

Economic Sanctions Against Burma: **Human Rights Issue and Congressional Initiative**

The Clinton administration imposed economic sanctions on Burma in April 1997 citing human rights violations and political repression by the Burmese military regime. The President put the sanctions into effect as authorized by the Congress in legislation which passed both houses and was signed into law a year earlier. Events leading to the presidential proclamation of the economic sanctions in fact point out that it was the Congress which took the initiative on the issue and shaped the policy while the White House was simply following the Congress' lead and attempting to include its preferences in the congress-initiated policy. The imposition of economic sanctions scored a triumph for a de facto alliance of human rights groups over the business lobby in the on-going battle of human rights vs. economic interests. At least, the issue has symbolized the growing emphasis on and influence of human rights issue in the U.S. foreign policy process in the 1990's.

It is conventional wisdom that the White House dominates the Congress in the foreign policy process. In reality the congressional members have formidable possibilities if they choose to influence foreign policy. Congress is in the "loop," meaning that, even if it does not control or supplant the White House as the preeminent foreign policy maker, its capacity to shape foreign policy is immense.¹ Reacting to a number of external influences and affected by their own ideology, partisanship, standing committees and caucuses, members of congress have a number of methods to shape U.S. foreign policy.² The case of the economic sanctions against the Burmese military regime precisely portrays the congressional capacity to initiate, legislate and influence the White House to implement the policy.

The rallying point for the congressional members and human rights groups to push for the sanctions against the Burmese military regime are human rights violations by the regime, and the Burmese case has become another battle ground for human rights groups and the business lobby. But the issue of human right has been a highly controversial issue in the U.S. foreign policy. The end of the Cold War has made it possible for the U.S. to put emphasis on human rights considerations in foreign policy as the urgency of the high politics issues of security and defense has decreased. But as economic interdependence has

grown significantly, a new priority has emerged and the U.S. foreign policy today is torn between the issues of human rights and economic interests. Even though human rights issue has gained wider currency today, the degree of its significance in the U.S. foreign policy is still unclear. In light of these considerations, this paper has two purposes: first, it is going to affirm the claims that the Congress matters in foreign policy and second, to investigate whether the issue of human rights has really become a significant factor in U.S. foreign policy citing the Burmese case.

Burma's Human Rights Violations and the U.S. Responses

In November 1994, President Clinton dispatched then Deputy Assistant Secretary Tom Hubbard to Burma to emphasize to the Burmese military regime that any improvement in the U.S. relations with Burma must be based on progress on the part of Burma in three areas: human rights, democracy and counter-narcotics.³ The issue of the human rights has been one of the three major components of the U.S. policy toward Burma. Although Burma voted for adoption by the General Assembly of the 1948 U.N. Charter on Human Rights, it has been one of the worst offenders against the charter since the State Law Order Restoration Council (SLORC), the military regime, took power in 1988. Military domination in Burma began in 1962 with the first military coup. Burma had been under a military-dominated leftist regime since then which pursued isolationist foreign policy and adopted economic autarchy. After almost three decades of misrule, the country degraded to the status of least developed country in the 1987 U.N. ratings and a popular uprising broke out in 1988 against the regime in the face of economic crisis. The military, however, suppressed the uprising resulting in the death of thousands of demonstrators.

In response to the display of brutality by the Burmese military, which assumed the new name of the SLORC, United States, Germany and Japan led the international protest by cutting off all aid. The United States, in addition to halting all aid, continued to monitor human rights violations. Indeed violations of human rights in Burma could meet almost all the conceivable categories of human rights violations. Human rights violations in Burma range from political repression of the democratic opposition party, the National League for Democracy (NLD), forced labor and child labor to repression of minorities, resulting in extra-

judicial imprisonment, summary executions, forced relocation of the population, torture, rape, and so on. In the early 1990's, the Burmese military regime was called "international pariah" by the international press. Though the new regime scheduled an election which was held in May 1990 and made verbal commitments that a multiparty democratic system would be adopted on one hand, the regime on the other hand suppressed opposition parties and dissidents in such a blatant way that the international community had to ostracize it. Martial law and administrative decrees were issued to restrict people's basic freedoms. Military tribunals were quickly set up which handed down hundreds of convictions against politicians, student activists, monks and people for peacefully exercising their basic rights to freedom of expression, association and assembly. Amnesty International reported that , by the mid-1990, hundreds, possibly thousands, of people were detained by the military authorities. At least 100 political prisoners were sentenced to death in 1989 alone.⁴

The military regime's major target has been the National League for Democracy (NLD) which is the major opposition party comprised of various pro-democracy groups. The party is led by Aung San Suu Kyi, daughter of Burmese national hero, Aung San. Most supporters of the party were imprisoned and the party leader, Aung San Suu Kyi, herself was put under house-arrest in 1989, and she was not released till 1995.⁵ Above all, the regime blatantly nullified the results of the 1990 elections in which Aung San Suu Kyi's NLD party won a landslide victor with over 85% of the popular vote. Apparently to neutralize the party, the military regime cracked down on the party and its elected members. Several hundred political prisoners remain in detention and approximately 20 are members of parliaments (MPs) elected in the 1990 elections. After Aung San Suu Kyi was released from house arrest, her party called for a national congress in 1996, which was disrupted by the SLORC's arrests of mover 260 members of the NLD MPs. Though most of them were released later, 26 were later convicted on the false charges of spreading disinformation and threatening to the stability of state.⁶ Up to date, similar acts of repression against the political opposition continue.

One rampant practice of the Burmese military has been torture of its victims. People suspected of organizing or participating in political activities critical of or in opposition to the government run a high risk of torture. The victims included students and others detained during periodic political unrest in the cities and

members of ethnic minorities arrested in the course of army counter-insurgency operations. In areas where ethnic minorities and students have been engaged in armed opposition to the government, torture often assumed a further dimension in that it culminated in summary and extrajudicial execution.⁷ Forced relocation is another problem. More than 75,000 Rohingyas, Burmese Muslims from Arakan state, fled to Bangladesh in 1992 from the SLORC's "census check." Today, approximately 33,000 remained in camps across the border for fear of persecution. Additionally some 90,000 refugees from Burma are residing in ethnic minority camps along the Thai-Burma border, who fled the abuses by the Burmese Army.⁸

In response to the worsening situation of human rights in Burma, the U.S. government, under Presidents Bush and Clinton, took measures to constrain the Burmese military regime and send the message to the regime that Burma can not fully rejoin the international community and gain the assistance it needs until fundamental changes are made. Measures taken by the U.S. government from 1988 to 1995 included urging other donor countries such as Japan to strictly limit any development assistance to Burma, denial of GSP trade preferences, decertification of Burma as a narcotics cooperating country, which requires the U.S. government by law to vote against assistance to Burma from international financial institutions such as IMF, the World Bank and the Asian Development Bank (ADB), abstention from promoting U.S. commercial investment in or trade with Burma, having Eximbank or OPIC deny loans or insurance for American companies selling to or investing in Burma and supporting efforts at the international such as in the UN General Assembly to condemn human rights violation in Burma.⁹

Despite these measures, the Burmese situation had not improved. In a 1995 testimony to the Senate, a Burma expert, Josef Silverstein, made an evaluation that "U.S.-Burma relations seem to be at the same place as a year ago - no better no worse."¹⁰ There had been no real advance toward democracy. SLORC continued to rule by decree under martial laws announced by five years ago. Human rights continued to be violated with impunity as political prisoners remained in jail without international verification of their conditions. Slave labor continued in the building of railroads, the clearing of the land where a gas-pipeline owned by UNOCAL and French TOTAL, was being laid, and in serving the Army's counter-insurgency operations. There was a decline in opium production in the year only because of adverse weather

conditions.¹¹ The measures taken until that time were assessed to be insufficient to pressure the Burmese military regime into respecting democracy and human rights. More intense actions were advocated by the Burmese democratic opposition, human rights groups, pro-democracy intellectuals and Congressional members who are sympathetic to the Burmese situation. Since U.S. investment in Burma was one of the largest in the early 1990's, economic sanctions were considered as a way to deprive the military regime of foreign investment and pressure to respect human rights and conform to democratic norms.

Evolution of the Economic Sanctions

U.S. Policy to impose economic sanctions against Burma evolved over two years' period though it had been ever since the early 1990's that economic sanctions were being called for. The original sanctions bill, which was titled "Burma Freedom and Democracy Act 1995" and introduced in the mid-1995, failed to pass the congress apparently due to its radical provisions to effect its enforcement. A watered-down version of the original bill, titled "Cohen-Feinstein Amendment 1996," was eventually passed in September 1996 authorizing the president to impose the sanctions. After the passing of the bill, seven months' time elapsed until President Clinton finally decided to put the bill into force. During the periods leading to the voting of the original bill, introduction of the amended bill and its passage, and the presidential decision to impose sanctions, leading congressional supporters of the economic sanctions, such as Senators Mitch McConnell (R-Kentucky), Patrick Moynihan (D-New York) and Congressman Dana Rorabacher (D-California), resorted to informal methods of influence to effect the passing and implementation of the bill. In addition to the formal legislation path, those congressional members made concurrent resolutions, held hearings and testimony, made public speeches and statements and wrote letters to the foreign policy leaders of the executive branch.

(A) Congressional Initiatives

Since before the introduction of the Burma Freedom and Democracy Act 1995, Congress had become persuaded that the executive branch was not doing enough to pressure the Burmese military regime.

Since 1988, some members of the Congress had been ahead of the Bush and Clinton administrations in taking steps to pressure the Burmese military regime. Members of congress, especially Senator Moynihan, led a move to place an trade embargo on fish and timber imported from Burma until political change occurred but failed to be written into law because of objections by the Bush administration.¹² Then, the Congress took an initiative that authorized President to take economic measures, though not specific yet. The Congress adopted a provision as part of the Customs and Trade Act of 1990 requiring the president to impose appropriate trade sanctions on Burma. But President Bush was unresponsive to the congressional lead. Only in 1991, as the situation in Burma grew worse, did the President act by refusing to extend or negotiate a new treaty that would allow Burmese textiles to enter the U.S. market under very favorable terms. But the president's action had minimal effect on the Burmese economy because U.S. trade with Burma constituted between 2% and 4% of Burma's total trade.¹³

In addition to these legislative actions, other measures were also taken to keep constant pressure upon the regime. For instance, on April 30, 1994, the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236), put Burma on the list of international "outlaw" states that includes Libya, North Korea and Iraq. As is set forth in section 307 of the Foreign Assistance Act of 1961, such a status mandates that voluntary United States funding for any United Nations agency will be automatically reduced if the agency conducts programs in Burma.¹⁴

Congressional resolutions were also made for the same purpose of pressuring the regime into respecting the democratic norms and the results of the 1990 elections. On July 15, 1994, the Senate adopted Senate Resolution 234 calling on the Administration to encourage members of the Association of the Southeast Asian Nations (ASEAN) to cooperate with the United States to achieve the transfer of power to the winners of the 1990 elections. On July 25, 1994, the House adopted House Resolution 471 which urged the Burmese regime to transfer power to democratically elected leaders of Burma and to respect human rights.¹⁵ Members of Congress could engage in a number of informal ways to influence particular foreign issues other than congressional activities. In that regard, then Congressman Bill Richardson's (D- New Mexico) trips to Burma deserve mention.

On February 14, Congressman Richardson became the first non-family member to visit Burma's detained opposition leader, Aung San Suu Kyi. At the time the Burmese military regime was engaged in an international propaganda campaign to improve its image and the congressman's trip was approved by the regime probably as part of the campaign to win international media's attention.¹⁶ Including the last trip in June 1995, the congressman made three trips to Burma. Even though he was permitted access in the first two trips to the prisons to visit prisoners of conscience, in addition to the visit to Aung San Suu Kyi's residence, he was denied access to both Aung San Suu Kyi's residence and prisons in the last trip. Evaluating the experiences he had over the three trips, the congressman made a public statement after the last trip that there was serious repression, regression, and retrenchment by the SLORC in the areas of human rights and democratization and called for a new more aggressive and creative policy by the U.S. toward Burma.¹⁷

Both Senate and the House also held hearings occasionally on the developments in Burma to highlight the issues of human rights, political repression, and U.S. Policy. Two major hearings at the House should be mentioned which were held before the Subcommittee on Asian and the Pacific of Committee on Foreign Affairs of the House in 1993 and 1995 respectively. In the first hearing, Burma experts, a non-profit organization representative, a senator and an American businesswoman, whose company was being engaged in commercial activities in Burma at the time, gave their perspectives on the situation and U.S. policy at the time.

The two Burmese experts, Dr. Steinberg (Georgetown University) and Dr. Silverstein (Rutgers University), agreed on the need to appoint a U.S. ambassador in Burma as a dialogue partner to the military rulers in order for the U.S. policy effective. The former emphasized U.S. interests in Burma, such as the elimination of opium production, Burma's geopolitical significance to the regional stability and potential access to the country's rich natural resources. The latter was more concerned by the continuation of human rights violation and political repression in the country. Senator Moynihan and Maureen Aung-Thwin (a non-profit organization representative) also took the same line by lamenting the continued political oppression in Burma and China's increasing influence on the Burmese military regime. In contrast the businesswoman, Miriam Seagull, urged the Congress, unsurprisingly, that American business interests in Burma should be promoted

because economic prosperity eventually brings about eventual political change.¹⁸

In the second hearing which was held on September 7, 1995, Assistant Secretary of State for East Asian and Pacific Affairs, Kent Wiedemann, was included in addition to the Burma experts, a human rights watcher and a business representative. His testimony stood out from those of other witnesses who expressed concerns for either human rights violations or businesses interests and articulated their evaluations of the Clinton Administration's standpoint and rationality regarding additional measures against the Burmese military regime. Representing the Administration's policy, the Assistant Secretary argued that economic sanctions which were under consideration in the Congress at the time would be counterproductive because Aung San Suu Kyi was just released from six years' house-arrest and some time should be allowed for dialogue between her and the military rulers. Indeed, these hearings at least made the Burmese issue float in the media and promoted public awareness on it.

(B) Burma Freedom and Democracy Act 1995

Senator Mitch McConnell is unquestionably the prime mover of the economic sanctions against the Burmese military regime. He is the chairman of the Senate Appropriations Subcommittee on Foreign Operations and had been calling for economic sanctions against Burma as early as the beginning of 1995. On July 11, 1995, he introduced a legislation which was titled as "Burma Freedom and Democracy Act 1995." In his statement made at the Senate, he explicitly mentioned that, in drafting the bill, he had consulted with Burmese students, ethnic leaders, democracy advocates and associates of Aung San Suu Kyi, all of whom supported the bill as a means to pressure political and economic change in Burma. His rationale for the timing of the introduction was that Aung San Suu Kyi's release at the time from six years' house-arrest strengthened the possibility of pushing toward the implementation of the 1990 election results and economic sanctions by the U.S. would pressure the Burmese military regime in that direction.¹⁹

The Burma Freedom and Democracy Act 1995 included drastic provisions against Burma. Most importantly the Act banned any investment in, imports from, assistance to, travel by U.S. citizens to and arms sales to Burma. It also authorized the President to continue the suspension of special trade privileges

pursuant to the Generalized System of Preferences (GSP) and most favored nation status of Burma. In addition, Burma would continue to be blocked from access to international financial institutions such the World Bank, IMF and Asian Development Bank (ADB) by the U.S. Even more, the Act included provisions to punish any country which would not cooperate with the proposed economic sanctions. For instance, any country which would not observe the economic sanctions would be denied of GSP trade privileges. The U.S. would block China's access to international financial institutions if it continued to sell or transfer to Burma. Thailand would be denied any U.S. assistance unless it provided support and relief for Burmese exiles and refugees. Most important of all, the bill provides for the withdrawal of most favored nations (MFN) status of any country which refuses to cooperate with the economic sanctions.²⁰

To rally support for the bill and keep the issue in limelight, Senator McConnell took the leadership to hold a Senate hearing on the bill. It was held on July 24, 1995, bringing together both government officials and human rights activists. The hearing boiled down to two contrasting perspectives. Human rights activists called for additional economic measures against the regime in light of the continuation of human rights abuses and the static state of the U.S. policy toward Burma. In Contrast, Assistant Secretary of State for East Asian Affairs, Winston Lord, expressed qualms on imposing economic sanctions. Mike Jendrzeczyk of Human Rights Watch/Asia reminds that the SLORC's decision to release Aung San Suu Kyi was probably a measure of confidence on the part of SLORC and that was difficult to know whether her release would lead to an improvement in human rights situation in Burma or whether it may lead to a further entrenchment of the current military regime. He pointed out that, despite her release, there remained at least 1,000 political prisoners remained in Burmese jails, including 16 members of parliaments elected in the 1990 elections. He criticized the U.S. policy toward Burma as having remained in limbo because the Administration at the time had not taken action to impose further economic other than those already in place.²¹

In contrast to the view of human rights activists' view, Assistant Secretary of State, Winston Lord, argued from the Administration's standpoint that, while the legislation under consideration is a serious effort to address the continuing violations of human rights in Burma, it would be counterproductive in the wake of Aung San Suu Kyi's release. He implied that the legislation would not allow the Administration flexibility

in Burma policy and that it would not allow sufficient time for a dialogue of national reconciliation between Aung San Suu Kyi's NLD and the SLORC. His testimony made it clear that Clinton Administration disagreed over the bill's provision to terminate the operations of U.N. agencies such as UNDP because the administration believed that these programs help needy Burmese without strengthening SLORC. The administration was also concerned with the additional limitation of U.S. counternarcotics programs with Burma because the programs were already severely limited and would not undermine U.S. human rights goals.²²

When the bill was about to be voted in the Senate, it was confronted with opposition from other Republican senators for two reasons. First, it was argued that the bill's provision for withdrawal of the MFN from any country that would not cooperate with the sanctions is not practically enforceable. Several senators believed that the bill was not feasible because it would cut off China's most-favored nation status as it does not honor sanctions against Burma. Senator William Roth (R-Del), who is the chairman of the Finance Committee, complained in his letter to McConnell that the provisions of the bill not only involved matters that were the jurisdiction of his committee, but also its call for withdrawing most-favored nation trading status would violate trade treaties.²³

Second, the bill's introduction by Senator McConnell was not approved by other senators for technical reasons. The Burma Freedom and Democracy 1995 Act was an amendment which was to be part of the larger Foreign Operations Appropriations Act. Senator McConnell was criticized for inserting the amendment without unanimous support. While floor managers of bills often insert amendments that have unanimous support, several senators criticized McConnell for inserting the amendment without unanimous backing which could have huge repercussions. Senator McConnell included the amendment in the Foreign Operations Appropriations Bill in an en bloc amendment at the end of the debate rather than adding it separately and allowing it to come up for discussion in the full Senate. Thus, other Republican Senators objected to the fact that McConnell had handled the amendment inappropriately. As a result, Senator McConnell withdrew his amendment.²⁴ Apart from these objections, Senator McConnell also attributed the failure of the bill to the White House opposition and the heavy lobbying by UNOCAL and Texaco, which have large investments in

Burma. Total U.S. investment in the country in the period from 1989 to 1994 was \$213 million.²⁵

(C) Cohen-Feinstein Amendment

After the defeat of the original Burma Free and Democracy Act of 1995, Senator McConnell reintroduced the revised version of the bill in December 1995 excluding some mandatory provisions such as the withdrawal of MFN status from the countries which do not back the sanctions. The new bill included both mandatory and discretionary provisions for the economic sanctions. Mandatory sanctions included a ban on U.S. investment in and U.S. assistance to Burma, blocking of Burma's access to international financial institutions, and denial of entry by SLORC officials and their relatives in to the U.S. Discretionary sanctions, which authorized the President to act upon its decision, included ban on imports from Burma, a ban on travel to Burma by U.S. citizens, and withholding of contribution to international organizations which operate in Burma.²⁶

A Senate hearing was held again on May 22, 1996, in front of the Senate Banking committee for testimonies on the Burma issue. Senator D'Amato, Chairman of the Committee, sponsored the hearing and pointed out that the U.S. policy toward Burma had not been working and increased pressure on the SLORC was needed. Senator McConnell himself was one of the witnesses. He expressed disappointment with the deterioration of the situation Burma following the arrest of 88 members of the NLD two days before the hearing. The SLORC had arrested approximately 200 people in an attempt to disrupt the NLD national conference held at the time.²⁷ As before, Clinton Administration expressed its disapproval with the mandatory aspects of the proposed bill. Kent Wiedemann, Deputy Assistant Secretary of State, declined to take a position on the McConnell bill at the hearing. But he commented that the administration would like a range of sanctions options, rather than be "locked in a set of legislatively prescribed measures" such as those proposed in the McConnell bill.²⁸

When the revised version of the McConnell amendment was debated on July 25, 1996, Senator Cohen (R-Maine) introduced an alternative amendment with the support of Senators Feinstein, Chafee and McCain. UNOCAL, which had the largest American investment in Burma and is headquartered in California,

persuaded the home state senator, Dianne Feinstein, that any sanctions should be prospective in nature. In addition, the Clinton Administration also did not want to order divestiture of U.S. investment from Burma and worked with Senator William Cohen from Maine on a compromise.²⁹

The Cohen-Feinstein amendment provided for weaker measures than the McConnell amendment. It stipulates that there will be no U.S. assistance other than humanitarian assistance, counter-narcotics assistance such as corp substitution, and assistance promoting human rights and democratic values. U.S. blocking of Burma's access to international financial institutions and visa ban on SLORC officials and their immediate relatives are retained. But, the economic sanctions on Burma are to be conditional and only against new U.S. investments. The amendment put the sanctions up to the President's discretion. In the part on conditional sanction, the amendment provides that:

"The President shall prohibit United States persons from new investment in Burma, if the president determines and certifies to the congress that, after the enactment of this act, the Government of Burma has physically harmed, rearrested for political acts, or exiled Daw Aung San Suu Kyi or has committed large-scale repression of or violence against the democratic opposition."³⁰

Compared to the McConnell amendment, the Cohen-Feinstein amendment is much weaker and serves as a compromise between all-out sanctions and taking no sanctions at all. Senator Cohen argued that, by imposing all-out economic sanction against the Burmese military regime, the U.S. is going to relinquish its remaining leverage in Burma. Such sanctions would further bind the hands of the Administration at the time and future administrations, taking away those tools of diplomacy - incentives both in a positive and negative sense. His argument was that Burma is not South Africa against which the U.S. economic sanctions were effectively imposed with the support of the European allies and countries surrounding South Africa. He pointed out that Burma's neighbors, especially ASEAN and China, are pursuing trade and engagement with Burma and will not be supportive of the U.S. sanctions.³¹

The Cohen-Feinstein amendment accommodated the Clinton Administration's resistance to the mandatory sanctions stipulated in the McConnell amendment. The White House opposed the sanctions provided in the McConnell amendment because it does not want Congress to dictate foreign policy and it believes that sanctions will fail without support from allies in Asian and Europe.³² Major foreign-policy makers

of the administration repeated this position and made it clear that economic sanctions against Burma were not appropriate at the time. At a State Department press conference with Denmark's Foreign Minister, Niels Helveg Petersen, on July 1, 1996, Secretary of State Warren Christopher, said "I share with the minister's appraisal that economic sanctions are unlikely at the present time, but it is a subject that is under active considerations."³³ He elaborated on that position two weeks later, before his trip to Indonesia to attend the annual meeting of ASEAN, saying, "I think we do not see a present role for sanctions but we want to have a discussion with other countries in the region to see what steps might be prepared."³⁴ National Security Advisor, Anthony Lake, on his trip to Southeast Asia in July 1996 reflected the same theme that the administration would like to have sanctions as an option but he sidestepped whether they would actually be invoked. He said, "Our view is that sanctions might be a useful tool. Obviously, there is a question of whether that tool would ever be used in that context in Burma."³⁵

The Cohen-Feinstein amendment thus falls in line with Administration policy at the time regarding the sanctions: flexibility for the President and less stringent measures against Burma. The amendment called for the sanctions but left it up to the President's discretions to decide whether the political repression and human rights violations in Burma deteriorate or not in order to impose sanctions. Even if the sanctions were to be imposed, they will affect only the new U.S. investment in Burma and the existing investments, mostly by U.S. oil companies in oil and natural gas ventures, would be intact. This aspect of the amendment reflects the oil lobby's efforts on the Hill to thwart the sanctions. For that purpose, UNOCAL had hired a number of lobbyists, including Timmons and Co., a prominent GOP lobbyist who served as one of Bob Dole's top campaign advisers. UNOCAL paid Korologos's firm \$280,000 in 1996 which lobbied for the oil company on a broad range of issues including Burma.³⁶ Those efforts by the oil companies partly explained the introduction of "compromised sanctions" and their victory over the McConnell amendment in July 1996.

Despite the oil lobby's efforts, the Cohen-Feinstein Amendment (Section 569 of the Foreign Operations and Appropriations Act, 1996) was passed on September 17, 1996. Though weaker than the original version, the bill was a victory for the human rights activists and Burmese pro-democracy groups. In addition to the efforts of its supporters, the bill's passing was also facilitated by the deteriorating situation

in Burma. In 1996, the NLD planned to hold two party congresses in May and September. The SLORC regime responded with arrests of hundreds of NLD members. In October the same year, Aung San Suu Kyi herself was barred from leaving her residence. These developments prompted international outcry, even including comments by some ASEAN countries which were usually quiet on the political oppression in Burma, all of which helped the passing of the sanctions by the Congress.

(D) Imposition of the Sanctions

In the first week of October 1996, the sanctions bill was signed into law by the President and, as provided in the law, the decision to impose was now solely dependent upon the President. However, in the following months, the administration was indecisive on the question of the sanctions law and it became apparently divided over the enforcement of the law. Two factions emerged in the administration over the proposed economic sanctions on Burma. One, including now U.S. Ambassador to the U.N., Bill Richardson, concluded that the conditions requiring sanctions had been met. But an equally influential group argued that sanctions would have little effect on the Burmese military regime. The latter group, including the President's economic and trade advisors and now Defense Secretary William Cohen, who as a senator co-sponsored the bill, recommended instead that the U.S. should continue to apply diplomatic pressure.³⁷

Constant pressure on the White House to impose sanctions came from several congressional members. Senators and congressmen sympathetic to the Burmese situation wrote letters to the White House and State Department reminding that the sanctions were overdue. Public statements and speeches were also made in the same fashion. On October 3, 1996, President Clinton imposed a visa ban on the SLORC officials and their immediate relatives as a response to the massive arrests of NLD members in Burma who were to attend the second party congress. Following the passing of the bill, Senator McConnell made a special floor speech on the same day to remind the NSC members that, in light of the SLORC's intransigence in the past, a visa ban would not be enough and advocated economic sanctions.³⁸ In addition, Senators McConnell, Leahy, and Moynihan wrote a open letter to President Clinton urging the immediate imposition of sanctions. The letter reminded the White House that economic sanctions must be imposed in the face of

the sweeping arrests and the continued repression in Burma.³⁹ In the same fashion, Senator Jesse Helm, Chairman of the Senate Foreign Relations Committee, called upon the administration in an letter on October 4, 1996, to immediately impose sanctions on Burma as outlined in the law. He was similarly concerned by the arrests of hundreds of pro-democracy activist in Burma and reminded the administration that "failure to impose sanctions at this point will clearly signal the SLORC that it can continue to abuse its citizens without consequence from the United States."⁴⁰

By all credible accounts, including the State Department's annual human rights report, Burma's government had met, if not exceeded, the level of repressive conditions cited in the sanctions legislation. In 1996, the worst year of repression in this decade, the Burmese military regime had detained over 500 activists, mostly students and NLD members, and held Aung San Suu Kyi under virtual house arrest. Nevertheless, the Clinton Administration's Burma policy was unchanged. In the first week of February 1997, State Department Spokesman Nicholas Burn affirmed that the U.S. had not decided to impose additional sanctions on Burma. He noted that the U.S. government neither encouraged or discouraged American companies to do business in Burma.⁴¹ Congressman Doug Bereuter, Chairman of House Subcommittee on East Asia and Pacific, made a public statement criticizing the White House's inaction regarding the deteriorating situation in Burma. The Congressman slammed the White House saying that the administration had been ignoring the law despite what he called the troubling repression by the SLORC: "whether the mandated sanctions are appropriate or not, I frankly do not see how the administration can avoid imposing sanctions on the regime in Rangoon."⁴²

Other than the constant pressure from the Congress, there existed other sources of pressure on the administration both for and against the sanctions. The media was obviously in favor of sanctions, the oil lobby was against the sanctions, and the human rights groups, especially the Free Burma Coalition and its allies, fiercely campaigned for the sanctions. The New York Times was a staunch supporter of the sanctions in the press. In the second week of February, 1996, the New York Times called for sanctions in an editorial in light of the appeal by Aung San Suu Kyi for sanctions, the State Department's human rights report which confirmed the severe repression in 1996, and the possibility of only a minuscule effect on the American

business community if sanctions were actually imposed.⁴³ The New York Times ran another editorial in the following month reflecting the same theme.⁴⁴ In the first week of March, 1996, the Washington Post also printed an article which argued that sanctions were overdue because of the stepped up repression in Burma.⁴⁵

As the pressure for the sanctions mounted, the business lobby launch a public relations campaign criticizing the unilateral sanctions by the U.S. The National Association of Manufacturers (NAM) issued a report titled "A Catalog of New U.S. Economic Sanctions for Foreign Purposes 1993-1996," which was a study commissioned by the association and produced by a Georgetown University professor. The report's conclusion emphatically condemned U.S. unilateral economic sanctions saying that "unilateral sanctions are little more than postage stamps we use to send messages to other countries at the cost of thousands of American jobs."

⁴⁶ On the part of UNOCAL, which had the largest investment in Burma, the company sponsored a trip to Burma by three House Representatives, Tom DeLay (R-TX), Dennis Hastert (R-IL) and Tom Paxson (R-NY), apparently to generate a report that would shield the company from criticism of human rights abuses in the areas its operations were running. Contrary to numerous reports from various sources on the right abuses in those areas where a huge pipeline was being laid, Congressman Hastert said after the trip that he saw no evidence of human rights abuses and, instead, there were well-paid villagers operating heavy equipment.⁴⁷

Nevertheless, lobbying by the human rights group for the sanctions and against U.S. investment in Burma was more intense and comprehensive. The imposition of the sanctions also attests to the effectiveness of mass mobilization in grass-roots campaigns in open, democratic polities to influence public policy. This is because the exercise of constituency pressure constitutes real political clout.⁴⁸ In this case, the Free Burma Campaign, which is modeled after a similar grass-roots movement against the apartheid government of South Africa a decade ago, has been important in influencing the American public and the legislators. The campaign was loosely coordinated before 1995 by various human rights groups and campus activists. Since 1995 it has become a well-coordinated movement, thanks to the better communications technology such as Internet. The group then assumed the name of Free Burma Coalition which has as its members human rights groups from over 100 campuses and localities. The movement successfully campaigned and made several

American companies pull out of Burma, including Pepsi and Disney. In a parallel effort, these groups also lobbied state and local governments to impose sanctions on Burma. Over 20 local and city governments and the State of Massachusetts have passed laws banning companies doing business in Burma from doing business in their localities. Such activities at state and local government levels also put pressure on the administration.

On April 22, 1997, the Administration finally decided to impose sanctions as political repression grew in intensity, especially following student protests at Rangoon University in December 1996. The President pointed out that during the last seven months, the regime had arrested and detained large numbers of students and opposition supporters, sentenced dozens to long-term imprisonment, and prevented the expression of political opposition, including that from Aung San Suu Kyi and NLD. The President also stated that the regime continued to attack Karen minorities and commit serious abuses such as forced conscription of civilians for portage, compelling thousands to flee into Thailand.⁴⁹

Human Rights Issue and the U.S. Policy Toward Burma

There is always a moral tone in contemporary U.S. foreign policy rhetoric, which reflects a tendency for all Americans to view their nation as a "a city on a hill" and their history as a moral lesson to the world.⁵⁰ Since the Nixon-Kissinger era, and goaded by the Congress, every U.S. President has rhetorically endorsed human rights as part of his foreign policy agenda.⁵¹ In the case of Burma, President Clinton has repeatedly stated that human rights is a major component of his administrations' policy toward Burma. In 1994, the administration officially affirmed that the U.S. would give top priority to human rights and democracy in its policy toward Burma.⁵² Nevertheless, there has been no consistency regarding the significance of human rights in the U.S. foreign policy. Nor has there emerged a clear pattern that human rights is a priority in the U.S. foreign policy.

In fact, the U.S. is not seriously restricted in its foreign policy on human rights by regional and global treaties. From 1953 to 1973, the Congress forced U.S. presidents to abstain from signing such treaties because it was believed that these treaties would restrict the U.S. in confronting the communist threat.⁵³ After

the end of the Vietnam war, the Congress tried to put human rights on the formal foreign policy agenda, a move which was complemented by President Carter's human rights rhetoric. Carter entered office with an idealist view of the place of human rights in the foreign policy and exerted diplomatic pressure on authoritarian governments in Asian, Africa and Latin America. But after the Soviet invasion of Afghanistan and the American hostage crisis in Iran, he shifted both rhetoric and policy as to emphasize more traditional security concerns.⁵⁴ Under the Reagan administrations, the Kirkpatrick doctrine on dictatorships and double standards guided human rights policy. According to this policy, the Reagan administration raised the human rights issue loudly and clearly when dealing with Soviet Union and its allies but not when working with anticommunist allies.⁵⁵

Under the Bush Administration, there was not pattern in human rights policy. Bush's stance on international human rights was characterized by pragmatic thinking but without clear strategy. Thus, where countervailing interests were absent, Bush was forceful for human rights such as in the case of the humanitarian operations in Somalia. Clinton campaigned against Bush for his inattention to human rights in places like China and Haiti. Upon assuming office, he continued a number of Bush policies. For instance Clinton criticized the forced repatriation of Haitian refugees but continued the policy after assuming office. He would later be forced by the Black Caucus and human rights groups to change the policy. The Clinton administration's inconsistency concerning human rights has been most prominent in its China policy. Clinton had made China the centerpiece of his rhetoric and, in his first year as president, he issued an executive order linking the most favored nation's status (MFN) and human rights. However, in June 1994, Clinton abandoned the linkage in favor of economic interests in China.⁵⁶

Domestic demands and foreign realities always influence U.S. foreign policy. Just as there exists a general public belief that the U.S. should promote human rights abroad, there is an equally or even stronger domestic demand for promoting U.S. economic interests abroad. This is most clearly exemplified by the successful lobbying of business interests in the case of the MFN for China. After all, contemporary U.S. administrations are judged on the basis of economic performance of the country during their tenure, even though the U.S. government can be only partially responsible for the country's economic health. After the

end of the Cold War, the urgency of national security issues has waned and trade and economic issues have gained more salience. Thus, the human rights question, which was always dominated by the security considerations during the Cold War, has come to be counterbalanced by U.S. economic interests abroad.

Despite the general agreement that U.S. trade with Burma is minuscule and current U.S. investment is small, the nature of U.S. economic sanctions against Burma have established the fact that economic interests clearly offset the human rights issue. After all, these sanctions are only against new U.S. investment in Burma and existing investments are kept exempt. Cautious and wary actions on the part of the Bush, later Clinton, Administrations in considering drastic economic measures against the Burmese military regime had a lot to do with the opening of the Burmese market to the foreign investors. Burma was economically opened following the emergence of the SLORC in 1988, and American businesses saw a huge potential to make profits in the country.

Following the 1988 coup, the military regime announced a market economy as its goal and promulgated "The Foreign Investment Law" in November 1988 and "The State Economic Enterprises Law" in March 1989 in order to attract foreign investment and begin economic restructuring.⁵⁷ U.S. firms were among first investors which rushed to Burma where natural resources were virtually untapped for decades. Although the United States has lately become the 14th largest country in terms of the volume of direct foreign investment in Burma,⁵⁸ it was the second largest foreign investor with a total investment of \$125 million in the period of 1989-91 following the opening of the Burmese market.⁵⁹ In the early 1990's, a majority of U.S. foreign direct investment (FDI) fell into the in oil and gas explorations ventures which was the largest sector of FDI in Burma at the time. American oil firms such as UNOCAL, Amoco, Arco and Exxon, along with other Western oil firms such as France's Total, Petro-Canada and Premier Petroleum of the U.K., began to engage in oil and gas exploration projects in Burma. The largest operation ever since has been the joint-venture of Total (31.24%), UNOCAL (28.26%), the Petroleum Authority of Thailand (25.5%) and Myanmar Oil and Gas Enterprises (SLORC 15%) which will extract 525 million cubic feet of natural gas from Yadana and Yetagun gas fields in the Gulf of Martaban and sell to Thailand through a mammoth 416-mile long pipeline which is still under construction.⁶⁰

Other U.S. companies, most of them consumer products manufacturers, also began to invest in Burma in the early 1990's. Pepsi Cola started with \$ 3 million investment in a beverage plant capable of producing 70,200 bottles per day. Coca Cola followed suit with a proposed investment of similar production worth \$ 4 million.⁶¹ According to the Free Burma Coalition, there are at least 55 U.S. companies, large and small, doing business in Burma, including AT&T, American Express, Compaq, Apple, ITT, Sears and UPS among others, in addition to the oil companies.⁶² Most business operations of these companies are actually pilot projects to establish a business presence in the newly-opened market and were expected to be expanded upon better prospects. Though small in volume for the time being, prospects of commercial profit in Burma influenced both the Bush and Clinton administrations to the extent that these administrations became indecisive over the use of economic sanctions to pressure the Burmese military regime. Despite the Clinton administration's cliché that mandatory sanctions as stipulated in the McConnell bill precludes the flexibility of its policy toward the Burmese military regime, its concern for the existing economic interests in Burma is well-reflected in its signals to the Congress that it was against any all-out economic sanctions. Testimonies at the Congress by Assistant Secretaries of State, statements by Secretaries of State and the National Security Advisor conveyed the message that the Administration was staunchly against comprehensive sanctions. After all, it was the White House which worked with then Senator Cohen to contrive less stringent sanctions against the egregious regime in order to save the existing U.S. investments in Burma as well as to gain consider leeway in imposing the sanctions. In contrast, the Congress, though not unaffected by the business lobby and economic considerations, took initiative to punish the regime for human rights violations and set the agenda for the U.S. policy toward Burma.

Conclusion

In this paper, two major points have been demonstrated. First, the case of leveling economic sanctions against Burma describes that the Congress can initiate and shape foreign policy and influence the White House to implement the policy. This example affirms the conclusions of the studies on the role of the congress in foreign policy that the Hill does matter in foreign policy in light of formal and informal methods

Congressional members can use to influence foreign policy. It was the Congress which took the initiative in applying economic sanctions against Burma and it was the White House that meandered along behind. Nevertheless, this case also sheds light on the weakness of the congress a fragmented body, further exacerbated by its large size of decision-makers. Consensus was hard to be built regarding all-out sanctions against Burma. As in any pluralist decision making process, the final result was one of compromise.

Second, this case also describes that the body politic in the U.S. is porous, in the sense that there exist numerous points in the decision making process at which various outside actors can influence the process. Major players in this case are the Congress, White House, human rights lobby and the business lobby. In the process of formulating the sanctions, the White House inserted its preferences through Senator Cohen's amendment. The business lobby modified the provisions of that bill to save the existing U.S. investment in Burma with help from Senator Feinstein. The human rights lobby has been an important agenda setter, along with the pro-sanctions Congressional members, throughout the process.

It could also be argued that the notion of anticipated reaction between the White House and the Capitol Hill works in both directions: just as the White House must anticipate reactions from the Hill and modify its options and preferences, so must the Hill. In this case, the Hill anticipated White House reaction against the proposed original sanctions and modifications were called for by some of its members. Senator McCain objected to the original bill because revocation of MFN status of any country which does not honor the sanctions would be impractical and unenforceable, and it was certain the White House would oppose it. The optional aspect of the bill which authorized the President to decide whether political repression in Burma has worsened and impose sanctions accordingly reflects the realization that the Congress had to take into account the White House's opposition to the mandatory provisions of the bill.

In the final analysis, although it is true that the human rights issue was the cause of the economic sanctions leveled against Burma, it was not the sole factor that shaped the final version of the bill. Just as human rights abuses in Burma are addressed by imposing sanctions reflecting the domestic outcry against such abuses, another significant domestic factor, that is economic interests, clearly helped shape U.S. policy toward Burma.

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