

Burma¹

Crippled for years by a military junta that refuses to accept the results of elections won by Aung San Suu Kyi's National League for Democracy (NLD) in 1990, Burma represents one of the world's most difficult democracy promotion challenges. After years of international condemnation, sanctions, and ineffectual special envoys, hardliners remain in control, leaving the international community searching for new options for effecting a genuine transition to democracy. Suu Kyi remains an international icon of the freedom movement, even as her ability diminishes to wrest Burma free of the junta's increasingly desperate maneuvers to stay in control. This chapter charts the extensive array of measures adopted by the international community against the Burmese regime since 1990, and argues that a new approach should be adopted by the community of democratic nations. This should build on the momentum of the 2005 Havel-Tutu Report,² and tackle the controversial issue of a transitional power-sharing arrangement as a realistic way out of the current stalemate.

Background

After a 1962 military coup, economic and political conditions in Burma steadily deteriorated until March 16, 1988, when students led protests in the capital city of Rangoon. These began as a small riot in a tea shop, but soon metastasized into a full-blown protest against the status quo. The government responded with force, killing dozens and inadvertently sparking sustained protests throughout the spring. The calls for regime change culminated in a massive uprising on August 8, with the movement finding

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2 "Threat to the Peace: A Call for the UN Security Council to Act in Burma," September 20, 2005. Commissioned by Vaclav Havel and Bishop Desmond Tutu; prepared by DLA Piper Rudnick Gray Cary LLP (hereafter Threat to the Peace). Jared Genser, the report's coordinator, argues that recent UN Security Council activity regarding Burma has opened up a new window of opportunity absent for 15 years. J. Genser, "Burma's Road to Peace," *Far Eastern Economic Review*, December 2005, p. 2.

a leader in Aung San Suu Kyi, the daughter of former nationalist leader General Aung San. Suu Kyi became famous after speaking to a rally of nearly half a million democracy supporters at Shwedagon Pagoda in Rangoon on August 26.

On September 18, a military junta deposed General Ne Win's Burmese Socialist Program party and established the State Law and Order Restoration Council (SLORC). The SLORC declared martial law and used the armed forces to impose control throughout the country, a process which left 3,000 dead and caused 10,000 to flee into the hills of the border with Thailand. This coup merely replaced one set of military officers with another.³

The SLORC would bring a number of changes to Burma, including opening up the resource-rich country to foreign direct investment (FDI) and altering the name of the country to Myanmar.⁴ However, the new junta remained as oppressive as its predecessor, and committed a number of human rights abuses including torture, forced labor, abuse of women, enforced disappearances, and summary execution. Seeking to quell the possibility of further uprisings, the army placed Suu Kyi under house arrest on July 20, 1989.

In response to growing international pressure and believing it would win, in May 1990 the SLORC held national parliamentary elections. Although Suu Kyi herself was unable to participate in the elections, her National League for Democracy (NLD) party won 392 of the 485 seats up for election. The SLORC, however, refused to call the parliament into session and jailed several activists, including many of those elected to parliament. Some elected members of parliament fled the country, establishing a government in exile that continues to work for restoration of democracy in Burma.

Suu Kyi won international acclaim in 1991 when she was awarded the Nobel Peace Prize, an event that raised her profile as a leading champion for democracy and human rights and helped provide a substantial boost to the legitimacy not only of her leadership of the Burmese opposition, but also to the cause for which she has labored incessantly since the mid 1980s. The SLORC has remained intransigent in their view that Suu Kyi and her party lack legitimacy.

3 D. Steinberg, *Burma: The State of Myanmar*, Georgetown University Press: Washington, 2002, p. 1.

4 The regime's opening up to FDI was not immediate, as Japan at the time was providing half of all economic support for the regime.

In January 1993 the SLORC established a National Convention to draft a new constitution and plan new elections. The 700-member body, including 120 elected members of parliament and chaired by a fifteen-member military commission, was divided into eight groups based on background and occupation. Each group was chaired by a military officer. The body met at intervals during the year and by September had produced a constitution giving power to the military. The constitution was approved by six of the eight subgroups; members of parliament and the representatives of political parties rejected the document. The National Convention continued to meet, serving as a quasi-legislative body, locked under the firm control of the military government.

In 1995 Suu Kyi was released from house arrest with certain restrictions on her movement and the activities of the NLD. The government made it clear that were she to leave the country she would not be allowed to re-enter. Many NLD members were forced to withdraw from the party and NLD offices were closed. In March 1996 the National Convention was adjourned following the withdrawal of the NLD in protest of the undemocratic proceedings.

Throughout the 1990s the regime focused intently on brokering cease-fire accords with nearly 30 ethnic groups. Signatories to the ceasefire have been allowed to keep their weapons and some of their territorial control and business activities, although renewed ethnic tensions may suggest that this alleged "achievement" of the regime is unraveling.⁵ The military government views this development as an indicator of its ability to be reasonable and statesmanlike, and also something that has fed its self-professed "savior of the nation" status.

The junta, now known as the State Peace and Development Council (SPDC), once again placed Suu Kyi under arrest in September 2000 after she traveled outside Rangoon, in violation of government-imposed travel restrictions. From October 2000 until 2002, Suu Kyi conducted something of a dialogue with the SPDC, which often consisted of little more than the regime calling her in and lecturing her. In conjunction with pressure from the international community, however, this process led to Suu Kyi's release from house arrest in May, 2002. At the same time the regime released several hundred political prisoners and re-opened 90 of the 400

5 More recently, the Mon state ethnic group has pulled out from the National Convention talks and the regime arrested Hkun Htun Oo and other Shan leaders on February 9, 2005. Fighting flared again in April 2006 between the military and the Karen ethnic group.

closed NLD offices. Suu Kyi was also granted permission to travel around the country.

The tenuous understanding between Suu Kyi and the SPDC ended in May 2003 when a group of government-sponsored paramilitaries attacked her caravan of supporters outside the northern village of Depayin. In the bloodiest confrontation in the country since 1988 – what has come to be known as Black Friday – scores of Suu Kyi’s supporters were injured and over one hundred killed (most estimates range between 75 and 150). While Suu Kyi herself managed to escape the massacre, she was detained and imprisoned at Insein prison. Many NLD offices were forcibly closed that day, and over 100 democracy activists were arrested. Universities, colleges, and schools were also closed to prevent protest. Although the regime released Suu Kyi from prison for medical reasons, she remains under house arrest.

In August 2003 General Khin Nyunt, formerly in charge of Burma’s intelligence community, became the prime minister, with the official title of Secretary One. Khin Nyunt was widely seen as a quasi-moderate within the regime, a “soft” hardliner, and in the eyes of the international community, someone with whom better relations could be conducted. In producing a new regime plan, Khin Nyunt promised to hold a National Convention in 2004 to draft a new constitution as part of a “road map” for constitutional and political reform. In May 2004 the NLD decided to boycott the convention due to the SPDC’s refusal to release Suu Kyi. The convention continued without the NLD but debate was severely restricted and the ruling junta demanded a continued leadership role for the military in any constitution.

In October 2004 Khin Nyunt was removed from office in a power play by a rival faction led by junta leader General Than Shwe. He was then replaced by Lieutenant General Soe Win, part of the younger generation of hardliners, who was involved in the May 2003 attack on Suu Kyi. Khin Nyunt had been viewed as a threat, especially once he expanded the powers of military intelligence and shifted control of cross-border trade from regional military commanders to a group of border security agents that he controlled. Than Shwe sided with the regional military commanders and succeeded in consolidating his power. In order to ensure that there would be no repercussions from Khin Nyunt’s supporters, the military intelligence organization that he commanded was also dismantled.

Despite removing Khin Nyunt from office, the SPDC claims to be continuing to pursue his “road map.” After suspending the National Convention in March 2005, the junta announced plans to reconvene the

body in October; by spring 2006 this had still not occurred. Additionally the SPDC continues to organize public rallies for junta-sponsored groups such as the War Veterans, the Fire Brigade, and the Union Solidarity and Development Association (USDA) - each of which regularly denounces the “internal and external destructionists” and praises the junta’s policies.

In perhaps its most bizarre and foreboding move yet, in November 2005 the SPDC surprised the world and its Southeast Asian neighbors by announcing the relocation of Burma’s capital from Rangoon to Pinyin, a small, remote underdeveloped town nearly 400 miles to the north. Apparently, the move was based in part on the astrological inclinations of the top generals, while some speculated that it was part of the regime’s attempt to inoculate itself from an American invasion as well as to keep a lid on future ethnic rebellions. The SPDC ended 2005 by announcing it was extending the terms of Suu Kyi’s house arrest for another year.

With civil society quiescent if barely extant, ethnic groups almost co-opted (via the recent ceasefires and their participation in the National Convention), and NLD members constantly harassed and imprisoned (if not killed or run out of the country), a hollowing out of Burmese society has been achieved by the regime.⁶ The military is effectively the only game in town. With ongoing violence, increased drug trafficking, the spreading of disease, and growing numbers of internally displaced persons and refugees, Burma represents an acute case of authoritarian stasis.

The International Response

The international responses to Burma’s ongoing political crisis have varied considerably.⁷ The United States (US), Canada, Japan, the European Union (EU), and the United Nations Secretary General have declared three aims: the release of Suu Kyi, the return of refugees to their homes, and meaningful steps toward democratic rule in Burma. The aims of the Association of South East Asian Nations (ASEAN) are similar, but this body’s time horizon is longer and preferred pace of change slower. China, India, and Thailand share a desire broadly to maintain the status quo, and

6 D. Steinberg, “Civil Society and Legitimacy: the Basis for National Reconciliation in Burma/Myanmar,” mimeo, October 10, 2004, p. 6.

7 This narrative section detailing the various international responses draws liberally from four sources, in addition to news reports: “Myanmar: The Military Regime’s View of the World” International Crisis Group, Asia Report No. 28, Brussels, December 7, 2001; Threat to the Peace, *op. cit.*; “Burma Briefing: Issues and Concerns,” Volume 1, Altsean Burma, November 2004; and “Ready Aim Sanction,” Special Report, Altsean Burma, November 2003.

to ensure that if some sort of transition is to take place it be gradual so as not to invite external intervention or send additional refugees across their borders. The responses of these various actors can be ranked from the most intense response to the most meager: from the US to ASEAN to the UN and finally to China, India and Thailand as the weakest.

Reactions to the Coup and Denial of Election Victory

In the wake of the 1988 coup, the US imposed graduated sanctions on Burma, suspending all economic aid with the exception of humanitarian aid and withdrawing trade preferences. The US also initiated a full-fledged arms embargo and decertified Burma as a “cooperating” state in efforts against narcotics, thereby denying the country anti-narcotics assistance. Furthermore, the US adopted a policy of opposing multilateral aid and loans, using its influence to block any assistance to Burma from international institutions such as the International Monetary Fund (IMF) and World Bank. Japan also quickly suspended development aid and economic cooperation “until Burma attains liberty and democracy.” It furthermore instituted a comprehensive arms embargo. However, Japan was also the first government officially to recognize the regime in February 1989, coupling this move with a resumption of aid disbursement on a case-by-case basis (although no new aid programs were created).⁸

The international community reacted negatively to the SLORC’s repudiation of the 1990 elections. The US failed to confirm two nominated ambassadors, in effect downgrading its diplomatic representation from Ambassador to Charge d’ Affaires, and Congress passed the US Customs Trade Act of 1990 requiring the imposition of economic sanctions if specific conditions on human rights and narcotics suppression were not met. A year later the US denied the renewal of a bilateral textile agreement and in 1993 suspended munitions export licenses under the Arms Export Control Act. In 1994 the US placed Burma on a list of “outlaw” states, which mandated that US funding for any UN agency be automatically reduced if the agency were to conduct programs in Burma; despite this the UN in fact continues to fund programs inside Burma.

The EU likewise imposed an arms embargo in 1990, and the year after instituted a range of measures, which included: the suspension of defense

8 Japan was the only country to officially recognize the SPDC, though in part because it was a way out of a diplomatic hard place – viz. at the Japanese emperor’s funeral not recognizing the new regime would have placed the SPDC next to the PLO in the seating arrangements (other countries did not need to re-recognize the regime).

cooperation, the expulsion of junta military personnel from its member states, a visa ban against top regime officials related to important governmental functions and their families, the suspension of high-level bilateral government visits to Burma, and the suspension of all non-humanitarian bilateral and multilateral aid. Japan also (re-)suspended aid in 1991 and furthermore created a set of guidelines known as “Fundamental Principles of ODA,” which tied its foreign policy more broadly to conditions relating to weapons procurement, military spending, democratic governance, and economic and environmental issues. After Suu Kyi’s release from house arrest in 1995 Japan responded by re-establishing foreign aid on a case-by-case basis. The year before it had provided new humanitarian aid to Burma as a reward for what Tokyo viewed as the regime’s progress in the form of its meeting personally with Suu Kyi.

When the National Convention was adjourned in 1996 following the NLD’s withdrawal to protest the undemocratic nature of the proceedings, the US Congress responded by blocking all assistance to Burma, with the exceptions of relief and anti-narcotics aid, and by suspending entry to its territory of any persons who formulate, implement, or benefit from policies that were impeding the transition to democracy in Burma. In 1997 President Clinton signed an executive order banning new investment in Burma; this measure, however, allowed pre-1997 investment to continue and even increase.⁹ Washington also suspended all forms of non-humanitarian bilateral assistance.

In 1996 the EU agreed on a Common Position on Burma. This formalized the arms embargo, expulsion of Burmese military personnel from EU capitals, and suspension of economic aid; widened the visa ban on Burmese officials; imposed a freeze on the funds of those affected by the visa ban; added an export ban on any equipment that might be used for internal repression; and suspended high-level governmental visits to Burma. Two years later the visa ban was extended to prohibit entry and transit visas to senior officials and to extend the ban to include the tourism administration. In addition to its Common Position the EU removed its General System of Preference trade privileges from Burma, citing forced labor practices, and made a statement that tourist visits to Burma were now seen as inappropriate. Apparently offsetting these punitive measures, a year later the EU stated a desire to establish meaningful dialogue with the SPDC.

9 Executive Order 13047 – Prohibiting New Investment in Burma, May 20, 1997.

Contrary to these efforts to isolate the regime, ASEAN moved in 1997 to invite Burma to join the organization, most likely in an attempt to curb China's influence over its neighbor, but in no small part also to rebuff US meddling in the region. The decision also reflected more traditional considerations. Burma was already a major trading partner with ASEAN, offered a bevy of energy-rich resources, had potential for outsourcing labor, and was gaining an upper hand on secessionist movements and violence. After inviting Burma to join, ASEAN governments defended the SPDC in international forums, thus failing to live up to their professed commitment to "deal with Burma once it is in the family."

The UN first took concerted action in 1998 when the General Assembly empowered the Secretary General to appoint a UN Special Envoy.¹⁰ After the SPDC once again placed Suu Kyi under arrest in September 2000, the UN sent a new Special Envoy, Malaysian diplomat Tan Sri Razali Ismail, to promote dialogue between the SPDC and the opposition.¹¹ Prior to this the UN member states had staked out a position vis-à-vis Burma, having annually adopted resolutions in the General Assembly and Human Rights Commission for fourteen years that called not only for the release of Suu Kyi but also for a cessation of SPDC repression and a tripartite dialogue between the government, the NLD, and ethnic group leaders. In 2005 the Human Rights Commission also appointed a Special Rapporteur on Burma.¹²

Over the course of twelve trips to Burma, Razali brokered secret talks between the SPDC and Suu Kyi that led to the release of a number of political prisoners and a modicum of increased freedom for the NLD – although it would take two years until Suu Kyi was released. However, the ascendance of hardliners in the junta and the Depayin Massacre proved a major setback for Razali. In March 2004 the SPDC banned him from entering Burma. This and other inactions led the Secretary General to pro-

10 UN mediation efforts began with the appointment in 1998 of Special Envoy Alvaro De Soto. De Soto's mission, however, proved stillborn when a U.S. newspaper's disclosure of his efforts prompted a considerable backlash from the SLORC. De Soto's plan was to trade aid to Burma through the World Bank for dialog with the NLD, release of political prisoners, and access for the Red Cross.

11 The basis was a UN General Assembly resolution that authorized the Secretary General to appoint a second Special Envoy. UN General Assembly, Situation of Human Rights in Myanmar, A/RES/59/263, December 23, 2004.

12 UN Economic and Social Council, Commission on Human Rights (61st Session, Agenda Item 9), Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World – Situation of Human Rights in Myanmar, E/CN.4/2005/L, April 29, 2005.

nounce that there were serious doubts as to whether the UN would be able to play a productive role and facilitate the reconciliation consistently called for in various UN resolutions. Razali resigned in January 2006.

Under continued pressure from the international community, Suu Kyi was released from house arrest in May 2002. Several international delegations visited Burma in the aftermath, including Professor Paulo Sergio Pinheiro, the UN Commission on Human Rights Special Rapporteur on Myanmar, and the International Labor Organization (ILO) High Level Team. Pinheiro has achieved little in the way of dialogue (though perhaps minimal success in the area of access for the Red Cross) and his saga in broad terms mirrors Razali's in its result. Than Shwe refused to meet with Pinheiro on a number of his trips, and on a visit during April 2003 Pinheiro left promptly after finding listening devices while he was interviewing prisoners at Insein prison. The SPDC imposed an active ban against further visits in November 2003. Pinheiro's report concluded human rights had deteriorated even further and called for reduced restrictions on political parties and early prisoner release.

International pressure on Burma continued with the EU extending its existing sanctions to target more people linked to the economic and political activities of the SPDC. The EU responded to Suu Kyi's re-arrest by publishing the list of 153 persons affected by its visa ban, freezing the assets held abroad by those on the list, and banning the export of equipment from the EU that could be used for internal repression or terrorism. Other countries, such as Thailand, called for greater efforts to support the SPDC if it were to begin to move toward reconciliation with the NLD.

The International Labor Organization (ILO) has adopted a vigorously critical stance against the regime. ILO efforts to eliminate the SPDC's forced labor practices – including through various restrictions on business activities – have achieved a modicum of success. In late 2000 the SPDC made public a stiffer ban of forced labor in response to threatened sanctions from the ILO, specifically a boycott by international trade unions (beyond the official “review” Burma had been placed under). Two years later, the regime permitted an ILO Liaison Officer to begin working in Rangoon and steadily thereafter marginal additional progress has been achieved, notably just ahead of ILO Governing Body meetings. The ILO again threatened action against Burma when the regime sentenced three people to death in early 2004 for seeking contacts with the ILO, succeeding in having one sentence commuted to life imprisonment and three-year sentences imposed for the other two individuals.

Black Friday

The event that spurred the most negative international response was Black Friday in May 2003. The harshest reaction came from the US, which passed the Burmese Freedom and Democracy Act after the SPDC refused to engage in talks with the opposition and once again imprisoned Suu Kyi. The act placed an import ban on Burmese products, froze all assets of the SPDC and senior SPDC officials, expanded the visa ban on SPDC officials, prohibited any remittances to Burma, and pledged support for democracy activists. Later the law was changed to allow educational materials and works of art to be taken into Burma.

The EU called for the immediate release of Suu Kyi, the prosecution of those responsible for the attacks, and further reconciliatory dialogue, and urged the UN and ASEAN to continue to exert influence on the situation. Moreover, it moved to extend the scope of the visa ban and asset freeze, strengthen enforcement of the arms embargo, reiterate the suspension of non-humanitarian aid, suspend development programs, and withdraw all military personnel of EU member states. Japan, which prior to 2003 had been moderately engaged with the SPDC and had been providing significant amounts of aid, toughened its rhetorical opposition to the holding of political detainees and placed a moratorium on new bilateral aid (except for humanitarian projects), although existing aid projects were continued.

In the only country-specific statement of its kind, the Community of Democracies Convening Group called for Suu Kyi's immediate release after the Depayin Massacre and appealed to the military authorities to re-establish democracy.¹³ This followed earlier efforts to give Burma a special place on the Community of Democracies agenda at the latter's Warsaw and Seoul meetings when foreign ministers heard a direct videotaped appeal from Suu Kyi to "use your freedom to defend ours."¹⁴

ASEAN, which rarely criticizes its member's internal affairs and has no democracy mandate, issued a sharp rebuke of Suu Kyi's detainment and

13 Declaration of the Convening Group of the Community of Democracies on the Situation in Burma, June 17, 2003, available at <http://www.cdemo.cl/cdemoing/pdf/BURMA.pdf>.

14 In her videotaped appeal presented in Warsaw, she said: "We would like to urge the peoples of the free world to work harder towards bringing true democratic progress everywhere. We would like to see action, rather than words. There have been many words supporting democracy, and we are duly grateful for them, because we do not underestimate the power of words. But words need to be backed up by action – by action that is united and that is focused on essentials. Only by such action will we be able to realize our democratic aspirations." Available at <http://www.ncgub.net/Daw%20Aung%20San%20Suu%20Kyi/Community%20of%20Democracies%20Conference%20-%2026%20June%202000.htm>.

called for the latter's release during its annual meeting. Additionally the nine foreign ministers in attendance at the meeting informed their Burmese counterpart Win Aung that they wanted Suu Kyi released as soon as possible. In the lead up to the October 2003 ASEAN summit, Thai Foreign Minister Surakiart Sathirathai and Indonesian Special Envoy Ali Alatas visited Burma for talks with the junta to press for the release of Suu Kyi. These two parties were concerned that the upcoming summit would be overshadowed by Burma's domestic issues. In June 2004 Malaysian parliamentarians also formed a committee of members of parliament to press for democracy in Burma (Malaysia had been the prime sponsor of Burma's entry into ASEAN). The committee was composed of both government and opposition members, including several individuals close to Prime Minister Abdullah Badawi. Announced less than a week after Khin Nyunt's visit to Malaysia, the committee urged Burma to hold free and fair elections and release all political prisoners.

Burma's first official participation in an Asia-European summit (ASEM) was scheduled for October 2004. Prior to this meeting some EU leaders, and particularly Tony Blair, threatened to boycott the summit if Burma sent a representative. EU foreign ministers agreed to Burma's participation at a level below head of state/government; they further agreed that additional sanctions against Burma would be put into effect if the SPDC failed to release Suu Kyi and open the National Convention to NLD participation in advance of the ASEM meeting. When this did not take place, Blair sent a deputy in protest, and French President Jacques Chirac, while in general opposed to further sanctions, did not attend a welcoming ceremony for the Burmese representative. In late October, the EU Council revised the Common Position to extend the visa ban to all those in the Burmese military holding the position of brigadier general or higher and prohibiting EU companies from investing in Burmese state-owned enterprises.

Although not as influential as events under UN and ASEAN auspices, the decision of the Global Fund to Fight AIDS, Tuberculosis, and Malaria to cancel an \$87 million program in Burma was a notable measure. The August 2005 decision, made without engaging the regime in discussion or negotiation, was a direct response to the SPDC's new restrictions on travel and the import of medical supplies (direct pressure from the US also played a prominent role). Although members of the democracy promotion NGO community were supportive of this move, diplomats in Rangoon and humanitarian NGOs opposed it, arguing that they continue to be able to operate usefully and independently of the government.

The UN decided to search for replacement funds for fighting the three diseases, and in December the EU decided to quadruple its humanitarian assistance to Burma (to roughly \$10 million). This aid was to target primary health care and malaria control, as well as water and sanitation services in the central dry zone of Burma. Officially, the EU's humanitarian arm ECHO (European Commission Humanitarian Aid Office) claimed that the decision was unrelated to the Global Fund's contrary decision to cancel funding; however, this claim was widely disbelieved. ECHO opened an office in Rangoon better to assess needs and monitor projects.

Burma was scheduled to assume the rotating chair of ASEAN in 2006. The EU and US promised to boycott the ASEAN summit if Burma did not make efforts to transition to democracy and release Suu Kyi. Fearing a Western boycott, and concerned about worsening relations with the EU and US, many member nations of ASEAN, including Singapore, Malaysia, Indonesia and the Philippines, expressed discomfort over Burma taking the organization's chair. Burma bowed to pressure from these nations and relinquished the chair in July 2005. The alphabetically rotating chair then passed to the Philippines, although ASEAN released a statement saying that once Burma was ready to take up its turn as ASEAN chair, it would be allowed to do so.

It was unclear how relinquishing the ASEAN chair affected the SPDC. On one level, SPDC officials argued that the United States and EU had "played right into our hands," by giving them the option of deferring the ASEAN chair instead of releasing Suu Kyi. Additionally, turning down the chair prevented the SPDC from having to confront the foreign press who would be covering ASEAN meetings. Conversely, there was evidence that the regime was looking forward to the high profile role so as to garner greater regional and international respect; government investment had already commenced to prepare for the summit, including a considerable amount of work at the capital's airport.

The final months of 2005 witnessed ASEAN adopting an even more critical posture. Ahead of the 2005 summit in Kuala Lumpur, Malaysian Prime Minister Abdullah publicly called for an ASEAN delegation to visit Burma, while Philippine President Arroyo made similar suggestions. ASEAN's chairman, Malaysian Foreign Minister Syed Hamid, expressed a need to visit Suu Kyi and see direct evidence of reform in Rangoon, while Malaysian cabinet minister Nazri Aziz compared the SPDC to the Hitler and Stalin regimes. In addition, a group of parliamentarians in the ASEAN Parliamentary Caucus called for ASEAN to expel Burma if its

human rights situation had not improved after a year, further demanding the Secretary General to report back regularly to ASEAN members.

Although the December 2005 summit itself did not include Burma on its formal agenda, the gathered heads of government discussed the country's situation for an hour over an informal dinner on the eve of the summit. What resulted came as a surprise to some: demands that the SPDC begin taking real steps toward democracy, fully implement its road map, and release Suu Kyi and all other political prisoners. Various leaders spoke candidly to Prime Minister Soe Win of the SPDC. Indeed, Burma acted with surprising alacrity by inviting ASEAN's chair, Malaysian Foreign Minister Syed Hamid, to visit Rangoon, leaving open the possibility of a meeting with Suu Kyi. Syed Hamid was quoted by Reuters as saying "The road map must have not only the road; there must be some signs along the way. There must be a timeline that they must work on." Three months later, Syed Hamid arrived in Rangoon and met with junta officials but was denied a visit with Suu Kyi and left a day earlier than scheduled.¹⁵ He was scheduled to brief ASEAN foreign ministers on his findings during their April 2006 summit in Bali. At the East Asian summit immediately following the ASEAN summit, a Korean foreign ministry official said Korea told Burma directly that good relations depended on further democratization.¹⁶ And Kofi Annan announced afterward that the UN welcomed the invitation to Rangoon and that he would personally be in touch with Syed Hamid.

Burma's other neighbors – China, India and Thailand – have consistently operated as enablers of the regime. China is the SPDC's staunchest ally, although at times it has encouraged reforms. China supplies the regime with arms, conducts significant trade with Burma, and protects it in international forums, while maintaining a substantial on-the-ground diplomatic presence in the country. Thailand also has regional interests in Burma, particularly in quelling unrest and other problems across the sprawling border the two states share. Thailand has supplied the SPDC with substantial trade and aid, while tightening its border against displaced persons and refusing to interfere in the regime's internal affairs. India has recently embraced the SPDC to protect its regional interests in Burma, not

15 Hamid noted that Burma's neighbors can only continue to defend the regime internationally if they can report back that there is progress towards reform. BBC News, "Malaysian FM Cuts Off Burma Trip," March 24, 2006.

16 Korea has provided some \$120 million in aid since President Kim Dae Jung reinitiated Korean aid to Burma.

least for border security reasons, naval interests, and a growing sense of competition with Chinese influence in the region. India has supplied substantial trade and aid to the regime, including arms, and despite being the world's largest democracy, has not been supportive of the pro-democracy movement in Burma.

Numerous individuals and groups, frustrated by the inefficacy of disparate efforts to influence the SPDC's behavior, have been calling on the UN, and particularly the Security Council, to take more concerted action. Support for specific action in the Security Council has come not only from the NLD and the Burmese government in exile, but also from various parliamentarians from around the world and several Nobel laureates. Momentum since 2005 has in particular coalesced around the Havel-Tutu report, "Threat to the Peace," which in turn has galvanized even greater support at government (US, EU, Australia) and UN levels. The Havel-Tutu report asserts that Burma clearly meets the "threat to international peace and security" criterion for Security Council action.¹⁷

Further suggesting that the tide appears to have begun turning against Burma at the UN, in December 2005 the US delegation lined up the necessary nine votes, and in fact even a tenth, in favor of placing Burma on the Security Council's agenda. US Ambassador Bolton opted to wait to push for formally placing Burma on the agenda in deference to Chinese and Russian willingness to accept a proposal for the Security Council to hear an informal report on Burma behind closed doors. The briefing took place, with the Secretary General present, on December 16, 2005.

By early 2006 all eyes were on ASEAN and the UN. At the UN there is wide expectation that the US will push for a formal Security Council debate on Burma by mid-2006. If this were to succeed without sustaining a veto from one of the permanent members, the ground would be laid for a Security Council resolution; overcoming Chinese and Russian opposition is the key in this regard. Momentum at the UN positively affected ASEAN's recent movement on Burma, including the March 2006 ASEAN delegation visit to Rangoon. A positive development in either of these supranational bodies will likely have a similarly positive effect on the other.

In sum, the international community has undertaken a wide range of activities in recent years in response to the political crisis in Burma, particularly in the wake of an intensified internal crackdown in 2003. The US has taken the lead, with Canada and the EU also active in adopting criti-

¹⁷ See Chapter 7 of the UN Charter.

cal measures. Japan has been somewhat less active and critical. Most significant has been ASEAN's recent, if cautious, move beyond its traditional staunchly non-interventionist approach. The willingness of several states to take the Burma issue to the UN Security Council is also noteworthy. However, much like the special envoys to the SPDC, such efforts still need much further development before they have any prospect of putting significant pressure on the Burmese regime.

Assessing the International Response

The international response to the stalled democratization process in Burma is best described as mixed. The intentions of key members of the international community of democratic states to press for change have firmed up, but the measures so far adopted have been ineffective in terms of outcomes. Key democracies like the US, Canada, and the EU have taken the very actions that Suu Kyi and the NLD have called for. Indeed, Suu Kyi specifically made a plea for international sanctions against Burma so as to provide the NLD something to bargain with in its negotiations with the regime. It would thus appear that by supporting the Burmese opposition's wishes the international community has bolstered the position of Suu Kyi and the NLD, and given them a substantial international platform whose legitimacy was cemented when Suu Kyi won the Nobel Peace Prize in 1991. Even though SPDC leaders have continually viewed Suu Kyi with disdain and bereft of domestic legitimacy, they have refrained from what could have been even worse attacks against her, because of both her father's legacy and the immense importance the international community has placed on her well-being.

In 1988 the international community, with the reactions of Japan, Canada, and the US at the forefront, began to take action over the crisis in Burma. Over the course of the next fifteen years these states gradually ratcheted up pressure on the regime, never directly in sync but certainly with a shared sense of the strong need to take a meaningful stand against the junta's oppression. The specific intention of these early efforts was to apply enough pressure on the regime, using symbolism and particularly sanctions, to persuade the junta to release Suu Kyi and implement the results of the 1990 elections. The fact that in the early 2000s the junta's top leaders engaged in secret talks with Suu Kyi seemed to confirm that this approach was having some modest desired effect. While not all important governments around the world took this stand, and while those that did can be faulted for often reacting slowly, from the standpoint of intent the international community has been fairly successful in living up to its

commitments “to work together to promote and strengthen democracy,” as set forth in the Warsaw Declaration.

From the perspective of efficacy, however, the picture of the international community’s response is dismal. Events inside Burma have not transpired as intended by those who have sought to come to Burma’s aid. If anything the SPDC has tightened repression partly in response to western sanctions. Suu Kyi remains under house arrest; NLD members are harassed, in hiding, or in prison; the legitimacy of the 1990 elections has lost its practical utility; the best hope for a positive role by the SPDC – former Prime Minister Khin Nyunt – was removed by the hard line junta leader Than Shwe; and the National Convention has atrophied and is no longer even scheduled to be convened. In terms of efficacy the quality of response, to date, has been poor.

In evaluating the international response, one must take into account the particular mindset of the current regime. The SPDC appears dug into its position of power as deeply as ever.¹⁸ Indeed, one can safely conclude that the SPDC has actively and successfully thwarted external efforts to pressure it into negotiating with the opposition, let alone voluntarily giving up power.¹⁹ In the eyes of Than Shwe and his contemporaries, Suu Kyi and the NLD are almost completely lacking in legitimacy. All indications are the SPDC intends to keep her bottled up for the foreseeable future. The SPDC generals in fact view themselves as Myanmar’s wholly legitimate leaders, evidenced *inter alia* by a penchant for snubbing outsiders whenever they see fit.²⁰ Believing quite literally that the country will disintegrate without them is perhaps their greatest motivation for holding onto power. This self-image of the regime is staunch enough that the generals and their families and associates are not even as traditionally corrupt as one might expect. Further complicating the international response is that the ruling junta is unique among the world’s remaining undemocratic governments in its collective lack of education. Unlike Cuba,

18 Sanctions or Engagement, op. cit., p. 7.

19 “[S]anctions freeze a situation that does not appear to contain the seeds of its own resolution. The military, despite its many policy failures, has stayed in power since 1962, and there are no indications that external pressure has changed its will or capacity to do so for the foreseeable future. On the contrary, sanctions – so long as they are not universally applied ... confirm the suspicion of strongly nationalist leaders that the West aims to dominate and exploit Myanmar, and strengthen their resolve to resist.” Sanctions or Engagement, op. cit., p. ii.

20 Sanctions or Engagement, op. cit., pp. 10-11; Regime’s View of the World, op. cit., pp. 4-8.

Zimbabwe, and North Korea – whose educated leaders have deftly played their weak hands against the international community – Than Shwe and his cadre have merely grade school educations. Being ill informed to this degree is precisely what makes the regime not only unfathomable but also unpredictable. It is thus incumbent on the international community to find a way to relate to the regime on its level.

While the international democracy community is fairly united and efforts related to bringing Burma before the UN Security Council have been extensive, building up significant diplomatic momentum in the process, prospects for the success of traditional pressure approaches look bleak. Even if the regime's critics, for instance, were to gain all they seek in the UN forum - including a strong resolution, unanimity on the Security Council, punitive sanctions, and an active diplomatic role for the Secretary General - it is unlikely that this would suffice to kick-start a transition to democracy in Burma. Indeed, it would seem that current efforts by the active members of the international community are on something of a road to nowhere.

On this level it would appear that efforts of local reformers, Suu Kyi and the NLD have been somewhat hindered by the international community's response. US influence has waned.²¹ In response to the 2003 tightening of sanctions, Than Shwe and his cadre have turned away from the West and concentrated on promoting ties and friendship with China and others in the region. In essence America's punitive measures have backfired, engendering nearly the diametrically opposite effect of what was intended. Even among lower-ranked, more pragmatic officers there has been a revival of the bunker mentality that sees Burma's interests being best looked after by going it alone. The EU, Canada, and Japan are being tarred with the same brush, partly because each too has broken links or strengthened sanctions since 2003, and partly because they are viewed as allies of the US. Relations with Japan have also cooled, significant in light of Japan's erstwhile closeness to the Ne Win regime and talk of its "special relationship" with the SLORC.

Despite the antipathy elicited by sanctions, the SPDC has not entirely closed the door to external influence. In fact, "its leaders harbor a deep-seated wish to be accepted as equals by the developed countries."²² It is the current regime that has taken steps toward opening up Burma, particular-

21 "Myanmar: Sanctions, Engagement or Another Way Forward?" International Crisis Group, Asian Report No. 78, April 26, 2004, p. 8.

22 Regime's View of the World, op. cit., p. 12.

ly the economic sector; the SPDC is keen to attract foreign investment, including Western technology and capital. Thus, although the regime is among the most resistant to external pressure anywhere in the world and fairly autarkic in mindset, it does indeed yearn for respect from its Western counterparts – especially the U.S. – even while it insists on conducting its affairs in its own way, thinking nothing of snubbing outsiders if necessary.

Intensified moves and some progress towards getting Burma on to the UN Security Council agenda could prove significant. An earlier small wave of momentum had ebbed due to the collapse of the NLD-SPDC dialogue brokered by UN Special Envoy Razali. Prior to late 2005 the UN was feckless; moreover, it too has been unable to escape being tarred with the anti-American brush, which has harmed the prospects of its activities.²³ Nonetheless, the SPDC at least has kept its door open to the UN.²⁴ The fact that China in particular did not oppose the UN Secretariat's informal report on Burma to the Security Council represents something of a small breakthrough. The US delegation will have to monitor the situation over time to assess whether China would veto a formal agenda move, but there is at least the possibility that Beijing is concerned enough about the problems Burma is causing across its border to join the emerging consensus on defining the regime as a threat to international peace and security, as required for Security Council action.²⁵ With Ambassador Bolton planning to push for a formal Security Council debate by mid-2006, the desire to deflect possible vetoes by either China or Russia has been the immediate matter of concern.

While China, India, Malaysia, and Thailand would appear to have the most leverage over the SPDC, it is unrealistic to expect much if any assistance in terms of sanctions or proactive diplomacy from these governments. China may shift position to a limited degree, but any sort of significant public censure is unlikely. Thailand has attempted to elicit change from the regime, but the generals have been indifferent to Thai threats and leverage is limited due to Bangkok's economic interests and its need for junta cooperation on controlling drugs, illegal immigrants, and refugees in the border region. Malaysia has been important from the mid 1990s, as former Prime Minister Mahathir was a great champion of Burma. Since

23 Threat to the Peace, *op. cit.*, p. 67.

24 Sanctions or Engagement, *op. cit.*, p. 8.

25 Regime's View of the World, *op. cit.*, p. 23. China sells arms to Burma and extracts an immense amount of cheap natural resources from it, but it also is suffering from increased HIV rates, a growing drug trade, and possibly SARS whose sources are all Burmese.

his departure Malaysia's dissatisfaction with Rangoon has grown, and it has been pivotal along with Indonesia in altering ASEAN's approach to Burma. India would seem most pliable to alter its cooperative stance with the regime; indeed, India operates a two-track approach of officially cooperating with the SPDC at the government level while allowing Indian groups and individuals to criticize the regime. India is highly concerned about an alliance between Burma and China, which mitigates prospects for change; however, India is a close American ally and could respond to strong US pressure.

The key to external action, however, still resides among Burma's fellow members of ASEAN. ASEAN states exerted significant influence to deny Burma its role as ASEAN rotating chair in 2006, while pressing Burma to show progress in resolving the domestic deadlock ahead of assuming the organization's chair. ASEAN evidently was embarrassed by Burma's inaction and how its addition to ASEAN, rather than bolstering the regional body, has instead engendered alienation from the West. ASEAN governments' unexpectedly strong stance against the SPDC at their December 2005 summit in Malaysia bodes well. The fear was that ASEAN would revert to upholding its long-cherished non-interference principle after the Burma chair episode; on the contrary, ASEAN has moved further along the spectrum toward greater interference. That host country Malaysia individually, and in concert with its peers, has taken such a strong public stand against the SPDC is significant - a sharp U-turn from the days when former Prime Minister Mahathir championed the SPDC at every turn.

According to the ASEAN Secretary General, Ong Keng Yong, and Malaysian Prime Minister Abdullah, the additional pressure applied to Burma came directly from US and EU pressure on ASEAN, though certainly informal movement against Burma on the UN Security Council also played a role. In regional terms, evidence also points to ASEAN displeasure with the junta not having consulted its neighbors ahead of the move to Pyinmana and the announcement of additional detention time for Suu Kyi. ASEAN appears to have learned from the defunct Bangkok process,²⁶ for having lowered its expectations of the SPDC it is now having greater success by telling Rangoon in less equivocal terms that it must deliver. Even this influence has only been modest, however, and evi-

²⁶ The Bangkok Process was the ASEAN diplomatic attempt to influence Rangoon in the early 2000s. Initiated and led by Thailand Prime Minister Thaksin Shinawatra, the mission was a traditional ASEAN attempt to deal with a problem in "the ASEAN way," i.e. through quiet internal diplomacy. The mission came to nothing, however, when the SPDC sent Thaksin away essentially empty-handed.

denced simply in the SPDC's more defensive regional position. Overall, no international efforts have prevented the military regime from entrenching itself further in power and stifling internal dissent.

In sum, no coordinated international diplomatic initiative has emerged among the various actors. Collective diplomacy through the UN has barely coalesced. The UN General Assembly and UN Commission on Human Rights have been content to pass resolution after resolution, with little to show for it. The ineffectual UN Special Envoy and Special Rapporteur have floundered with marginal support from the Secretary General's office or members of the Security Council. Direct engagement of the SPDC by China, India, Thailand, Japan, and Australia has amounted to lip service from both sides. The SPDC has become quite accomplished at interacting with the international community on its own terms. Thus, a significant change in the international community's approach toward Burma is called for.

Recommendations

A more comprehensive approach by the international community composed of carrots and sticks is needed to help facilitate a long-awaited democratic transition in Burma. The fact that sanctions have failed does not mean that pressure on the Burmese regime is inappropriate. Sanctions need to be made smarter and counterbalanced by a series of more prominent incentives.²⁷ As one analyst notes, removing sanctions "and increasing 'engagement' ... will not return the NLD ... to power, shared or otherwise."²⁸ An effective strategy will need to come from an increased ASEAN role, probably to a greater extent than American and European measures. At the same time, it is contended here that qualitatively different approaches should be considered as a means of breaking Burma's political deadlock. In particular a transitional power-sharing arrangement with some incentives for regime officials to step down, combined with innovative forms of transitional justice, could produce the necessary stimulus to unblock political change.

27 As argued by the International Crisis Group: "[i]n the absence of any external pressure at all for change, it is highly unlikely that any change at all will occur ... The international community should take whatever opportunity is presented to encourage whatever progress is possible. That means developing a new policy approach—containing elements of the present sanctions approach of the West and engagement policy of the region, but more productive than either." *Sanctions or Engagement*, op. cit., p. 37.

28 A. McCarty, "Burma/Myanmar: Reconciliation without Capitulation," *mekongeeconomics.com*, March 31, 2004, p. 4.

The mechanism of delayed or alternative justice needs to be explored in exchange for sharing power and/or stepping aside while a democratic election is held.²⁹ Some governments, diplomats, NGOs, activists and the Burmese government in exile are likely to oppose any option short of full prosecution of the junta's crimes and a restoration of the 1990 elections. But the crux of the present imbroglio in Burma is that the long-awaited transition to democracy is not happening, and no option already on the table is capable of effecting the scale of change desired. A catalyst is needed, something to kick start a transition process that is not at present under consideration. Assuming the regime could be persuaded to engage in a serious negotiation, it must be convinced that it will get something in return for yielding power; if they are not assured of receiving anything commensurate, then they will happily remain on the authoritarian path. In addition, the opposition needs to fix what political scientists refer to as a commitment problem, i.e. the NLD is not able – in the eyes of the junta – credibly to commit to treating them “fairly” even though Suu Kyi is on record stating that she would even consider sharing power with the regime.³⁰

Only the international community can solve this commitment problem, acting as an honest broker with the express purpose of doing what has to be done to bring about long delayed democratization to Burma. In this regard, the US, in addition to the potentially decisive roles that could be played by ASEAN and the UN, actually has the potential to make a difference. Rarely discussed is the extent to which elements inside the SPDC fear US military action against them in light of Washington's preemptive defense doctrine and behavior in the region. This fear of a military invasion actually gives the US considerable leverage over Burma (about which the Bush Administration has shown limited awareness).

In sum, the assumptions outlined above – that the regime is not entirely close-minded about its “life after power,” that the opposition lacks credibility in the regime's eyes, and that those external actors which the regime has some regard for (or fears) have a certain if limited degree of leverage over future outcomes – underpin the following set of recommendations.

29 In 1988 when Suu Kyi stated that there would be no trials for junta members, the effect on them was the opposite of what the NLD intended: instead of being reassured, the regime took issue with the topic being mooted. There is growing consensus in the NGO community that prosecution is not viable, as well as a view that further efforts are needed to assure the regime that the offer from the NLD is credible.

30 M. A. Nalepa, “The Problem of Credible Commitments in Transitions to Democracy,” unpublished mimeo, November 30, 2005; J. D. Fearon, “Comments on the Ex Ante/Ex Post Problem in Transitional Justice,” unpublished mimeo, October 15, 2005.

- *Tighten multilateral sanctions against the regime.*

The UN Security Council should endorse a unified package of sanctions starting with a comprehensive arms embargo, visa ban and assets freeze, to be followed as necessary by other measures such as bans on imports, remittances, investment, bilateral and multilateral aid. Australia, Canada, Japan, and the EU should go further by adopting copies of US sanctions and by persuading China, Thailand and India to begin adopting sanctions. This approach requires engaging China and Russia sufficiently to prevent exercise of their vetoes.

The SPDC needs to have a direct interest in negotiating to give up power; ahead of offering new carrots, the international community's sticks need to be stronger. A multilateral sanctions package will increase external pressure and make the status quo more costly for the regime, thereby adding to existing incentives (which at present are insufficient) to convince the regime to negotiate. A concerted attempt must be made to discern the threshold level of "pain" for the regime and then tailor a still smarter set of multilateral sanctions intended to target the regime in the most effective way.

Sanctions to date have missed their target.³¹ The primary problem is that although the first wave of US sanctions directly resulted in shutting down numerous export firms and factories in Burma (primarily in the garment industry), these have gradually made a significant comeback due to growing business opportunities with Chinese, Taiwanese, and Indian companies. With abundant natural resources and a cheap labor force, Burma's neighbors have ample incentives to undercut Western sanctions. The Burmese companies doing increased business are mostly operated by or tied to the military and thus the SPDC. Therefore, although sanctions do harm smaller non-military businesses, the West must find ways to persuade regional governments to rein in their Burma-speculating companies in order to stem the SPDC's successful attempts to insulate itself from Western sanctions. Also, the Burmese government in exile could let it be known that upon transition in Burma, it will review contracts that the SPDC has negotiated with companies, Asian or Western.

31 David Steinberg contends that capitulation to sanctions by the SPDC is tantamount to expecting its unconditional surrender. D. Steinberg, "Myanmar: The Roots of Economic Malaise," in K. Y. Hlaing, R. H. Taylor, and T. M. Maung Than, eds., *Myanmar: Beyond Politics to Societal Imperatives*, Singapore: Institute of Southeast Asian Studies, 2005, p. 111; Sanctions of Engagement, op. cit., p. 19.

- *Authorize the UN Secretary General to engage the SPDC in new negotiations.*

As part of a UN Security Council resolution covering sanctions, the Secretary General should be given a broad, flexible negotiating mandate beyond the limited mandate that the UN Special Envoy has been working under. The SG in turn should name a new, higher level envoy - someone seen as close to him and preferably a retired American general - while becoming involved in the negotiations himself at the outset and wherever needed.

The active and personal involvement of the UN Secretary General far beyond the status quo is necessary in order to solve the opposition's commitment problem.³² The Secretary General is superior to an ASEAN head of state/government because a true third party representing the wider international community is necessary to gain enough trust to broker a successful deal, for at present the regime has little reason to believe Suu Kyi and the NLD will not renege on a deal *ex post*. Indeed, 2006 is Kofi Annan's final year in office thereby heightening the prospect that he might take on such a challenge.

The December 2005 unanimous Security Council vote to receive an informal briefing on the security situation in Burma bodes well, and it appears there are votes to go further and place Burma on the Security Council's formal agenda. The fact that Russia and particularly China did not stand in the way is promising for the US-led effort to bring about UN pressure on the SPDC. Indeed, the SPDC has vehemently opposed UN action of any kind, indicating that the UN retains at least a modicum of influence. Razali may have failed, but prospects that Kofi Annan and a new higher-level envoy will be given a hearing from the regime are higher now than at any other time in recent years.³³

The naming of a retired U.S. general (such as Anthony Zinni or Wesley Clark) as the new envoy could potentially be a masterstroke. The SPDC is under-educated and prone to misperception; for example they seem genuinely to believe that the US may soon attack Burma militarily.³⁴ A regime

32 Sanctions or Engagement, *op. cit.*, p. v.

33 Comments from the Secretary General indicate that he is taking a serious personal interest in building greater diplomatic momentum, e.g., his strong direct support for ASEAN's initiatives after the 2005 East Asia summit.

34 Recent high-level cooperation between the US and Thai militaries have accentuated this fear, particularly the annual joint military exercises known as "Cobra Gold"; for example, Burma will respond next year with its own "Operation Hawk," though it has not elaborated on any details.

that understands little other than force and fear is likely to take a retired US general in this role more seriously, particularly one that with UN backing tells Than Shwe and his cadre that there is a way out. Moreover, the SPDC is obsessed with prestige, very much wanting to be taken seriously by the West instead of just sanctioned unendingly. An American general sitting down with them would offer something previous UN envoys have been unable to: the very prestige they crave. One not very well known indicator that such a move could prove effective is that the SPDC has privately reached out to Washington and London on several occasions, only to be spurned.³⁵ Another option would be a four-member contact group (UN, US, ASEAN, EU) led by the UN envoy.

- *Organize roundtable talks between the regime and the opposition to promote power-sharing.*

The UN envoy should broker roundtable talks between the SPDC and the broadly defined opposition movement, including not only the NLD but also representatives from different ethnic groups. The Polish example in this regard offers a standard to work from. The SPDC is simply not going to relinquish power without playing a role in what transpires thereafter and equally not without at least being a part of any transitional government that would rule until the results of fresh elections are implemented. Suu Kyi and the NLD are on record as offering to govern jointly with the SPDC, and the UN would offer third-party credibility for this commitment. Ongoing talks, taking cues from similar sort of talks in Northern Ireland, would also offer an opportunity for the regime over time to move beyond its present view of the NLD as thoroughly lacking in legitimacy.

Any governance solution in Burma will not be achievable without a significant role for the many and varied ethnic groups inside the country. Already NCUB and other ethnic leaders participate in the SPDC's National Convention talks, and interestingly the regime takes them more seriously than the NLD - wishing to highlight non-NLD leadership in society and due most of all to the numerous and successful ceasefire negotiations the regime has brokered with the main ethnic groups. A peaceful and prosperous future Burma is more likely with a government that allows for ethnic groups to achieve their interests alongside the Burmans.³⁶

35 The regime has consistently lobbied Washington policy-makers, from hiring public relations firms to burnish its image to hosting senators and others on visits to Rangoon. In particular, the SPDC has pressed aggressively for US resumption of anti-narcotics aid.

36 Sanctions or Engagement, op. cit., p. 13.

In conjunction with power-sharing talks, the Secretary General and his envoy should find a backchannel, such as an ASEAN government, to offer the SPDC's top generals (and their immediate family members) certain incentives to step down. A package deal, for example, involving limiting prosecution and/or a comfortable life in exile would also allow these individuals to play a prominent role in the transition.

The practical aim here is to get the transition started, which simply will not happen if the junta fears unlimited prosecutions or immediate displacement from power. It must be coaxed to hand over the reins of power and credibly promised "life after power." Nor should the aim be an equivalent to the de-Baathification policy imposed in Iraq, for the military plays an unmistakably prominent role in Burmese society, representing what David Steinberg has called a state within a state. Without the military, society will suffer if such a void were created.³⁷ One viable way to pursue a power-sharing transition is to try the Indonesian method, namely through a 25 per cent retention of the regime's generals both in the leadership ranks of the armed forces and seats in parliament.

If a transition were put in motion, eventually there would have to be a vetting of the next layer of military officials. A transitional government or some sort of High Commissioner would need to put a lustration system into place, that would offer qualified amnesty for lower-level officials who will be needed to help run the country, and who may have collaborated previously not out of support for the regime but out of necessity of some kind.

- *Set up a truth and reconciliation commission as part of a transition package that includes new elections.*

This truth commission should be incentive-based, as opposed to adopting the approach of examining the secret police and military records (which may be partially destroyed in the transition) and either trying ex-officials/collaborators or preventing them from holding office due to the content of the records. Extensive academic research demonstrates that evidence-based approaches falter in two key areas: false convictions and false acquittals. A superior track record is offered by incentive-based approaches such as seen in South Africa. Not only does this approach bode better

³⁷ Amnesty and golden parachutes may be the only possibility of overcoming the predilection of every Burmese regime since independence for the military's retention of veto power over "critical" aspects of the state. D. Steinberg, "Myanmar: The Roots of Eco Sanctions or Engagement, op. cit., p. 24.

in terms of reconciliation, but also in gaining the full cooperation of regime remnants and a comprehensive record of its past dealings.

This commission should have the power to limit prosecutions and/or reduce sentences for former regime members or supporters who fully cooperate with the commission. This would involve offering these incentives for anyone who makes a full confession of past misdeeds with prosecutions for anyone who lies or is not fully forthcoming. Evidence of previous truth commissions shows a remarkably high participation rate of former regime members, with need for only a handful of prosecutions to send an effective signal to others waiting to testify. Local *gacaca* courts in Rwanda, which have the power to commute or reduce sentences, are another example of how effective such an incentive-based approach can be. This type of truth commission combined with a battery of economic forms of alternative justice offers the best hope for some type of longer-term reconciliation.

Because a new status quo along the lines of these recommendations is likely to be perceived as unfair to the victims of the current regime, the opposition and the populace in general need to receive some form of delayed or alternative justice. This can take place in the form of the return of refugees, restitution of property, monetary compensation to victims, extension of citizenship rights, new rights and protection for minorities, and in particular a truth and reconciliation commission (including prosecution of former regime members who are not forthcoming during such a commission's proceedings). The importance of alternative justice for the Burmese people cannot be overestimated. If incentives for the most prominent members of the SPDC are necessary to kick-start a transition, then some tangible justice for the long-suffering citizenry of Burma is essential.

- *Obtain the support of ASEAN and China for the above measures.*

The UN and the West should engage ASEAN to use the leverage it has over the SPDC, which is not considerable but greater certainly than that of India or Australia.³⁸ ASEAN as a collective regional voice has greater potential than any other external actor for helping persuade the regime that leaving power is in its best interests. China's involvement in coaxing the junta to give way is as obvious as it is important; while it retains more leverage over the regime than ASEAN, a thriving democracy may not be in its interests, despite the problems China is experiencing in its border areas

38 Sanctions or Engagement, op. cit., p. 24.

with Burma. However, it is likely that China will begin to push the SPDC to “get its act together,” not only due to bilateral problems but also to a desire China may have to avoid being isolated in the UN.

The flurry of activity running up to and surrounding the December 2005 ASEAN summit may be a harbinger, as ASEAN parliamentarians continued to pressure their governments to oppose Burma, and the leaders took several key steps at the summit to place further pressure on the SPDC (with episodic evidence that the regime will substantively respond). A thorough diplomatic and sanctions phalanx is achievable if China and ASEAN in particular are persuaded to back the UN’s approach; gaining Indian and Australian assistance would further augment such an endeavor.

The above recommendations are intended to be realistically achievable, for the stakes are high; they stem from carefully weighing what it would take for the international community to help initiate a democratic transition inside Burma that to date has been lacking. Given how firmly the regime is entrenched in power, it would appear that some creative approaches are called for. With an absence of effective internal pressure on the authoritarian Burmese junta, perhaps no nation state around the world is riper for a stepped-up role from the international community. The welfare of the Burmese people depends on it.