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BURMA: COMPANIES, NGOs AND THE NEW DIPLOMACY

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Burma, also known as Myanmar,¹ is an important case study in wider international debates on the politics of sanctions versus constructive engagement, and the role of companies and NGOs in controversial states.

Since 1962 Burma has been ruled by a succession of military and quasi-military regimes. All the main political actors, including the armed forces, agree that it should eventually return to some form of democratic rule. The questions are: when and by what route? And how, if at all, can the international community assist?

One of the most important features of the Burma debate is the role played by non-state actors – particularly NGOs, but also companies. A loose coalition of advocacy groups has put pressure on Western governments to impose sanctions on Burma, and on companies to withdraw from the country. Petroleum companies, in particular, have been accused of collaborating with an illegitimate regime. But such campaigns raise further questions: what role should advocacy groups play in foreign policy-making? And what are the real responsibilities of international companies in controversial states?

The Burmese political conundrum

For the past half-century, Burma has conspicuously failed to establish effective, broad-based political institutions; and the economy has languished. The army regards itself as the arbiter of national politics, and the guarantor of Burma's territorial integrity. However, it lacks popular support or political legitimacy. It is difficult to envisage lasting economic development without a political settlement between the army and the civilian opposition, and between the national government and the ethnic minorities that make up 35% of the country's population.²

Opposition leader Aung San Suu Kyi has been held under house arrest, for the second time, since September 2000. However, she has been engaged in an intermittent dialogue with the ruling State Peace and Development Council (SPDC – formerly known as the State Law and Order Restoration Council, SLORC) for much of this period, and the UN special representative Razali Ismail has reportedly played a significant role in promoting these talks. The government has toned down its public criticism of Aung San Suu Kyi's National League for Democracy (NLD) and released some 180 political prisoners, although at least 1,700 remain behind bars. By mid-September 2001 both the NLD and the SPDC

¹ The government changed the official English-language name of the country to Myanmar in 1989. The change remains controversial, and both names continue to be used, sometimes alongside one another, both inside and outside the country. I continue to use 'Burma' out of personal preference.

² Since the early 1990s the government has reached ceasefire agreements with some 15 ethnic minority insurgent groups. All these settlements have a provisional quality; and two major groups, the Karen National Union (KNU) and a branch of the Shan State Army (SSA), remain at war with the government.

expressed guarded optimism about the course of the dialogue, but neither side had revealed the nature of the discussions that had taken place.

In the absence of more concrete signs of progress, foreign governments will remain divided in their approach to the SPDC. The US has been most confrontational and in 1997 imposed sanctions on new US investment in Burma. The UK and other EU countries have suspended aid as well as imposing bans on arms exports and on visits by leading members of the regime and their families.

By contrast, Japan and Australia have sought to establish some form of engagement with the regime: in April 2001 Japan promised Burma \$28m towards the refurbishment of a vital hydroelectric plant, while Australia has been organizing human rights lectures for Burmese officials. ASEAN welcomed Burma as a full member in 1997.

Neither confrontation nor engagement has been proven to work. The challenge to the international community is therefore the same as it has been for the last decade: how to encourage progress in Burma's political dialogue and, in the worst case, how to respond to failure. International Burma campaign groups have played an important part in the debate.

Burma campaigns

Burma advocacy groups benefit from the exceptional popular appeal of NLD leader Aung San Suu Kyi. By contrast, the military regime appears, at best, clumsy and inept. Few foreigners – and almost none outside Asia – are prepared actively to defend the SPDC's record.

The flavour of Burma democracy campaigns has varied from country to country. In the US, the Free Burma Coalition (FBC) is dominated by student groups. In Australia and Denmark the trade unions have played a particularly important role. In the UK, the Burma Campaign appears to have established a sympathetic relationship with Foreign Office ministers. Campaign groups in the Anglo-Saxon and north European countries have tended to be more effective in building popular support than their counterparts in France or Japan.

Wherever they operate, the campaign groups have been united in their call for economic and political sanctions against Burma, pointing out that Aung San Suu Kyi favours this approach. The NLD's landslide victory in the 1990 national elections, which the military regime chose to ignore, demonstrated her democratic legitimacy; and campaigners say no one else has the right to argue with her. The only question is how to make people listen.

New technology has proved an important tool. US-based activists were among the pioneers, using the FBC website (www.freeburma.org) to coordinate the activities of dozens of university and regional groups that might otherwise have found it difficult to communicate. The FBC and similar groups have used a variety of different tactics:

Box 1: The Massachusetts Burma Law and US foreign policy

In July 1996 the Massachusetts state legislature enacted its Act Regulating State Contracts with Companies doing Business with or in Burma (Myanmar). The law stipulated that any company doing business with Burma must pay a 10% penalty surcharge on procurement contracts with the state government. The act matched a series of similar ‘selective purchasing laws’ enacted by some 24 city administrations across the US.

The act prompted criticism from both business associations and foreign governments. In April 1998 the National Foreign Trade Council (NFTC), representing 550 members, filed a suit challenging the Massachusetts law in the Federal District Court. Meanwhile both the European Union and Japan criticized the law as a violation of the EU’s obligations under the World Trade Organization’s Government Procurement Agreement (GPA).

In November 1998 the 10th District Court struck down the law, arguing that it ‘impermissibly infringes on the federal government’s power to regulate foreign affairs’. The US Supreme Court ruling in June 2000 confirmed this judgment, stating that the law infringed upon the President’s power to set foreign policy, and had been pre-empted by the 1997 federal law that imposed a ban on new US investments in Burma.

1. They have lobbied companies at annual shareholders’ meetings. For example, activists have regularly coordinated votes at the annual shareholders’ meeting of Unocal, the US petroleum company (see below and Box 2). In the May 2001 meeting, 22% of the votes supported a code of conduct discouraging business in countries that used forced labour, a clear reference to Burma.
2. They have called for consumer boycotts, which have been most effective against manufacturers of garments and drinks. In 1992 Levi Strauss became the first garment manufacturer to pull out of Burma. It was followed by a series of other garment manufacturers. In 1996 and early 1997 Heineken, Carlsberg and Pepsi-Cola followed suit.
3. US campaigners have put pressure on city and state administrations to impose ‘selective purchasing’ laws, stating that they would not do business with companies operating in Burma. The best known of these was the Massachusetts Burma Law (see Box 1).

Notwithstanding the fate of the Massachusetts law, US Burma activists continue to explore other means of putting pressure on companies operating in the country. These include fresh boycott campaigns against garment companies; calls on individuals, pension funds and city administrations to withdraw investments from companies operating in Burma; and, as will be seen below, legal challenges against companies accused of complicity in human rights abuses.

Burma may remain something of a specialist interest but, especially in the US, activists continue to make a significant impact on both government and business policy.

Business perspectives

No one doubts that Burma has the natural resources and human potential to achieve economic prosperity. Equally, there is general agreement that private foreign

investment will be essential for the country’s future development. The main questions concern the political conditions that will make such investment viable and legitimate.

In the 1970s and 1980s Burma’s socialist and isolationist policies prevented it from emulating the successes of other Southeast Asian nations. In the early 1990s SLORC opened up the country to foreign investors, and the country was widely billed as a new Asian ‘tiger’, or at least a ‘tiger cub’. However, this optimism has long since dissipated. Investment flows from Japan and Southeast Asia have declined sharply since 1997. Few major Western companies outside the petroleum sector have made significant commitments.

Companies have sound practical reasons for being slow to invest. There is a severe shortage of foreign exchange, and the bureaucracy remains unwieldy. Government policy is *dirigiste* – a ‘command economy’ where the military leadership issues orders that may or may not be based on a recognizable economic rationale. The armed forces swallow up by far the largest proportion of government expenditure, and companies linked to serving or retired officers win preferential treatment.

Despite these problems, the proponents of business engagement argue that investors will bring wealth into the country, providing employment as well as new ideas. In the long term, engagement is more likely to bring real change. By contrast, Burma’s critics argue that it is impossible to operate in the country without being involved with the military regime and its supporters. The debate has focused on two main questions:

1 At the national level, does the presence of foreign companies lend political and financial support to the regime?

1 At the local level, do these companies benefit from unacceptable practices such as forced labour? Are they directly or indirectly implicated in human rights abuses by the security forces?

The International Labour Organization (ILO) has highlighted the problems associated with forced labour, and sent an official mission to Burma in September 2001 to assess the extent to which the practice still continued.

Offshore gas

The offshore gas sector offers by far the most promising prospects for foreign investment. It is also the greatest source of controversy, both because it is a major potential source of income to the government and because of its local impact. There are two main offshore fields:

1 The Yadana field is a joint venture between TotalFinaElf (France – 31%), Unocal (US – 28%), PTT Exploration and Production (Thailand – 26%), and Myanmar Oil and Gas Enterprise (MOGE – 15%). Investment in this field is in the order of \$1.2bn, and it is projected to bring the Burmese government royalties of some \$100m a year. TotalFinaElf is the operator.

1 The Yetagun field is a joint venture between Premier (UK – 26%), Petronas (Malaysia – 30%), Nippon-Mitsubishi Oil (14%), PTTEP (14%) and MOGE (15%). Premier is the operator, having taken over from Texaco which sold out in 1998.

Thailand is the main customer for both fields, and the two consortia share the same pipeline route from the Gulf of Martaban across 39 miles of Burmese territory in Tenasserim Division to the Thai border. This area is inhabited by a mixture of Burman, Karen and Mon villagers. Karen National Union (KNU) guerrillas have operated in the region for decades.

NGO critics argue that the companies are implicated in government abuses in two main respects.³ First, they have allegedly benefited directly or indirectly from forced labour. Secondly, the government has increased its military presence in the area to protect the pipeline, and human rights abuses by the army have resulted in an increased flow of refugees across the border to Thailand.

Much of the controversy has focused on the extent to which the companies have responsibility for – or are implicated in – government activities that are outside their direct control. The companies insist that Burmese workers directly employed on

³ See, for example, Earthrights International, *Total Denial Continues* (Washington, May 2000); www.earthrights.org.

Box 2: The Unocal legal cases

In 1996 US lawyers representing Burmese refugees brought two cases against Unocal under the Alien Torts Claims Act (ATCA). The legal cases are supported by Earthrights International, the International Labor Rights Fund, the Center for Constitutional Rights and other advocacy groups. The ATCA was originally enacted in 1789 to allow US courts to try acts of international piracy. Its scope has now widened to include other violations of international law, potentially including corporations' complicity in human rights abuses.³ A series of similar legal actions has also been brought against international oil companies operating in countries such as Nigeria, Indonesia and Ecuador.

In 1997 and 1998, US district courts ruled that the ATCA could potentially be applied to Unocal's activities in Burma, although not to the French company Total (now TotalFinaElf). In August 2000 Judge Ronald S. Lew ruled in the Los Angeles District Court that 'the evidence does suggest that Unocal knew that forced labour was being utilized and that the Joint Venturers benefited from the practice'. However, he dismissed the case on the ground that there was no evidence that the company directly 'participated in or influenced' the Burmese army's unlawful conduct.

The plaintiffs have appealed this decision to the US Ninth Circuit Court of Appeals. Meanwhile, on 30 August 2001 California Superior Court Judge Victoria Chaney ruled that a parallel case against Unocal under Californian state law could be heard in a California state court. After five years, Unocal's legal battles are far from over.

³ See Halina Ward, *Governing Multinationals: The Role of Foreign Direct Liability*, RIIA Briefing Paper New Series No. 18, February 2001.

pipeline construction have been paid a better than average wage, but maintain that they have no influence on the army's use of forced labour for other purposes.

The impact of these controversies on the consortia partners has varied according to the political climate in their respective home countries. In Japan and Malaysia, Burma advocacy groups have so far won limited public support, and Nippon-Mitsubishi and Petronas therefore face no major problems. Burma advocacy groups are gaining support in France, but from a low base, and TotalFinaElf has benefited from strong government support. By contrast, in April 2000 the British government told Premier that it would prefer the company to withdraw from Burma as soon as possible. However, of all the companies, it is Unocal that faces the greatest legal and political challenges (see Box 2).

Both consortia have tried to defuse criticism by pointing out that local people benefit from social projects associated with the pipeline, as well as from employment opportunities. For example, in 2001 Premier published its first Social Performance Report, which reports on the social impact of its Burma project as seen by local villagers, as well as giving details of its partnership with Save the Children Fund (USA). The report was verified by the Corporate Citizenship Unit of Warwick University's Business School.

The interviewees for the report did not include refugees in Thailand who are said to have been displaced as a result of the pipeline construction, although the company says that it may include them in future. Moreover, the scope of the report is limited to the immediate impact of the pipeline rather than addressing wider

issues. As Premier's Dr Richard Jones argues, 'It's not our company's role to question the money going to the government or what use it makes of it.'⁴ Jones' comment highlights the dilemmas of petroleum companies operating in controversial states such as Burma. In both commercial and NGO circles it was formerly accepted that it was inappropriate for companies to influence government policy on non-commercial issues. In practice, Western critics now hold petroleum companies responsible both for the behaviour of government forces acting on their behalf and – by extension – for the host government's use of revenue they help produce.

Garments

Unlike oil and gas, garment manufacturing requires a relatively low initial level of investment, and it is even more susceptible to consumer pressure.

In the early 1990s Burma's garment industry expanded rapidly, as companies took advantage of the country's cheap labour supply. As noted above, the industry was weakened by US boycott campaigns from the beginning. Nevertheless US garment imports from Burma increased from \$168m in 1999 to \$454m in 2000: customers reportedly included the Pentagon's Army and Air Force Exchange Service.⁵

The Free Burma Coalition has

⁴ David Buchan, 'Spinning and pumping', *Financial Times*, 16 May 2001.

⁵ Steven Greenhouse, 'Pentagon and Clinton at odds on Burma trade', *International Herald Tribune*, 20 December 2000; Barry Wain, 'Myanmar faces dual blow from US proposed ban', *Wall Street Journal*, 9 July 2001.

responded by reviving its boycott campaign, and increasing political pressure. In September the US Senate was due to debate a bill tabled by US Senator Tom Harkin calling for sanctions on all US imports from Burma. Boycott campaigners point to the low wages paid to employees to argue that the factories constitute a form of exploitation, but poorly paid work may be better than none. US campaigns will not destroy the industry, but they certainly limit its prospects for expansion.

Tourism

Burma's natural beauty and potential for tourism are obvious, and there has been significant government and foreign investment in new hotels since in the early 1990s. Despite this, occupancy rates in Rangoon's new hotels remain low. Campaigns by foreign pro-democracy groups are part of the reason.

The UK-based Burma Campaign and Tourism Concern have focused on this area, taking on Lonely Planet, the publisher of backpackers' guides, as a symbolic target. They argue that tourist income boosts the SPDC regime directly and indirectly. Tourists entering the country are required to exchange a minimum of \$200 for Foreign Exchange Certificates (FECs), a form of parallel currency pioneered – and now dropped – in China. The profits from this transaction go directly to the government. Moreover, many of the leading hotels are believed to be associated, directly or indirectly, with leading figures in the regime.

The activists appear to be winning the argument: in 2000 there were 234,900 tourist visitors, a decrease of 9.3% compared with 1999.⁶ In the same period there were 9.5m tourist visitors in neighbouring Thailand.

Development agencies

Meanwhile, international development agencies and NGOs grapple with their own engagement dilemmas. Historically, Burma has been a major rice producer: no one starves. However, a combination of conflict and mismanagement has contributed to malnutrition, high infant mortality rates and a growing HIV/AIDS problem. As long ago as 1990 UNICEF representative Rolf Carriere argued that Burma faced a 'silent emergency'.⁷ Its crisis was not as visible as flood, fire or

⁶ Angela Takats, 'Tourists face Myanmar dilemma – boycott or rough it', Reuters, 16 May 2001.

⁷ Carriere's 1990 conference paper was published in revised form as: 'Responding to Myanmar's silent emergency', in Peter Carey (ed.), *Burma: The Challenge of Change in a Divided Society* (Basingstoke: Macmillan, 1997), pp. 209–34.

famine, but there was nevertheless an urgent need for substantial humanitarian aid.

However, Burma receives no more than a trickle of foreign assistance. Western countries have yet to resume bilateral programmes that were shut down in 1988. Nine UN agencies, including the United Nations Development Programme (UNDP) and UNICEF, maintain offices in Rangoon, but their projects are relatively small-scale. Since the mid-1990s some 20 international NGOs have begun operations in Burma, but this is a mere fraction of the number of agencies working in neighbouring countries.

The arguments for and against the involvement of international agencies have paralleled those concerning business engagement.⁸ Critics maintain that the presence of international agencies boosts the government's political credibility. If development agencies help with the country's health and education programmes, they make it easier for the government to spend more on weapons. Moreover, just as foreign companies find it difficult to identify suitable joint venture partners, NGOs are hard pressed to choose local partners who have both the necessary organizational skills and a degree of independence from the regime. And tortuous government bureaucracy has proved as troublesome for aid agencies as for their commercial counterparts.

In the mid-1990s, the UNDP announced that it planned to concentrate on grassroots programmes, minimizing its involvement with the government at a national level. Most of the few international

⁸ For an NGO inside view see David Tegenfeldt, 'International non-governmental organizations in Burma', in Robert H. Taylor (ed.), *Burma: Political Economy under Military Rule* (London: Hurst, 2001), pp. 109–18.

NGOs in the country have followed suit, with small-scale programmes on issues such as primary health care and AIDS prevention. Some have gone so far as to seek informal approval from Aung San Suu Kyi before beginning operations.

An internal UN assessment leaked to the Thai press in August 2001 pointed out that there were at least 500,000 HIV cases in Burma; 25 per cent of newborn babies were underweight; and one in three children would be malnourished by the age of five. It went on to argue that 'humanitarian assistance is a moral and ethical necessity as well as an obligation of the international community'. Burma receives \$1 of foreign aid per capita, compared with Cambodia's \$35 and Laos' \$68. The UN subsequently denied that the paper amounted to an official call for sanctions to be lifted.⁹ However, international assistance on the scale that is needed is unlikely to come about without substantive political change.

Outlook and policy implications

Burma may be a key case study in the wider debate on sanctions versus constructive engagement, but it remains a particularly tough one. The 'new diplomacy' of the Burma advocacy groups will remain an important factor in Western governments' policy-making and, still more, in companies' investment decisions. However, it is difficult to demonstrate that either confrontation or commercial engagement has made a decisive impact on SPDC policy. It is possible to argue that neither approach has been tried with sufficient consistency to ensure that it works. In any case, the military leadership remains

⁹ AFP, 'UN denies that agencies in Myanmar want sanctions lifted', 7 August 2001.

primarily preoccupied with personal and institutional survival, and this makes it less susceptible to foreign influence from any quarter.

The fact that talks between Aung San Suu Kyi and the SPDC are apparently taking place is a positive development, but it may be unrealistic to expect a sudden or decisive breakthrough. Progress is more likely to be gradual and incremental.

Meanwhile Western companies operating in Burma will continue to face significant political risks, not just in the host country but also from consumers and their home governments. Few mainstream Western companies are likely even to consider new investment without some move towards a political settlement. Development agencies will face similar risks although – in view of the obvious humanitarian need – the collective view appears to be moving more towards some form of cautious engagement with Burma.

Whatever happens, Burma will continue to face major problems because of the shortage of institutional capacity and administrative skills outside the armed forces. There are some signs of an emerging civil society, for example in ethnic minority regions where the churches have played a more important role than in Burman-majority areas. However, even in the most positive scenario, it will take time to build up the country's technical and administrative skills.

International business and development agencies may one day play a critical role in developing these skills and promoting Burma's eventual economic and social revival. The need is clearly urgent, but they will not be able to operate to best effect until the political conditions are right – both in Burma and internationally.

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