State, after consultation with the ILO Secretary-General and relevant nongovernmental organizations, reports to the appropriate congressional committees that the SPDC no longer systematically violates workers’ rights”¹² the 2003 BFDA also set preconditions for lifting sanctions based on benchmarks showing progress towards democratic governance, such as the release of all political prisoners, expansion of freedom of speech, press, association, and peaceful exercise of religion and the transfer of power to a civilian government. The President retains the right to issue a waiver on the import ban if he determines and notifies the appropriate committees within the Senate and the House of Representatives, as specified in Sec. 3(a)(4), that it is in the national interest. Sec. 8 of EO 13310 also allows the President to waive the import ban if the prohibition conflicts with international obligations of the US.

Provisions in Sec. 570 of the Foreign Operations, Export Financing, and Related Programs Appropriation Act of 1997 also place restrictions on bilateral assistance to Burma. Sec. 570 bans all bilateral assistance to Burma

9 Martin, “U.S. Sanctions on Burma,” 12.

10 HR 2330: Burmese Freedom and Democracy Act of 2003 [2003 BFDA], Sec. 3(a), 109th Congress of the United States of America, 1st session, U.S. Congress, January 7, 2003.

11 HR 3890: Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008 [2008 JADE Act], Sec. 6, 110th Congress of the United States of America, 2nd session, U.S. Congress, January 3, 2008.

12 2003 BFDA, Sec. 3(a)(3).

except for humanitarian assistance, counter-narcotics or crop substitution assistance, or assistance promoting human rights or democratic values. Exceptions to the provision are if such assistance conflicts with US treaty obligations, or if the President chooses to issue a temporary or permanent waiver on the basis of serving national interests. Also of note, but not within the scope of this paper, is that Sec. 307 of the Foreign Assistance Act of 1961 withholds US funding for international organizations with programs operating in Burma, with the exception of the International Atomic Energy Agency (IAEA) and the United Nations Children's Fund (UNICEF).¹³

As seen above, the bilateral sanctions that the US has enacted over the last two decades are quite comprehensive, covering a wide range of activities that have politically isolated the regime, at least from the US. What is more significant, however, is that the range of sanctions employed have a number of loopholes which, in one sense, permit a certain degree of flexibility and provide certain actors with opportunities to circumvent the enacted sanctions. It should be noted that these loopholes can be a double-edged sword. It can be beneficial in the sense that it allows the President, through his use of waivers, to respond to the military junta in a more pragmatic fashion. However, other loopholes, particularly the provisions protecting US business interests in EO 13047, may potentially be counterproductive, limiting the impact and effectiveness of the enacted ban. The sanctions enacted by both the legislative and executive branches are also at times contradictory or imprecise, particularly provisions related to humanitarian assistance and restrictions on assistance to entities or industries tied to the junta. This signifies that there is a lack of a coordination of US policy towards Burma, which, in turn, affects the government's ability to implement an effective sanctions approach as well as respond to any policy shifts made by the junta. How this and other factors influencing the effectiveness and impact of US bilateral sanctions will be analyzed below.

Effectiveness of US Bilateral Sanctions

Meghan O'Sullivan defines impact as "the sheer economic or political damage that sanctions inflict on a target country" and effectiveness as a sanction's "... ability to achieve the goals established for them."¹⁴ While these two terms are often interrelated, this paper will separate them, first analyzing the outcome of

13 Martin, "U.S. Sanctions on Burma," 19.

14 Meghan L. O'Sullivan, *Shrewd Sanctions: Statecraft and State Sponsors of Terrorism* (Washington D.C.: Brookings Institution Press, 2003), 27.

the sanctions, and then later focusing on the impact in order to evaluate their effectiveness in achieving US foreign policy objectives with regards to Burma.

How effective or successful have US bilateral sanctions been in persuading the junta to improve its human rights record and implement more democratic elements into its political system? Burma has acceded or ratified international human rights treaties such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention against Transnational Organized Crime (UNTOC) and has, at times, extended invitations to UN special envoys or human rights Special Rapporteurs.¹⁵ However, the total number of ratified or acceded treaties remains relatively small, and the extent to which the Burmese Government has complied with the obligations is unclear. The junta has also allowed international agencies such as the International Labor Organization (ILO) and the United Nations Development Programme (UNDP) access to provide assistance in development projects and programs. Whether this is a direct result of US sanctions or due to humanitarian crises such as Cyclone Nargis or the HIV/AIDS epidemic is also unclear.

International Crisis Group (ICG) assessed the effectiveness of the sanctions in a 2004 report and noted that the sanctions may have possibly helped protect opposition leaders and provided some leverage for the West regarding future negotiations with the military junta. The report also stated that sanctions may have placed budget constraints on the military and that there were “ signs of the inability [...] to provide adequate salaries and living conditions are hurting morale among junior officers”¹⁶ These constraints, however, may have had little effect on the regime’s ability to put down dissent and may have pushed the rank-and-file to invest in drug trafficking or other illicit activities to supplement their reduced income.¹⁷ Taking data from the UN Office on Drugs and Crime (UNODC) *World Drug Report 2009*, Liana Sun Wyler observed that opium production in the region had significantly declined over the past 10 years, from 155,150 hectares in 1997 to 31,700 hectares in 2009.¹⁸ This decline in opium production, however, has come at the expense of a massive increase in methamphetamine production, with recent seizures nearly tripling in the span of a

15 International Crisis Group, “Myanmar: Sanctions, Engagement or Another Way Forward?” International Crisis Group Asia Report No. 78, April 26, 2004, 16.

16 ICG Asia Report No. 78, 16.

17 Salat Pi Pi and Myint Maung, “Opium Cultivation in Burma Surges,” *Mizzima News*, January 26, 2010, <http://mizzima.com/news/inside-burma/3439-opium-cultivation-in-burma-surges.html> (accessed April 25, 2011).

18 Liana Sun Wyler, CRS Report for Congress, “Burma and Transnational Crime,” Congressional Research Service, January 21, 2010: 6.

year.¹⁹ A UNODC official also recently observed that after the period of decline, opium production had begun to increase and now accounted for 95 percent of the opium produced in Southeast Asia.²⁰

More importantly, however, the military junta has maintained its dominance in politics and is virtually unassailable, in spite of the concessions made such as the recently held parliamentary elections and the release of high-profile political prisoners, most recently Suu Kyi in November 2010. The 2010 elections, regarded as a sham by nearly all international observers, served to reinforce the junta's dominance in the domestic political arena.²¹ These indicators suggest that US bilateral sanctions have largely failed to make any considerable impact on the military junta's economic activities or domestic policies, and an assessment of the factors that limited their impact needs to be addressed to gain a better understanding.

Impact of Sanctions

From a bilateral standpoint, the visa ban on specific individuals tied to the military junta and its proxy organizations has failed to make a significant impact on the junta, other than providing the US the opportunity to make a symbolic show of disapproval. As the ICG report states, the political and military elite in Burma live relatively frugal lifestyles as compared to other authoritarian leaders and rarely travel outside the region, attributing this behavior to their eccentricities and to the fact that they "have access to everything they need, including tertiary education."²² US sanctions also allow exceptions for those traveling to the US on diplomatic business. It should be noted that incidents have occurred where relatives of the junta have run into visa complications.²³ These incidents, however, only seem to pose a minor inconvenience, as the son of Tay Za, one

19 Joseph Allchin, "Meth Soaring as UN Expert Urges Regulation," *Democratic Voice of Burma*, November 26, 2010. <http://www.dvb.no/news/meth-soaring-as-un-urges-regulation/13100> (accessed April 25, 2011).

20 Dan Withers, "Opium Production Soaring, Warns UN Drugs Tzar," *Democratic Voice of Burma*, October 19, 2010, <http://www.dvb.no/news/opium-production-soaring-warns-un-drugs-tzar/12294> (accessed April 25, 2011).

21 Yan Paing and IPS writer, "Few Surprises in First Poll in 20 Years," *The Irrawaddy*, November 10, 2010, http://www.irrawaddy.org/article.php?art_id=20022 (accessed April 25, 2011).

22 ICG Asia Report, No. 78, 16. According to Larry A. Nicksch's report, Singapore is a popular traveling destination for the Burmese elite with regards to acquiring tertiary education and access to modern medical facilities. See Larry Nicksch, CRS Report for Congress. "Burma - U.S. Relations," Congressional Research Service, June 2, 2008: 8.

23 "Burmese General's Daughter Forced to Leave Australia," *The Irrawaddy*, June 30, 2010. http://www.irrawaddy.org/article.php?art_id=18840 (accessed April 25, 2011).

of the most prominent businessmen linked to the junta, was quoted in a 2007 email, stating that “the US bans us, [but] we’re still [expletive deleted] cool in Singapore.”²⁴

It is difficult to assess how effective US sanctions have been with regards to the freezing of individuals’ assets on the Secretary of Treasury’s list. While individuals tied to the junta and its affiliated public and private sector organizations have had their property and assets frozen in the US, the exact amount, and the proportion to their total profit, is unknown.²⁵ Sources also report that the above individuals have been able to circumvent the sanctions by conducting money laundering schemes; profits gained through joint ventures and illicit activities are laundered through offshore financial centers in countries such as Singapore, or directly through cross-border drug trafficking.²⁶

The CRS report on Burma and transnational crime identifies two factors, Burma’s large informal economy and informal money transfer networks (called *hundi* or *hawala*), that contribute to the difficulties in monitoring the junta’s financial activities. A study on Burma’s foreign trade cited previous research as estimating the size of trade through the informal sector to be 50 percent - 85 percent of official trade in the 1980s and believed that that proportion could be assumed to reflect current levels of trade, as the structure of the country’s external economy has, by and large, remained unchanged.²⁷ The lack of transparency and regulation of the *hawala* networks also pose a challenge for financial regulatory bodies such as the Financial Action Task Force on Money Laundering (FATF) to effectively distinguish between money transfers that the junta can use for their criminal activities, and legitimate overseas remittances sent to families who rely on those finances to meet their basic needs for survival.²⁸

The impact of US sanctions banning new investment and restricting bilateral assistance has been blunted by other regional players seeking to ben-

24 Simon Roughneen, “EU Sanctions on Tay Za’s Son Upheld,” *The Irrawaddy*, July 8, 2010. http://www.irrawaddy.org/article.php?art_id=18909 (accessed April 25, 2011).

25 Daya Gamage, “US Treasury Freezes Assets of Burmese Business Enterprises,” *The Asian Tribune*, January 19, 2009. <http://www.asiantribune.com/node/15217> (accessed April 25, 2011).

26 Earth Rights International, “Total Impact: The Human Rights, Environmental, and Financial Impacts of Total and Chevron’s Yadana Gas Project in Military-ruled Burma (Myanmar),” *Earth Rights International*, 2009: 44, <http://www.earthrights.org/sites/default/files/publications/total-impact.pdf> (accessed April 25, 2011); and Joshua Kurlantzick, “Can Burma Reform?” *Foreign Affairs* 81, no. 6, (November/December 2002): 140.

27 Jalal, Alamgir, “Myanmar’s Foreign Trade and its Political Consequences,” *Asian Survey* 48, no. 6, (November/December 2008): 982.

28 Wyler, “Burma and Transnational Crime,” 12.

efit from Burma's natural resources and gain a strategic foothold in the geopolitical configuration in Southeast Asia. This approach adopted by these players is one of "constructive engagement," which attempts to accomplish its objectives through the increase of the volume and liberalization of Burmese trade. Alamgir's study on Burma's foreign trade highlights how US sanctions have patterned Burma's foreign trade. In examining Burma's top ten trading partners and their Freedom House political classification index, he noted that during the mid-1990s, when sanctions with heavily imposed by the US and other Western countries, the regime had shifted its foreign trade to partly-free and non-democratic countries, accounting for up to 80 percent of its official trade, until they were relatively eased in the mid-2000s.²⁹ He also observed that, on average from 1990 - 2005, "Democracies supplied 22 percent of Myanmar's imports and non-democracies and semi-democracies provided 63 percent," and that, "Since 2001, China has become the country's single largest supplier and by 2004, account[ed] for almost one-third of Myanmar's official imports."³⁰

A CRS report on Burma – US relations prepared by Larry A. Nicksch also stated that China's economic aid to Burma was estimated to be 200 million dollars annually, mostly distributed to improving and developing infrastructure, and military aid at 2 – 3 billion dollars since the early 1990s. Chinese companies were reported to have invested in more than 800 projects, with direct investment estimated at approximately US\$3 billion. The report also stated that while informal cross-border trade between China and Burma is unrecorded, it is substantial, with Burmese and Chinese Governments' project of 2007 trade levels at nearly 2 billion dollars.³¹ Another CRS report focusing solely on China's economic assistance to Southeast Asia concur with the findings in Nicksch's report and also noted that Burma's main exports to China were timber and ore.³² China's role in Burma had rapidly increased after finding itself similarly isolated politically after the Tiananmen Square Massacre, and sought to fill the vacuum by increasing both military and economic cooperation. In his article, Ian Holliday refers to this policy shift as a significant transition point in Southeast Asian relations with Burma, as it "forced the hand of many other regional actors."³³

29 Alamgir, "Myanmar Foreign Trade," 987.

30 Ibid., 988.

31 Nicksch, "Burma: Economic Sanctions," 10.

32 Thomas Lum, CRS Report for Congress, "China's Economic Assistance and Government-sponsored Investment Activities in Africa, Latin America, and Southeast Asia," Congressional Research Service, November 25, 2009: 16.

33 Ian Holliday, "Rethinking the United States's Myanmar Policy," *Asian Survey* 45, no. 4, (July -

India was one such player that began engaging Burma, in what it termed its “Look East” policy in 1991. Renaud Egreteau gives an insightful analysis into Indo-Burmese relations from 1998 - 2008 that illustrated how India’s new engagement policy put an increasing focus on border security issues and multi-lateral economic initiatives with Burma as the main geographical hub. In 1995 and 2003, India and Burma held joint counterinsurgency military operations called “Golden Bird” and “Operation All Clear” that aimed at pacifying the various ethnic militias responsible for political instability and drug trafficking in the local region operating on both sides of the border.³⁴ A number of major multilateral projects such as the Bangladesh-India-Myanmar-Sri Lanka-Thailand Economic Cooperation (BIMST-EC) in 1997 and the Mekong-Ganga Cooperation (MGC) in 2000 also sought to develop infrastructure in order to enhance trade and investment.³⁵ Multilateral cooperation on energy issues was also enhanced in 2002 when state-controlled Indian firms joined a consortium along with Korea Gas, Daewoo International, and state-owned Myanmar Oil and Gas Enterprise (MOGE), as well as a private Indian firm in a separate project, to exploit natural gas resources.³⁶ As Egreteau points out in his study, the Indian government perceived China’s increasing role in developing infrastructure in Burma as a threat to its maritime security, as these projects would provide China with access to Burmese ports and the Indian Ocean. Subsequently, India sought to counter Chinese influence by undertaking initiatives to “prevent Burma from becoming [...] a satellite against Indian interests.”³⁷

Other countries such as Thailand and Singapore have also invested significantly in Burma. Trade data from Nicksch’s report showed that in 2004, Thailand-based private firms invested roughly 1.29 billion dollars in 49 projects and has valued Burmese imports at 1.06 billion dollars for the fiscal 2003 - 2004.³⁸ A major infrastructure development project is also currently underway at the Burmese port city of Dawei, which is reportedly valued at 8.6 billion dollars and is largely financed by the Thai Government.³⁹ Singapore was also reported to have invested 1.4 billion dollars in 2004.⁴⁰ Japan, a long-time donor country with

August 2005): 614.

34 Renald Egreteau, “India’s Ambitions in Burma: More Frustration than Success?” *Asian Survey* 48, no. 6, (November/December 2008): 941.

35 *Ibid.*, 941.

36 *Ibid.*, 943.

37 *Ibid.*, 944.

38 Nicksch, “Burma Economic Sanctions,” 8.

39 Wai Moe, “Tycoon Zaw Zaw Reportedly Gets Dawei Port Contract,” *The Irrawaddy*, November 29, 2010. http://www.irrawaddy.org/article.php?art_id=20211 (accessed April 25, 2011).

40 Nicksch, “Burma Economic Sanctions,” 8.

respect to Burma, has also been reluctant to impose sanctions and withdraw economic aid; rather, it has focused on using economic aid as a leverage tool and takes a more centrist position in comparison to the hard-line approach held by the US, or the engagement approach held by other Southeast Asian nations.⁴¹

US bilateral sanctions banning investments and financial services with the Burmese Government also do not include a number of US business interests. Most notably, the US-based UNOCAL Corporation (now Chevron) has a 28 percent share of the consortium responsible for the development of the Yadana gas pipeline project, which extracts natural gas from offshore deposits and delivers the natural gas through a pipeline to Thailand. The Yadana joint venture, which includes firms from France, Thailand, and the MOGE, reportedly earned 2.16 billion dollars in 2006.⁴² The joint venture, with MOGE holding a fifteen percent share in profits, provides a substantial source of revenue for the military junta. This not only limits the impact of the enacted sanctions on the Burmese government's economic activities, but also puts into question the credibility of the US government's stance on "punishing" the regime for its human rights abuses.

Sanctions restricting the sale of Burmese good in US markets have been criticized as missing its target. Burma's export trade to the US was estimated to be worth 350 million dollars in 2002.⁴³ The ICG estimated in its report that the garment industry had accounted for roughly 85 percent of that trade volume, but also pointed out that the industry was "dominated by local, generally small, privately-owned companies (88 percent), which employ 72 percent of the workers and produce 62 percent of the export value"⁴⁴ This ran contrary to what US officials assumed, which was that "most major enterprise in Burma are connected in some way by the SPDC" and that the "'sanctions have a disproportionate impact on the military, not the people of Burma."⁴⁵ Reports by the media and scholarly research confirm that the opposite is true. In his article, Seekins quotes Burma specialist David I. Steinberg, who stated that the import ban shut down 64 textile factories and that "'Some 80,000 jobs have already been lost and this will be followed by another 100,000, mostly young women who provide supplementary income for impoverished families. One recent academic inquiry in central Burma indicated that some of those let off are finding their way into the

41 Wayne Bert. "Burma, China, and the U.S.A.," *Pacific Affairs* 77, no. 2 (Summer 2004): 272.

42 Niksch, "Burma Economic Sanctions," 6.

43 Ian Holliday, "Doing Business with Rights Violating Regimes: Corporate Social Responsibility and Myanmar's Military Junta," *Journal of Business Ethics* 61, no. 4 (November 2005): 334.

44 Niksch, "Burma Economic Sanctions," 19.

45 Seekins, "Burma and U.S. Sanctions," 440.

brothels.”⁴⁶

Toshihiro Kudo also conducted a study of the impact of the sanctions on the garment industry in Burma; his research found that the number of workers had decreased to about 120,000 - 130,000 by mid-2005, from a peak of 300,000.⁴⁷ Other findings from his research showed that firms and workers were affected by the sanctions in very different ways. Smaller garment firms felt the impact more acutely, and were forced to downsize or shut down altogether, while larger domestic firms with adequate capital, relatively more sophisticated business operations, or foreign-affiliated parent companies that provided market information and global sales networks were better able to weather the sanctions.⁴⁸ Using data taken from a sample survey of workers, he found that a majority of workers were young females, with over half from outside Yangon and whose income was the main source of revenue for their households. Those coming from rural areas were more negatively affected. Their families were either subsistence farmers, owning a small plot of land and entirely dependent on land fertility and the weather, or tenant farmers, who owned no land at all. The loss of those remittances earned by the garment workers undoubtedly contributed significantly to their economic impoverishment.⁴⁹ It may also be worth noting that the economic impact was further reduced by the economic aid provided by China; Holliday notes in his article that after the 2003 BFDA prevented exports from reaching the US, resulting in a loss of 350 million dollars in trade, “China gave Rangoon a \$200 million loan package, wrote off many of Burma’s debts [...] all of which soften[ed] the blow caused by U.S. sanctions.”⁵⁰

Such evidence points to the shortsightedness of the impact of sanctions banning Burmese imports from US markets and ignored the underlying economic structure of the Burmese economy. The Burmese garment industry was an industry with a relatively low barrier to entry and relied on low-skilled, intensive labor, which made it easy for small-sized domestic firms to set up shop and acquire workers. Such firms would ultimately serve to benefit the people by providing extra and relatively more lucrative job opportunities to earn some sorely needed cash. US sanctions had less of an impact on state-controlled industries, which constituted the much larger portion of the state economy and may have encouraged foreign investors to focus on state-controlled, capital-

46 Ibid., 442.

47 Toshihiro Kudo. “The Impact of U.S. Sanctions on the Myanmar Garment Industry,” *Asian Survey* 48, no. 6 (November/December 2008): 1006.

48 Kudo, “Myanmar Gourmet Industry.” 1010.

49 Ibid., 1015.

50 Holliday, “Rethinking the United States’s Myanmar Policy,” 616.

intensive industries such as mining or resource extraction, as they could more easily circumvent the sanctions through the methods stated above.

Policy Prescriptions

The information presented above highlights the challenges the US faces in influencing the military junta to adopted policies that are more conducive to democratic governance and international human rights standards. While the US-adopted coercive approach has had a relatively marginal impact, the constructive engagement approach favored by other regional actors also seems to have limited influence. The US government needs to take a more nuanced approach that incorporates the more effective elements from both approaches and eliminates factors that limit their impact. The sanctions approach adopted by the US also needs to more accurately identify and address the underlying root causes, both domestic and international, that allow the junta to preserve its political power base.

By justifying the use of sanctions on moral grounds, the US government has, in effect, adopted ideological constraints, in the sense that it reduces policymakers' ability to act pragmatically in responding to changes in the junta's behavior. Quoting David Steinberg, Bert aptly observed that "... the US should concentrate on encouraging the *process* of democratization instead of waiting for the *product* of a pluralistic political system to suddenly appear. [author's emphasis]"⁵¹ While some would argue that the military junta's "roadmap" towards democracy lacks substance and is cosmetic in appearance, similar can be said of the US bilateral sanctions placed on Burma.

It is important to recognize that improvements in democratic governance and human rights, albeit minor, do warrant some sort of acknowledgment. The US has been far too eager to condemn the regime and far too recalcitrant in lifting sanctions for what is perceived as a lack of visible progress. Such behavior only undermines the faith the military junta has in being rewarded for good behavior. Setting modest benchmarks as prerequisites for lifting sanctions would be a start. The further lifting of sanctions could be based on concrete and irreversible benchmarks such as the release of political prisoners, successful negotiations of cease-fire agreements with ethnic groups, or increased access for international development agencies.

Also, the 2008 JADE Act has designated a special sanctions policy co-

51 Bert, "Burma, China, and the U.S.A.," 280.

ordinator to act as an advisor. However, it is unclear how much influence the sanction policy coordinator has in determining future sanctions policies. A revision of the provisions stipulated in previous executive orders and legislation would be strongly recommended. The coordinator should also make regular exchanges with both domestic and transnational special interest groups, influential members of Congress, and relevant stakeholders with the administration, particularly the Secretary of Treasury, in order to ensure that coordinated efforts, or, in the very least, a coordinated stance on principles, towards achieving policy objectives can be made.

The lifting of the ban on economic assistance, particularly humanitarian assistance, should also be an immediate goal. Seekins observed in his paper that some activists "... oppose giving large-scale humanitarian aid because allegedly most of it will be diverted into regime coffers."⁵² While this may be true, he points out that it is still necessary, and that better monitoring is essential. Economic aid should also be focused on building state capacity in public social services and in central governance.

In his study of the Burmese administrative system, Englehart stated that, "Making and enacting policy requires resources, which must be extracted by the state apparatus in the form of taxes and fees," and that "... any government requires a civil service and military willing and able to enact policy on the ground."⁵³ Democratic governments also require a transparent, competent legal system and an effective police force to protect citizens and provide political space to hold those in power accountable. The central administrative system in Burma has been, by and large, neglected by the military junta, resulting in a system that is decentralized, where citizens must rely on local or regional leaders for protection.⁵⁴ The civil service is rife with corruption, relying on bribery and extortion to supplement their meager incomes, and their declining competence has been detrimental to their ability to carry out their basic functions such as tax collection and budget management. These reductions in state revenue, in turn, undermine public services, leading to the privatization of basic services such as health care and education, further widening the economic disparity between the haves and the have-nots.⁵⁵

It is essential that economic assistance, in the form of direct bilateral and multilateral aid and aid distributed through designated international agen-

52 Seekins, "Burma and U.S. Sanctions," 450.

53 Neil A. Englehart. "Is Regime Change Enough for Burma?: The Problem of State Capacity," *Asian Survey*, 45, no. 4 (July - August 2005): 628.

54 *Ibid.*, 638.

55 *Ibid.*, 637.

cies, focus on developing a stronger bureaucracy in Burma, one that can effectively establish a centralized tax system and allocate funding to develop adequate public services and infrastructure. An effective tax system can encourage the junta to redirect its efforts towards state capacity-building, rather than in private joint ventures that exploit natural resources for their own profit, as a functioning bureaucracy can produce a stable and reliable source of revenue that cannot be sanctioned by any government. A competent central administration, along with an effective and transparent police force and legal system, can also break the patron-clientelism that Seekins argues has decentralized domestic power bases in Burma;⁵⁶ patron-clientelism is arguably the only source of protection and local solidarity for Burmese citizens. While these networks may help fill the gaps left by the junta in meeting the average Burmese citizen's security needs in times of hardship, they also allow those in power to act arbitrarily and with impunity, placing groups that are already vulnerable at greater risk of human rights abuses. To implement capacity-building measures, the US, in cooperation with other regional states and relevant agencies, can provide technical expertise where access is available, and through educational exchanges by providing local civil servants opportunities to study at Western universities. Such opportunities could also have the indirect effect of exposing them to Western society, where they might possibly internalize some of the values espoused by the American political system. Thus, in order to be effectively implemented, steps need to be taken towards lifting or modifying the visa ban currently in place.

Moreover, the private sector can also play a significant role in promoting democracy and human rights. The sanctions and the constructive engagement approach have had a limited impact on Burmese domestic policies, but there are some opportunities for achieving some modest goals if both approaches are effectively coordinated and implemented with US policy. In his research, Holliday observed that the lack of political reform has continued to discourage multinational corporations (MNCs) from investing in the country.⁵⁷ While this may be true, encouraging MNCs to engage in economic activities while abiding by guidelines specified by international agencies such as the ILO could be beneficial for both Burma and the corporation. A "principled" approach adopted by the private sector with regards to economic activities in Burma can have the dual effect of both stimulating economic growth that could directly benefit those in need by creating jobs and providing technical training and provide

56 Seekins, "Burma and U.S. Sanctions," 445.

57 Holliday, "Doing Business with Rights Violating Regimes," 337.

opportunities for the MNC to promote a more socially responsible image. Furthermore, Holliday argues that just the mere presence of such expatriates and companies working and living in the country can help curtail the worst human rights abuses, as they, by virtue of their work, become passive observers or active participants, which may ultimately constrain the junta's behavior.⁵⁸

While many of the above suggestions could be categorized as "engagement" policies, diplomatic pressure can still be an effective tool in the US government's political arsenal. While coercive diplomatic strategies have had limited success, a multilateral negotiation setting with the US, Burma, and a trusted intermediary body may prove to be more successful. Strategic allies, such as India and Japan, both who have had long histories and substantial diplomatic relations with Burma, are crucial actors in any future negotiations in the areas of human rights and democratic governance.

Regional bodies such as ASEAN could also be persuaded to take a harder stance. Burma has been a member of ASEAN since 1997, and ASEAN, as a collective whole, is more sensitive to diplomatic pressure regarding thorny issues from other regional bodies, such as the EU and the US. While ASEAN collectively has opted against taking a sanctions approach on the basis of their principle of non-interference, individual member states have, at times, been critical of the junta. Katanyuu stated in his analysis of ASEAN member state relations with Burma that domestic political changes within member states, particularly countries like the Philippines, with its increasingly assertive stance in promoting human rights, and Indonesia, with its recent democratization after the fall of Suharto, have contributed to their changing attitudes towards Burma. The result has been a gradual increase in diplomatic pressure on Burma, especially after the re-arrest of Suu Kyi in 2003; Malaysian ex-prime minister Mahathir made unusually harsh remarks "to the effect that Myanmar might be expelled from ASEAN if no progress were made on Suu Kyi's release."⁵⁹ Diplomatic pressure, Katanyuu argues, eventually became a decisive factor, stating that while "ASEAN gave Myanmar an opportunity to make its own decision, it was the collective pressure that compelled Burmese officials to forgo the chairmanship [of ASEAN] in 2005."⁶⁰

Furthermore, the recent establishment of the ASEAN Intergovernmen-

58 Ibid., 336.

59 Ruukun Katanyuu. "Beyond Non-Interference in ASEAN: The Association's Role in Myanmar's National Reconciliation and Democratization," *Asian Survey*, 46, no. 6 (November - December 2006): 836; and Nicksch, "Burma Economic Sanctions," 8.

60 Katanyuu, "Beyond Non-Interference," 839.

tal Commission for Human Rights (AICHR) has been hailed as a significant step in the promotion of human rights within the region and while many argue that its mandate does not grant it any substantial power over member states, its mandate does require the regional body to address grievances filed by individuals within its jurisdiction and can act as a potential leverage point for both ASEAN or Western countries in negotiating with the junta.⁶¹ Encouraging or pressuring individual member states and ASEAN as a collective body to expand AICHR's mandate may also create opportunities for the improvement of human rights on the ground.

Most importantly, domestic political factors and a more accurate analysis of the impact of sanctions affecting those on the ground must be taken into account. Ethnic militias operating in the border areas have refused to submit to the military junta's authority and their negotiations with the junta have been held only intermittently, as cease-fire negotiations often give way to more skirmishes, especially when an impasse is reached. Conflicts arising from local flare-ups disrupt the social fabric and make any significant improvements to the livelihoods of local citizens impossible. Ethnic militias also remain in control of areas where drugs are produced and sent across borders, to which both the junta and the militias have been accused of promoting. Maintaining a consistent level of security along the borders should be a high priority if the US seeks to curb the flow of illegal cross-border trade of drugs, gems, and timber, which provide the junta (as well as militias) with opportunities to earn and launder illicit revenue, which may line the junta's personal coffers, or, also in the case of the militias, used to purchase more arms and essentially prolonging the conflict.

Suu Kyi has been and remains the greatest moral authority and public figure for the political opposition; she has also had extensive contacts and maintains good relations with many individuals in both the American and European Governments.⁶² She may possibly be the best person suited to play the honest broker and intermediary between the military junta, Western Governments, and domestic opposition leaders. However, it has been observed that in sharp contrast, "leaders of the ASEAN nations [have] had almost no contact with Aung San Suu Kyi."⁶³ Encouraging Suu Kyi to engage with all regional players in applying pressure on the junta and cooperating on mutual interests such as conflict mediation, cross-border trafficking, and developing state capacity should take

61 John Arendhorst. "The Dilemma of Non-Interference: Myanmar, Human Rights, and the ASEAN Charter," *Northwestern Journal of International Human Rights*, 8, no. 1 (Fall 2009): 114.

62 Bert, "Burma, China, and the U.S.A.," 277.

63 *Ibid.*, 277.

precedence. This can help influence perceptions of these issues as being domestic, or “Burmese,” problems, rather than what they truly are: human rights abuses and security issues that have significant consequences on both the regional and international level.

Conclusion

This paper has defined the policy objectives of US bilateral sanctions placed on Burma over the past two decades as one designed to induce behavioral change within the regime, to encourage the Burmese regime to comply with international human rights standards and to encourage a more democratic form of governance. This article has also covered the bilateral sanctions employed by the US since 1990, which have consisted of legislative and executive enactments and provisions within federal laws. In discussing the sanctions implemented, the paper also sought to analyze both the outcome and impact of the sanctions. It is in this author’s opinion that, based on the research above, the outcomes fall significantly short of achieving their goals due to the limited impact of the sanctions and, at times, inadvertently adverse effects on the wrong target groups. Thus, the US sanctions approach to Burma needs to be adjusted and employ a more balanced carrot-and-stick approach to dealing with the junta.

As highlighted above, the US should acknowledge some of the modest steps that the junta has taken in complying with international human rights standards and democratic governance, such as the release of key political prisoners and the recent elections. Slapping the junta with sanction after sanction can only reduce the effectiveness of additional sanctions placed on the junta and encourage the regime to continue with its belligerence. US sanctions policy towards Burma should also set concrete benchmarks for lifting sanctions such as ratifying, and complying with the obligations of, more international human rights treaties, negotiating permanent cease-fires with ethnic militias operating in the border areas and increasing access for human rights monitoring bodies and multilateral agencies involved with humanitarian and development assistance. Amending the visa ban to allow Burmese civil servants to enter the US for the purpose of acquiring technical expertise or education could also prove to be beneficial, in the sense that it can indirectly benefit Burma’s central administrative system as well as provide a opportunity for them to experience Western culture and possibly internalize some Western values, even if only to a small degree.

More effective coordination with financial regulatory bodies such as the

FATF and the relevant domestic policymakers and stakeholders is also needed, to clamp down on the junta's illicit financial activities. Interrelated to this issue are Burma's resource extraction industries such as gems, ore, drugs and timber. Increased efforts to monitor and reduce the trafficking on such goods should also take precedence. While the difficulties in implementing such measures are numerous, both the licit and illicit trade of such good impacts the Burmese economy and the people on a number of different levels, from financing the regime to labor exploitation and the persistent violence in the border areas. A stronger, more concerted effort is imperative in order to alleviate these problems. Rather than applying a blanket restriction, the US Government should, along with other states such as India, Japan, and European Union, encourage "principled investment" by private sector companies in the Burmese economy for the dual purpose of increasing trade linkages with democratic governments and counterbalancing economic and political influence of China, which has turned a blind eye towards the human rights abuses and lack of transparency of the military junta. Also, the blanket restriction on Burmese imports needs to be restructured so that it may allow the growth of industries that directly benefit the welfare of the general public, and target or more accurately monitor those whose profits find their way into the junta's personal coffers.

Finally, domestic factors such as the junta's relations with the ethnic militias and the political opposition leaders are a crucial issue that needs to be carefully handled. By transforming these groups into honest brokers between the junta and other states or by bringing them back to the negotiating table, the probability of their safety and survival can be significantly improved. Moreover, increased interaction among these groups and other regional states and relevant stakeholders can transform, in the normative sense, what is seen as a domestic problem into one that is regional and international in scope. Issues with the military junta and human rights and democratic governance, while having international repercussions, cannot be solved without the Burmese people taking active ownership in the future direction of their country. Democratic governance, as the US so poignantly learned from their foreign policy experience in numerous fledgling democracies and most recently in Iraq, requires not just the structural elements that comprise a modern functioning democracy, but the normative and cultural aspects as well. If the US continues to isolate the regime, they will also continue to fall short of their goals.

PEAR