

Washington University Global Studies Law Review

Volume 17 | Issue 2

2018

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Recommended Citation

Stephanie Amador, *Democratization: A Comparative Analysis of Lifted Economic Sanctions in Cuba and Burma*, 17 WASH. U. GLOBAL STUD. L. REV. 503 (2018),
https://openscholarship.wustl.edu/law_globalstudies/vol17/iss2/10

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DEMOCRATIZATION: A COMPARATIVE ANALYSIS OF LIFTED ECONOMIC SANCTIONS IN CUBA AND BURMA

INTRODUCTION

On December 17, 2014, President Obama announced that the U.S. would restore full diplomatic relations with Cuba, opening up trade and commercial ties that had been cut off for nearly fifty-five years.¹ Normalizing relations after nearly six decades of hostility marks a stark transition in U.S. policy. The tumultuous U.S.-Cuba relationship dates back to the 1959 Cuban Revolution, where the U.S. began promoting Cuban democracy through diplomatic and economic isolation.² Democratization—protecting human rights and promoting democracy—is integral to U.S. foreign policy as it “seeks to end oppression, combat terrorism, and advocate democratic ideals and freedoms worldwide.”³ The U.S. has often imposed unilateral sanctions against countries to achieve these ends.⁴

Various countries, including Cuba and Myanmar/Burma (“Burma”),⁵ were subject to such prolonged sanctions by the United States.⁶ These

1. Peter E. Harrell, *Cuba: US Sanctions Policy After the Embargo*, CTR. ON GLOBAL ENERGY POL’Y 5 (Nov. 2016), <http://energypolicy.columbia.edu/sites/default/files/energy/Cuba%3A%20US%20Sanctions%20Policy%20After%20the%20Embargo.pdf>.

2. See generally HUGH THOMAS, *THE CUBAN REVOLUTION (1977)* (recounting the events surrounding the 1959 Cuban Revolution); HUGH THOMAS, *CUBA OR THE PURSUIT OF FREEDOM* (De Capo Press 1998) (1971) (discussing the events preceding and following the 1959 Cuban Revolution). See also Harrell, *supra* note 1 (comparing Eisenhower’s “policy of diplomatic and economic isolation” with Obama’s engagement policy).

3. U.S. DEP’T OF STATE & U.S. AGENCY FOR INT’L DEV., STRATEGIC GOAL 7: DEMOCRACY AND HUMAN RIGHTS 158 (2006), <https://www.state.gov/documents/organization/41608.pdf> (last visited Mar. 18, 2018).

4. Unilateral sanctions are often imposed as a foreign policy tool, covering a range of sanctions from “import bans and embargoes to restrictions on U.S. investment and expatriate activity overseas.” *Oppose Unilateral Economic Sanctions*, U.S. CHAMBER OF COMMERCE, <https://www.uschamber.com/issue-brief/oppose-unilateral-economic-sanctions> (last updated Aug. 15, 2017) (citing the United States’ policy toward Cuba as one example of ineffective unilateral sanctions).

5. Since 1989 the military and the Burmese government have promoted the name Myanmar for their state, but the United States has not adopted that name, opting instead for Burma. CIA, *The World Factbook: Burma*, https://www.cia.gov/library/publications/the-world-factbook/geos/print_bm.html (last visited Mar. 18, 2018).

6. Joshua L. Savey, Comment, *Unilateral Sanctions: An Effective Foreign Policy Tool in Myanmar?*, 50 WILLAMETTE L. REV. 371, 372 (2014) (explaining that these sanctions are “unilateral”

sanctions, however, were recently lifted against Cuba in 2014 and against Burma in 2016 under the Obama administration, whose policy sought engagement rather than isolation.⁷ Recent normalization between the U.S. and Cuba raises questions concerning the efficacy of economic sanctions to achieve democratization, particularly when such measures have unintended consequences on the target country's general population.⁸ This Note will examine the history of U.S. sanctions in these two countries, and their effect on economic development and civil liberties.

Part I presents a historical overview of the U.S. foreign policy sanctions imposed on Cuba, which have become increasingly stringent since the end of the Cold War. Part II illustrates the Cuban human rights repercussions resulting from limited international interaction and resources under the embargo, revealing the overall inefficacy of severe economic sanctions. Particularly troubling were the implications under the multilateral sanction of the Cuban Democracy Act ("CDA") in 1992.⁹ Part III explores the details regarding the lifted Cuban embargo under the Obama administration. Changes to U.S. sanctions have provided benefits to Cuba and the U.S., including furthering private-sector growth in Cuba, allowing Americans to travel to Cuba, and promoting technological communication throughout the island.¹⁰ All benefits aside, changes that fully address U.S. interests in democratization of Cuba have yet to come to fruition.¹¹

Additionally, by looking at post-sanction Burma, this Note will make suggestions on how to best facilitate democratization in Cuba. Part IV provides an overview of Burma's embargo history. U.S. sanctions on Burma date back to 1997, following "rising political repression and human rights abuses."¹² Part V examines the progression of human rights in Burma. In response to Burma's ongoing human rights efforts and democratic transition with parliamentary elections in 2015, President Obama terminated U.S. sanctions on Burma effective on October 7, 2016.¹³ Part VI discusses the Obama administration's policy developments in Burma following the lifted

because one country, or several countries with little or no coordination among them, imposes sanctions on a target country"). Countries impose such unilateral sanctions in order to "cut off necessary resources to a target country in hopes that the target country will change one or more of its policies . . ." *Id.*

7. See discussion *infra* Sections III & VI; see also Pennington, *infra* note 170.

8. Tilahun Weldie Hindeya, *Unilateral Trade Sanctions as a Means to Combat Human Rights Abuses: Legal and Factual Appraisal*, 7 MIZAN L. REV. 101, 102 (2013). It is argued that unilateral trade sanctions against World Trade Organization [hereinafter "WTO"] countries on "grounds of human rights violations are neither permitted under WTO rules nor effective mechanisms to ensure respect for human rights." *Id.* at 103.

9. For a detailed list of sanctions, see 22 U.S.C. § 6005 (1993).

10. Harrell, *supra* note 1.

11. *Id.*

12. *Id.* at 12.

13. *Id.*

sanctions, which offers informative context towards sanctions on Cuba.¹⁴ Part VII and VIII assess the effectiveness of the lifted embargo on human rights in Cuba using Burma's change in regime as a model. Part IX concludes this Note by finding that while future U.S. foreign policy towards Cuba is uncertain, the U.S. should maintain normalized relations, while striving to create a more targeted sanctions program if it truly wants to bring about unparalleled change through a movement toward democracy in Cuba.

I. HISTORICAL OVERVIEW: THE CUBAN EMBARGO: U.S. FOREIGN POLICY SANCTIONS

On January 1, 1959, Fidel Castro successfully ousted President Fulgencio Batista and secured power, embarking on a Revolution that would deteriorate U.S.-Cuba relations for the next half-century.¹⁵ By 1960, Castro's regime had "seized private land, nationalized hundreds of private companies . . . and taxed American products . . ." ¹⁶ In response to nationalization, President Eisenhower invoked the Trading with the Enemy Act of 1917 ("TWEA"), which suspended trade with Cuba.¹⁷ On October 19, 1960, Eisenhower prohibited all exports to Cuba, marking the start of the Cuban Embargo (referred to as "*el Bloqueo*" in Cuba).¹⁸ The embargo continued in 1961 under John F. Kennedy, was tightened in 1991 after the Cold War, and was codified into the 1996 Cuban Liberty and Democratic Solidarity Act during the Clinton administration.¹⁹

A. *The Foreign Assistance Act of 1961*

The early 1960s were marked by hostile U.S. covert operations to overthrow Castro's administration, including the Bay of Pigs invasion and the Cuban Missile Crisis.²⁰ In 1961, President Kennedy signed the Foreign

14. *Id.* at 12.

15. Claire Suddath, *U.S.-Cuba Relations*, TIME (Apr. 15, 2009), <http://content.time.com/time/nation/article/0,8599,1891359,00.html>.

16. *Id.*

17. Amnesty Int'l, *The US Embargo Against Cuba: Its Impact on Economic and Social Rights*, AI INDEX AMR 25/007/2009 7 (Sept. 2009), <http://www.amnestyusa.org/pdfs/amr250072009eng.pdf>. In 1933, Congress amended section 5(b), granting the President authority to impose embargoes against foreign countries during "the time of war or during any other period of national emergency declared by the President." *Id.*

18. Jared K. Carter, *Wanna Go to Cuba? New Travel and Trade Rules Provide Unique Opportunities for Vermonters*, VT. B.J., Spring 2015, at 22.

19. PATRICK HANEY & WALT VANDERBUSH, *THE CUBAN EMBARGO: DOMESTIC POLITICS OF AMERICAN FOREIGN POLICY* 1, 11-16 (Univ. of Pittsburgh Press 2005).

20. MARK P. SULLIVAN, CONG. RESEARCH SERV., R43926, CUBA ISSUES AND ACTIONS IN

Assistance Act of 1961 (“FAA”), which authorized the president to impose a “total embargo upon all trade between the United States and Cuba.”²¹ On February 3, 1962, Kennedy proclaimed a formal embargo against all trade with Cuba after several failed attempts to displace Castro.²² Kennedy, through Presidential Proclamation 3447, prohibited the “importation into the United States of all goods of Cuban origin and all goods imported from or through Cuba” and “all exports from the United States to Cuba.”²³

B. THE CUBAN ASSETS CONTROL REGULATIONS OF 1963

In July 1963, the Department of Treasury, under the authority of TWEA and Section 620(a) of the FAA, issued the Cuban Assets Control Regulations (“CACR”).²⁴ The CACR prohibits financial and trade transactions with Cuba and requires that all exports to Cuba be licensed by the Department of Commerce and the Bureau of Industry and Security, pursuant to the Export Administration Act of 1979.²⁵ The CACR has been amended over the years,²⁶ including loosened travel restrictions imposed in 1977 under President Carter, and later, the tightening of travel regulations under George W. Bush’s administration.²⁷

From 1963 through 1975, “a near total embargo was imposed,” whereby U.S. foreign subsidiaries were prohibited from trading with Cuba.²⁸ On July 26, 1964, multilateral sanctions were also imposed by the Organization of American States (“OAS”), who then lifted their eleven-year embargo against Cuba in August 1975, prompting the Ford administration to relax Cuban trade restrictions.²⁹ Carter became the first president to attempt to

THE 114TH CONGRESS 22 (2017), <https://fas.org/sgp/crs/row/R43926.pdf>.

21. Act for International Development of 1961 (Foreign Assistance Act of 1961), Pub. L. No. 87-195, § 620, 75 Stat. 424, 444-45 (codified as amended at 22 U.S.C. § 2370 (1988)).

22. Proclamation No. 3447, 27 Fed. Reg. 1085 (Feb. 3, 1962).

23. *Id.*

24. SULLIVAN, *supra* note 20.

25. *Id.* at 22-23.

26. *Id.* at 28-50.

27. MARK P. SULLIVAN, CONG. RESEARCH SERV., RL31139, CUBA: U.S. RESTRICTIONS ON TRAVEL AND REMITTANCES I, 18 (2017), <https://fas.org/sgp/crs/row/RL31139.pdf>.

28. Kam S. Wong, Comment, *The Cuban Democracy Act of 1992: The Extraterritorial Scope of 1706(a)*, 14 U. PA. J. INT’L BUS. L. 651, 654 (1994).

29. *Id.* at 655. See also Brianna Lee & Danielle Renwick, *The Organization of American States*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/background/organization-american-states> (last updated May 17, 2017) (defining the Organization of American States as a “multilateral regional organization focused on human rights, electoral oversight, social and economic development, and security in the Western Hemisphere” and discussing its importance as a “forum for regional diplomacy”); David Binder, *Cuba Sanctions, Imposed in 1964, Lifted by O.A.S.*, N.Y. TIMES (July 30, 1975), <http://www.nytimes.com/1975/07/30/archives/cuba-sanctions-imposed-in-1964-lifted-by-oas-vote-at-costa-rica.html> (explaining how the OAS abolished an 11-year embargo imposed “as a penalty for fostering Communist guerilla activities in the hemisphere”).

normalize relations with Cuba after the mutual U.S.-Cuba hostility in the decades following the missile crisis.³⁰

C. *The 1992 Cuban Democracy Act*

Ronald Reagan's administration ended all attempts to accommodate Cuba because it was still under Castro's authoritarian rule. Reagan and his successors, Presidents George H. W. Bush and Bill Clinton, advocated increased pressure on Cuba by strengthening the embargo in an effort to bring about a democratic political reform after Cuba undertook drastic economic reform following the collapse of the Soviet Union.³¹ In 1992 Congress passed the CDA, which prohibited *all* foreign-based subsidiaries of U.S. companies from trading with Cuba, traveling to Cuba by U.S. citizens, and family remittances to Cuba.³²

Because the CDA imposed severe penalties on U.S. subsidiaries operating in foreign countries trading with Cuba, many foreign nations objected on grounds that it would ultimately hurt their economic interests, potentially appropriating their authority to implement necessary laws.³³ As a result, many U.S. allies—such as the United Kingdom and Canada—enacted laws preventing U.S. subsidiaries wishing to trade with Cuba from operating within their territories.³⁴ Despite all of its restrictions, the CDA also sought to bring humanitarian aid to Cuba through food donations,³⁵ medical supply exports,³⁶ postal infrastructure,³⁷ and assistance to support

30. WILLIAM M. LEGRANDE & PETER KORNBLUH, *BACK CHANNEL TO CUBA: THE HIDDEN HISTORY OF NEGOTIATIONS BETWEEN WASHINGTON AND HAVANA 169-172* (Univ. of North Carolina Press 2015). On March 15, 1977, Carter issued a presidential directive (NSC-6), through which his administration began talks with Cuba to “set in motion a process which will lead to the reestablishment of diplomatic relations.” HANNA S. KASSAB & JONATHAN D. ROSEN, *THE OBAMA DOCTRINE IN THE AMERICAS 30* (Hanna S. Kassab & Jonathan D. Rosen eds., Lexington Books 2016).

31. KASSAB & ROSEN, *supra* note 30.

32. Cuban Democracy Act of 1992, Pub. L. No. 102-484, 106 Stat. 2575 (codified as amended at 22 U.S.C. §§ 6001-6010 (2006)). For a detailed list of sanctions see 22 U.S.C. § 6005 (1993).

33. Wong, *supra* note 28, at 651 (explaining that the CDA caused “great international concern and protest”).

34. Luisette Gierbolini, Comment, *The Helms-Burton Act: Inconsistency with International Law and Irrationality at Their Maximum*, 6 J. TRANSNAT'L L. & POL'Y 289, 295 (1997) (maintaining that the CDA “was violative of international law”).

35. See 22 U.S.C. § 6004(b) (1992) (“Nothing in this or any other Act shall prohibit donations of food to nongovernmental organizations or individuals in Cuba.”).

36. See 22 U.S.C. § 6004(c) (1992) (“Exports of medicines or medical supplies, instruments, or equipment to Cuba shall not be restricted.”).

37. See 22 U.S.C. § 6004(f) (1992) (“The United States Postal Service shall take such actions as are necessary to provide direct mail service to and from Cuba, including, in the absence of common carrier service between the 2 countries, the use of charter service providers.”).

democracy.³⁸

*D. The Cuban Liberty and Democratic Solidarity Act of 1996
(Helms-Burton Act)*

Hostility continued to ensue during the Clinton administration with the passage of the Cuban Liberty and Democratic Solidarity Act of 1996 (“Libertad”), also known as the Helms-Burton Act.³⁹ Libertad was enacted after the Cuban Air Force shot down two American civilian planes.⁴⁰ The purpose of the Act was to strengthen the embargo, encourage democratic elections in Cuba, assist in a transition towards a democratically elected government, and to safeguard Americans’ property rights.⁴¹

Title I of Libertad strengthened the economic embargo by: prohibiting the indirect financing of Cuba,⁴² opposing Cuban membership in international financial institutions and reducing payments to institutions that provide loans or other assistance to Cuba,⁴³ removing Cuba from the OAS,⁴⁴ blocking the importation of Cuban-made commodities,⁴⁵ and prohibiting the importation of one of Cuba’s most important export industries – sugar.⁴⁶ Title II intended to achieve democracy in Cuba, suspending the economic embargo upon a presidential determination that a democratically elected government came into power in Cuba.⁴⁷

E. The Trade Sanctions Reform and Export Enhancement Act of 2000

Congress passed the Trade Sanctions Reform and Export Enhancement Act (“TSRA”) in 2000, which eased export restrictions in Cuba by allowing “the sale of agricultural goods and medicine to Cuba for humanitarian

38. See 22 U.S.C. § 6004(g) (1992) (“The United States Government may provide assistance, through appropriate nongovernmental organizations, for the support of individuals and organizations to promote nonviolent democratic change in Cuba.”).

39. Cuban Liberty and Democratic Solidarity Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (codified as amended at 22 U.S.C. § 6021-6091(1996)).

40. Tim Bearden, *Helms-Burton Act: Resurrecting the Iron Curtain*, COUNCIL ON HEMISPHERIC AFFAIRS (June 10, 2011), <http://www.coha.org/helms-burton-act-resurrecting-the-iron-curtain/>.

41. Jonathan R. Ratchik, Note, *Cuban Liberty and the Democratic Solidarity Act of 1995*, 11 AM. U. INT’L L. REV. 343, 348-49 (1996).

42. Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. § 6033.

43. *Id.* at § 6034.

44. *Id.* at § 6035.

45. *Id.* at § 6040.

46. *Id.* at § 6040(c).

47. *Id.* at § 6061, § 6064.

reasons.”⁴⁸ Consequently, the U.S. became Cuba’s fourth largest trading partner.⁴⁹ However, unlike Iranian, Libyan, or Sudanese sales, Cuban exports required either cash-in-advance payments or funding by a third-country financial institution.⁵⁰

F. Cuba’s Relation with Foreign Nations

Despite recurring sanctions and limited foreign policy affairs with the U.S., Cuba has nevertheless strengthened relations with other international players.⁵¹ For instance, since Raul Castro became the provisional president, Havana has “hosted over seventy heads of state.”⁵² International relations, however, have not advanced economic globalization in Cuba.⁵³

II. THE EMBARGO’S EFFECT ON CUBA’S DEVELOPMENT AND HUMAN RIGHTS

While the purported goal of the embargo was to achieve democracy in Cuba, it nevertheless had negative effects on the country overall, causing human rights violations of an economic, social, and cultural nature.⁵⁴ Depriving Cuba of new medicines and technologies and imposing a coercive multilateral embargo caused “grave, systematic violations of

48. See Amnesty Int’l, *supra* note 17, at 11. See also REMY JURENAS, CONG. RESEARCH SERV., IB10061, EXEMPTING FOOD AND AGRICULTURE PRODUCTS FROM U.S. ECONOMIC SANCTIONS: STATUS AND IMPLEMENTATION, Summary (2005) (explaining that the incentive for the U.S. Congress to enact legislation “exempting foods and agricultural commodities from U.S. sanctions” originated from the “[f]alling agricultural exports and declining commodity prices”).

49. C. Parr Rosson, III & Flynn J. Adcock, *Emerging Markets for U.S. Agriculture: Focus on Cuba*, TEX. A&M AGRILIFE EXTENSION SERV., at 1, <http://cnas.tamu.edu/Publications/E312.pdf> (last visited Mar. 18, 2018).

50. John B. Reynolds, III et al., *Export Controls and Economic Sanctions*, 37 INT’L LAW. 263, 268 (2003) (noting that “Congressional efforts to remove these financing restrictions failed”). These financial institutions had to be outside the United States and Cuba. *Id.*

51. Daniel P. Erikson & Paul J. Wander, *Cuba’s Brave New World*, FLETCHER F. WORLD AFF., Fall 2009, at 9, 10. In 2009, China was Cuba’s second largest trading partner, Latin American diplomats withdrew Cuba’s suspension from the Organization of American States, Africa admired Cuba’s solidarity and medical diplomacy, Canadian relations remained strong, and the European Union engaged in new normalcy discussions with Cuba. *Id.* at 9-10.

52. *Id.* at 9. Such high-profile leaders include “Hu Jintao of China, Dmitry Medvedev of Russia, and Luiz Inácio Lula da Silva of Brazil.” *Id.*

53. Cuba is far from globalization, ranking 136th out of 207 on the overall Globalization Index and 166th out of 207 in terms of economic globalization. See 2015 KOF Index of Globalization, KOF 1-3 (2015), http://globalization.kof.ethz.ch/media/filer_public/2015/03/04/rankings_2015.pdf.

54. BERTA ESPERANZA HERNÁNDEZ-TRUYOL & STEPHEN JOSEPH POWELL, JUST TRADE: A NEW COVENANT LINKING TRADE AND HUMAN RIGHTS 265 (New York Univ. Press 2009).

human rights . . . in violation of international law.”⁵⁵

A. *Economic Impact*

The embargo has negatively impacted the Cuban economy, with estimates totaling around \$86 billion.⁵⁶ The relaxation of sanctions against food and medicines in 2000 allowed Cuba to rise from the 138th in 2001 to the 33rd largest market for U.S. agricultural exports in 2006, with exports totaling \$328 million.⁵⁷ Though Cuba has gained more access to needed exports, its overall gross domestic product (GDP), has room for faster growth.⁵⁸ Nevertheless, Raul Castro’s liberalization of Cuba’s state-controlled economy provides potential for growth.⁵⁹

B. *Socioeconomic Development – Human Development Index*

The Human Development Index (“HDI”) is an annual composite statistic presented by the United Nations Development Program (“UNDP”) used for assessing progress in life expectancy, education, and standard of living.⁶⁰ According to the UNDP, Cuba’s HDI value for 2015 was 0.775, placing the

55. U.N. Econ. & Soc. Council, Sub-Comm. on the Promotion and Prot. of Hum. Rts., *The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights*, 52d Sess., ¶ 98-100, U.N. Doc. E/CN.4/Sub.2/2000/33 (June 21, 2000) (prepared by Marc J. Bossuyt).

56. See HERNÁNDEZ-TRUYOL & POWELL, *supra* note 54, at 271. These estimates include the loss of export earnings, additional import costs, and a suppression of economic growth. *Id.*

57. *Id.*

58. See CIA, *Cuba, The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/cu.html> (last updated Mar. 14, 2018) (explaining that Cuban GDP growth (at purchasing power parity) per capita ranks 126th out of 230 countries); MARK P. SULLIVAN, CONG. RESEARCH SERV., R43926, *CUBA ISSUES AND ACTIONS IN THE 114TH CONGRESS 11* (2015), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43926.pdf> (“Since 2010, growth has improved modestly, averaging almost 2.5% growth during the period, although growth was just 1.3% in 2014 because of Cuba’s challenges in shifting from a centrally planned to a more decentralized economy.”); THE WORLD BANK, *Cuba*, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=CU> (last visited Mar. 18, 2018) (demonstrating that Cuba’s GDP has steadily risen, totaling \$87 billion in 2015); *But see*, THE WORLD BANK, *United States*, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2015&locations=US&start=1960> (demonstrating that the United States has a GDP of around \$18 trillion) (last visited Mar. 18, 2018).

59. See Claire Felter & Danielle Renwick, *U.S.-Cuba Relations*, COUNCIL ON FOREIGN RELATIONS, <http://www.cfr.org/cuba/us-cuba-relations/p11113> (last updated Jan. 19, 2018). Reforms included “decentralizing the agricultural sector, relaxing restrictions on small businesses, liberalizing real estate markets, making it easier for Cubans to obtain permission to travel abroad, and expanding access to consumer goods.” *Id.*

60. U.N. HUMAN DEV. PROGRAMME, *HUMAN DEVELOPMENT REPORT 2016: CUBA*, at 2, http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/CUB.pdf (last visited Sept. 30, 2017). Standard of living is measured by Gross National Income [hereinafter “GNI”] per capita. *Id.*

country at the 68th position among 188 nations.⁶¹

C. Health

While the passage of the CDA loosened the embargo on medicine,⁶² access to specialized medical equipment and chemical components became virtually impossible because the CDA also prohibited foreign subsidiaries of U.S. companies from trading with Cuba.⁶³ Because of the laborious licensing process required to purchase medical products, the Cuban government claims that “between June 2004 and April 2005, the embargo cost Cuba \$75.7 million in public health damages alone.”⁶⁴ Although life expectancy has increased to 79 years,⁶⁵ Cuba’s scarce medical equipment and supplies have hindered technological innovation, curtailed preventative methods,⁶⁶ and affected treatment for children,⁶⁷ transplant patients,⁶⁸ dialysis patients,⁶⁹ and cancer patients.⁷⁰

61. Between 1990 and 2015, Cuba’s life expectancy increased by 5.0 years, the mean years of schooling increased by 3.3 years, and the GNI per capita increased by 52.0 percent. *Id.*

62. *Denial of Food and Medicine: The Impact of the U.S. Embargo on Health & Nutrition in Cuba*, AM. ASSOC. FOR WORLD HEALTH, Mar. 1997, at 6, http://medicc.org/ns/documents/The_impact_of_the_U.S._Embargo_on_Health_&_Nutrition_in_Cuba.pdf.

63. *Id.*

64. Alberto R. Coll, *Harming Human Rights in the Name of Promoting Them: The Case of the Cuban Embargo*, 12 UCLA J. INT’L L. & FOR. AFF. 199, 241 (2007).

65. See U.N. HUMAN DEV. PROGRAMME, *supra* note 60, at 3. Cuba’s life expectancy at birth has steadily increased from 74.6 in 1990 to 79.6 in 2015. *Id.*

66. See Amnesty Int’l, *supra* note 17, at 18 (refusing to “renew a license to health organization Population Services International (PSI) to export condoms to Cuba for distribution to groups at high of contracting HIV” and preventing programs to fight HIV/AIDS even when implemented by UN agencies).

67. *Id.* In their 2008 report, UNICEF reported that: Cuba was unable to import nutritional products for children, which contributed to the high prevalence of iron deficiency, affecting 37.5% of children in 2007. *Id.* “The number of children suffering from heart conditions who are waiting for appropriate treatment at a [pediatric] hospital has increased after Cuba was unable to buy from the US- based companies the necessary medical equipment for their treatment.” *Id.*

68. See U.N. Secretary-General, *Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba*, ¶ 91, U.N. Doc. A/61/132 (Aug. 8, 2006) (noting the lack of access to medical technology in Cuba as a result of the embargo). Because the U.S. Department of Treasury denied permission, America’s “Atlantic Philanthropic Service Co. was prevented from donating a molecular biology laboratory to Cuba’s Nephrology Institute,” which would have “increased the survival rate among patients receiving kidney transplants.” *Id.*

69. *Id.* at ¶ 90. “Leading international companies in the sector, such as the United States firm Baxter, were prevented from responding to requests from Cuba to provide continuous ambulatory peritoneal dialysis.” *Id.*

70. Coll, *supra* note 64, at 243 (denying “film for x-ray machines used to detect breast cancer, Spanish-language medical books from a U.S. conglomerate subsidiary, and U.S.-made components for respirators”).

D. Education

According to the CIA World Factbook, as of 2010, Cuba ranks second in the world for education expenditures, with expenses making up 12.8% of the total GDP.⁷¹ Adult literacy, defined as the population over age 15 who can read and write, was 99.8% in Cuba.⁷² Nonetheless, by eliminating access to products manufactured in the U.S., the embargo contributes to high educational expenditures due to the increased cost of procuring school supplies.⁷³

E. Travel Restrictions

In 2004, the CACR was amended, imposing stricter sanctions and travel restrictions on Cuba.⁷⁴ The amendment narrowed the category of relatives allowed to be visited,⁷⁵ restricted travel to once every three years for no more than fourteen days,⁷⁶ required a specific license in order to visit Cuba, eliminated additional visits,⁷⁷ restricted remittances to immediate family members,⁷⁸ and reduced remittance amounts travelers could bring.⁷⁹

71. *Cuba, The World Factbook*, *supra* note 58.

72. *Id.* *But see, e.g.*, ENCYCLOPEDIA OF THE NATIONS, *Literacy - The World Factbook - CIA*, <http://www.nationsencyclopedia.com/WorldStats/CIA-World-Factbook-Literacy.html> (last visited Nov. 25, 2017) (listing the United States as twenty-eighth with a literacy rate of 99%).

73. *See* Coll, *supra* note 64, at 244. In 2006, the Cuban government, in its report to the United Nations General Assembly, noted that supplies “indispensable to art schools (violins, pianos, double basses, flutes, ballet pointed and half-pointed shoes, maillots and leotards) have had to be purchased in third countries, at an additional cost of 16% or \$2.5 million.” *Id.* Furthermore, the University of Havana paid \$40,000 a year for Internet bandwidth because “it was denied access to the sub-aquatic fiber-optic cable.” *Id.*

74. *See* 31 C.F.R. § 515 (2002).

75. *See* 31 C.F.R. § 515.561 (2015). *See also Recent OFAC Actions*, U.S. DEP’T OF TREASURY, (June 16, 2004), <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20040616.aspx> (narrowing the definition of “close relative” by replacing it with the term “member of a person’s immediate family”).

76. *See* U.S. DEP’T OF TREASURY, *supra* note 75 (replacing the once-per-twelve-months general license contained in former paragraph (a) of Section 515.561 with “specific licenses authorizing travel-related transactions incident to visits to members of a person’s immediate family who are nationals of Cuba once per three-year period and for no more than 14 days”).

77. *Id.* Former paragraph (b) of Section 515.561, eliminates specific licenses for additional visits, thus “no additional visits [are] authorized.” *Id.*

78. *Id.*

79. *Id.* The new limit under the amended CACR is “\$50 per day plus up to an additional \$50 per trip, if needed, to pay for transportation-related expenses in Cuba that exceed the \$50 per day limit” compared to the prior \$167 limit “plus any additional funds needed for transactions that were directly incident to visiting that relative.” *Id.*

F. *Shift in Regime*

Since Fidel Castro relinquished governmental control to his brother, Raul, Cuba has “signaled a willingness to reconsider its long-standing disregard for human rights.”⁸⁰ In February 2008, Cuba signed the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), thereby recognizing core international human rights principles.⁸¹ In response to this and other economic reforms, the European Union lifted sanctions on Cuba in June 2008.⁸²

G. *Freedom of Expression*

Despite some progress under Raul Castro, by 2009 the Cuban government continued to maintain a media monopoly, making freedom of expression virtually nonexistent.⁸³ Access to electronic information was highly regulated; the only internet café in Havana, the nation's capital, charged five U.S. dollars per hour, which was “one-third of the average monthly salary in Cuba.”⁸⁴ In May 2013, a governmental decree expanded internet access, but its broad conditions essentially impeded access to any critics of the Cuban government.⁸⁵

H. *Political Imprisonment*

In 2008, the Cuban government increased the use of arbitrary detention to intimidate individuals from participating in events viewed as critical of

80. HUMAN RIGHTS WATCH, *Cuba: Events of 2008*, in WORLD REPORT 2009, <https://www.hrw.org/world-report/2009/country-chapters/cuba> (last visited Nov. 25, 2017) [hereinafter *Cuba: Events of 2008*].

81. *Id.*

82. *Id.* See also HUMAN RIGHTS WATCH, *Cuba: Events of 2015*, in WORLD REPORT 2016, <https://www.hrw.org/world-report/2016/country-chapters/cuba> (last visited Mar. 18, 2018) [hereinafter *Cuba: Events of 2015*]. “In November 2013, Cuba was re-elected to a regional position on the UN Human Rights Council, despite its poor human rights record.” *Id.* “As a member of the council, Cuba has regularly voted to prevent scrutiny of serious human rights abuses around the world, opposing resolutions spotlighting abuses in North Korea, Syria, Iran, and Ukraine.” *Id.*

83. *Cuba: Events of 2008*, *supra* note 80.

84. *Id.*

85. HUMAN RIGHTS WATCH, *Cuba: Events of 2013*, in WORLD REPORT 2014, <https://www.hrw.org/world-report/2014/country-chapters/cuba> (last visited Mar. 18, 2018) [hereinafter *Cuba: Events of 2013*]. The May 2013 government decree stipulates that Internet access cannot be used for activities that undermine “‘public security, the integrity, the economy, independence, and national security’ of Cuba.” *Id.*

the government, such as peaceful marches or meetings.⁸⁶ From January through October 2015, the Cuban Commission for Human Rights and National Reconciliation (“CCDHRN”), a Cuban human rights group, received over 6,200 reports of arbitrary detentions in 2013, compared to approximately 9,940 in 2016.⁸⁷ Family members of political prisoners also continue to be “harassed and blacklisted from jobs.”⁸⁸

III. CUBA’S LIFTED SANCTIONS UNDER THE OBAMA ADMINISTRATION

On December 17, 2014, Barack Obama and Raul Castro announced that the U.S. and Cuba would restore full diplomatic ties.⁸⁹ According to President Obama, “after all, these fifty years have shown that isolation has not worked.”⁹⁰ In addition to both countries releasing prisoners,⁹¹ the United States agreed to further ease restrictions on remittances and travel, “allowing Cuban Americans to send unlimited funds into Cuba and permitting U.S. Citizens to travel to Cuba for religious and educational purposes.”⁹² On December 16, 2016, the U.S. and Cuba reached a “bilateral civil aviation arrangement,” allowing “commercial airlines to operate regular flights to Cuba” for the first time in more than fifty years.⁹³ The new rules have also eased previously imposed economic sanctions by allowing: “travelers to use U.S. credit and debit cards; U.S. insurance companies to cover health, life, and travel insurance for individuals living in or visiting Cuba; banks to facilitate authorized transactions; U.S. companies to invest in some small businesses; and shipment of building materials to private

86. See *Cuba: Events of 2008*, *supra* note 80.

87. See *Cuba: Events of 2015*, *supra* note 82 (documenting “more than 6,200 reports of arbitrary detentions from January through October 2015”); Felter & Renwick, *supra* note 59 (“[T]he Cuban Commission on Human Rights and National Reconciliation documented a total of 9,940 arbitrary detentions [in 2016].”).

88. See *Cuba: Events of 2008*, *supra* note 80. Family members of political prisoners, namely wives, were also detained. In April 2008, the Ladies in White, wives of political prisoners, were arrested when they tried to “stage a peaceful sit-in in Havana’s Revolution Plaza.” *Id.* See also *Cuba: Events of 2013*, *supra* note 85. On August 25, 2013, more than 30 Ladies in White were “detained and beaten after attending Sunday mass.” *Id.*

89. See Felter & Renwick, *supra* note 59.

90. Address to the Nation on United States Policy Toward Cuba, 2014 DAILY COMP. PRES. DOC. 937 (Dec. 17, 2014).

91. See SULLIVAN, *supra* note 20, at 25 (noting two developments in U.S.-Cuban relations: first, Cuba released Alan Gross on humanitarian grounds after five years of imprisonment, and second, Cuba released “one of the most important intelligence assets that the United States has ever had in Cuba’ in exchange for three Cuban intelligence agents who had been imprisoned in the United States since 1998”). See also KASSAB & ROSEN, *supra* note 30, at 32 (noting that “Cuba agreed to release fifty-three prisoners that the U.S. had classified as political dissidents”).

92. Felter & Renwick, *supra* note 59.

93. See SULLIVAN, *supra* note 20, at 34. See also Felter & Renwick, *supra* note 59 (noting that in early 2016 “commercial U.S. airlines began offering service between the countries . . .”).

Cuban companies.”⁹⁴ Unfortunately, these lifted sanctions on the part of the United States might prove to be short lived.

In an effort to obtain additional concessions from the Cuban government, President Trump announced in June 2017 that he was re-imposing the lifted embargo.⁹⁵ President Trump subsequently signed a directive that would reinstate travel and commercial restrictions.⁹⁶ The directive, however, will not eliminate the diplomatic ties that the Obama administration re-opened in 2015.⁹⁷ Under the directive, American tourists will be prevented from freely visiting the island in an individual capacity,⁹⁸ and U.S. “companies and citizens will be barred from doing business with any firm controlled by the Cuban military or its intelligence or security services.”⁹⁹

IV. HISTORICAL OVERVIEW: UNITED STATES AND BURMA RELATIONS

Burma, like Cuba, was subject to prolonged U.S. sanctions in response to a military dictatorship that disregarded Burmese human rights and civil liberties. In 1948, after the assassination of nationalist leader General Aung San, Burma declared independence after over a century of British colonial rule.¹⁰⁰ Pro-democracy activists consider the period from 1948 to 1962 as Burma's “democratic era.”¹⁰¹ Such representative democracy lasted until the

94. KASSAB & ROSEN, *supra* note 30, at 32.

95. Julie Hirschfeld Davis, *Trump Reverses Pieces of Obama-Era Engagement With Cuba*, N.Y. TIMES (June 17, 2017), <https://www.nytimes.com/2017/06/16/us/politics/cuba-trump-engagement-restrictions.html>. President Trump stated that the United States would not “be silent in the face of communist oppression any longer.” *Id.*

96. *Id.*

97. Gabrielle Levy, *Trump Orders Travel, Trade Restrictions on Cuba Tightened*, U.S. NEWS & WORLD REPORT (June 15, 2017, 9:00 PM), <https://www.usnews.com/news/politics/articles/2017-06-15/donald-trump-signs-directive-undoing-obama-era-loosening-of-cuba-travel-trade-restrictions>. Embassies in Washington and Havana will remain open and travel-based commercial institutions – i.e. cruises and airlines – will remain open. Davis, *supra* note 95.

98. Americans are currently able to travel to Cuba, but the Trump administration plans to heavily regulate the easily accessible “people-to-people” visa created during the Obama administration. Levy, *supra* note 97.

99. Davis, *supra* note 95. See also Gardiner Harris, *Trump Tightens Cuba Embargo, Restricting Access to Hotels and Businesses*, N.Y. TIMES (Nov. 8, 2017), <https://www.nytimes.com/2017/11/08/us/politics/trump-tightens-cuba-embargo-restricting-access-to-hotels-businesses.html> (“The Trump administration on [November 8, 2017] tightened the economic embargo on Cuba, restricting Americans from access to hotels, stores and other businesses tied to the Cuban military.”).

100. Beina Xu & Eleanor Albert, *Understanding Myanmar*, COUNCIL ON FOREIGN RELATIONS <http://www.cfr.org/human-rights/understanding-myanmar/p14385> (last updated Mar. 25, 2016).

101. Thihan Myo Nyun, *Feeling Good or Doing Good: Inefficacy of the U.S. Unilateral Sanctions Against the Military Government of Burma/Myanmar*, 7 WASH U. GLOBAL STUD. L. REV. 455, 473 (2008). The Anti-Fascist People's Freedom League (AFPFL) “controlled the political arena and was victorious in the parliamentary elections of 1947, 1951, and 1956. The collapse of the AFPFL produced

military coup of 1962, led by General U Ne Win, who would hold power for the next twenty-six years.¹⁰²

A. *Ne Win's Socialist Regime (1962-1988)*

On March 2, 1962, the Revolutionary Council headed by General Ne Win usurped power and established the “Socialist Republic of the Union of Myanmar,”¹⁰³ which nationalized the economy, formed the single-party state that became known as the Burma Socialist Programme Party (“BSPS”), and banned independent newspapers.¹⁰⁴ “[T]he Burmese way to socialism” led to the “nationalization of all major foreign and domestically owned businesses,” isolating Burma from “the international community.”¹⁰⁵ Despite economic growth in Southeast Asia, the UN declared Burma a “Least Developed Country” in 1987.¹⁰⁶

B. *Political Impasse – the 1988 Anti-Government Riots and the 1990 Election*

By 1988, “widespread corruption and food shortages led to mass protests.”¹⁰⁷ In response, the military junta “killed thousands and reorganized into the State Law and Order Restoration Council” (“SLORC”).¹⁰⁸ During the 1990 national “elections,” Daw Aung San Suu Kyi, who would later be detained, led the main opposition party — the National League of Democracy (“NLD”) — that won Burma's elections, but SLORC refused to transfer power.¹⁰⁹ The military junta maintained tight

a military caretaker government between 1958 and 1960, which culminated in U Nu's faction winning the 1960 elections over the military-supported faction.” *Id.*

102. Xu & Albert, *supra* note 100. Ne Win's party established a ruling council comprised almost entirely from the armed forces. *Id.* In 1974, Ne Win instituted a new constitution “based on an isolationist policy with a socialist economic program that nationalized Burma's major enterprises.” *Id.*

103. See Nyun, *supra* note 101, at 474.

104. *Myanmar profile – Timeline*, BBC NEWS (Jan. 11, 2018), <http://www.bbc.com/news/world-asia-pacific-12992883>.

105. Michael Ewing-Chow, *First Do No Harm: Myanmar Trade Sanctions and Human Rights*, 5 NW. J. INT'L RTS. 153, 154 (2007). See also Nyun, *supra* note 101, at 474 (arguing that BSPP's self-imposed isolation from the international community cut off “trade as well as other social contracts with the outside world”).

106. See Ewing-Chow, *supra* note 105.

107. Xu & Albert, *supra* note 100 (noting that on August 8, 1988, the army opened fire on dissidents, “killing at least three thousand, and displacing thousands more”). See also Nyun, *supra* note 101, at 475 (describing “civilians from all walks of life [taking] to the streets and peacefully march[ing] for change” only to be gunned down).

108. Audrey Tan, Note, *Myanmar's Transitional Justice: Addressing A Country's Past in A Time of Change*, 85 S. CAL. L. REV. 1643, 1646 (2012).

109. See Nyun, *supra* note 101, at 475-76 (“Faced with both domestic and world-wide criticism of its violent usurpation of power, SLORC promised to hold national elections to reconstitute the general

control well into the 2000s, eventually changing its name to the State Peace and Development Council.¹¹⁰ Problems continued into the twenty-first century, with Burmese monk demonstrations under the “Saffron Revolution” in 2007 and Cyclone Nargis in May 2008.¹¹¹

C. *The U.S. Response – Foreign Policy Sanctions*

1. *1990: The Customs and Trade Act*

In response to SLORC’s post-election restrictions, the U.S. Senate and Congress passed the Customs and Trade Act of 1990 (“CTA”), which required the President to impose economic sanctions against Burma if specified conditions were not met.¹¹² On April 13, 1989, President Bush suspended Burma’s eligibility for the Generalized System of Preferences program (“GSP”), and he designated Burma as a drug-trafficking country under the Foreign Assistance Act of 1961 (“FAA”) on February of the following year.¹¹³ After the CTA was passed, the Bush administration subsequently invoked the law’s authority and refused to renew the Bilateral Textile Agreement with Burma, which had expired on December 31, 1990.¹¹⁴

assembly as the first step in restoring democracy,” . . . but “nullified the results of the 1990 national election.”). Daw Aung San Suu Kyi was placed under house arrest numerous times and was detained in 2003 until her subsequent release in 2010. *See* BBC NEWS, *supra* note 104.

110. *See* Tan, *supra* note 108, at 1647 (“Between 1988 and 2000, the junta tripled the size of its armed forces and launched campaigns against ethnic militia. Political freedoms were also tightly limited.”).

111. *Id.* (criticizing the Burmese government for its failure to provide international aid when Cyclone Nargis hit causing a humanitarian crisis).

112. *See* Customs and Trade Act of 1990, Pub. L. No. 101-382, § 138, 104 Stat. 629 (1990). Section 138 granted the President the authority to impose “such economic sanctions upon Burma as the President determines to be appropriate, including any sanctions appropriate under the Narcotics Control Trade Act of 1986.” *Id.*; *see also* MICHAEL F. MARTIN, R41336, CONG. RESEARCH SERV., U.S. SANCTIONS ON BURMA 1 (2012), <https://fas.org/sgp/crs/row/R41336.pdf> (requiring the President to impose “such economic sanctions upon Burma as the President determines to be appropriate, unless the President certifies certain conditions pertaining to human rights and counternarcotics have been met”).

113. *See* MARTIN, *supra* note 112, at 12-13; *Generalized System of Preferences (GSP)*, U.S. CUSTOMS & BORDER PROTECTION, https://help.cbp.gov/app/answers/detail/a_id/266/~/generalized-system-of-preferences-%28gsp%29 (last updated Nov. 13, 2015) (describing the GSP as a “trade program designed to promote economic growth in the developing world by providing preferential duty-free entry for up to 4,800 products from 129 designated beneficiary countries and territories.”).

114. *See* MARTIN, *supra* note 112, at 13 n.40 (stating that the U.S. and Burma had a bilateral textile agreement covering selected articles of apparel from January 1, 1987 to December 31, 1990). It should also be noted that Congress considered various bills during the 1990s that would impose sanctions against Burma. *Id.* at 13. For example, “[o]n April 30, 1994, Congress passed the Foreign Relations Authorization Act . . . which amended the Foreign Assistance Act of 1961 and withheld a portion of

2. 1996: *The Federal Burma Statute*

Congress enacted the Federal Burma Statute in 1996, which imposed “mandatory sanctions against [Burma] for human rights violations and authorized the president to bar new investment in [Burma] by U.S. nationals if the president found either specified acts against the person of Daw Aung San Suu Kyi or ‘large-scale repression of or violence against the democratic opposition.’”¹¹⁵

3. 1997: *The Foreign Operations Act*

In May 1997, the Clinton administration declared a national emergency, as required by the International Emergency Economic Powers Act (“IEEPA”),¹¹⁶ and imposed further sanctions under the 1997 Foreign Operations Act (“FOA”),¹¹⁷ which granted the President the discretion to prohibit any “new investment” in Burma.¹¹⁸ The FOA approved new sanctions,¹¹⁹ including a ban on entry visas for Burmese government officials¹²⁰ and instructions for international financial institutions to vote against Burmese funding.¹²¹

4. 2003: *The Burmese Freedom and Democracy Act*

In response to an alleged SLORC-instigated attack on Daw Aung San Suu Kyi and her ultimate imprisonment, the Burmese Freedom and

U.S. contributions to international organizations with programs for Burma, including the United Nations Development Program (UNDP) . . .” *Id.*

115. See Nyun, *supra* note 101, at 480.

116. *Id.*

117. Foreign Operations, Export Financing, and Related Programs Appropriations Act, Pub. L. No. 104-208, § 570, 110 Stat. 3009-166 to 3009-167 (1997) (codified as amended at the Omnibus Consolidated Appropriations Act, § 101(c), 110 Stat. 3009-121 to 3009-172 (1997)).

118. Adrienne S. Khorasane, Note, *Sacrificing Burma to Save Free Trade: The Burma Freedom Act and the World Trade Organization*, 35 LOY. L.A. L. REV. 1295, 1302, 1302 n.55 (2002) (quoting *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 369 (2000)) (defining “new investment” as “[e]ntry into a contract that would favor the ‘economical development of resources in Burma,’ or would provide ownership interests in or benefits from such development . . . but the term specifically excludes . . . ‘entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology.’”).

119. See MARTIN, *supra* note 112.

120. Proclamation No. 6925, 3 C.F.R. 74 (1997) (suspending visas for “persons who formulate, implement, or benefit from policies that impede Burma’s transition to democracy, and the immediate family members of such persons” under Clinton’s Presidential Proclamation).

121. See Foreign Operations, Export Financing, and Related Programs Appropriation Act, *supra* note 117, § 570(a)(2) (requiring federal representatives of international financial institutions to vote against any proposed financial assistance to Burma).

Democracy Act of 2003 (“BFDA”) was enacted.¹²² The BFDA, alongside President George W. Bush’s Executive Order,¹²³ requires the President to impose a ban on Burmese imported products,¹²⁴ freeze assets of certain Burmese officials,¹²⁵ block U.S. support for loans from international financial institutions,¹²⁶ and ban visas for certain Burmese officials,¹²⁷ while allowing the President to waive any provision deemed contrary to “national security interests.”¹²⁸ The BFDA also provides that the ban will remain in effect until the SPDC has made “substantial and measurable progress to end violations of internationally recognized human rights including rape¹²⁹ . . . and toward implementing a democratic government.”¹³⁰

5. 2008: *The Junta’s Anti-Democratic Efforts (JADE) Act*

The JADE Act of 2008 (“JADE”)¹³¹ was not passed by Congress until

122. Burmese Freedom and Democracy Act of 2003, Pub. L. No. 108-61, §§ 1-9, 117 Stat. 864 (codified as amended at 50 U.S.C. § 1701 (2000)).

123. Exec. Order No. 13,310, 68 Fed. Reg. 44,853 (July 28, 2003).

124. *See* Burmese Freedom and Democracy Act of 2003, § 3(a)(1) (“[T]he President shall ban the importation of any article that is a product of Burma.”).

125. *See* Presidential Statement on Signing the Burmese Freedom and Democracy Act of 2003, 39 WEEKLY COMP. PRES. DOC. 990 (Jul. 28, 2003) (“The Executive order freezes the assets of senior Burmese officials and bans virtually all remittances to Burma. By denying these rulers the hard currency they use to fund their repression, we are providing strong incentives for democratic change and human rights in Burma.”).

126. *See* Burmese Freedom and Democracy Act of 2003, § 5 (“[T]he Secretary of the Treasury shall instruct the United States executive director to each appropriate international financial institution in which the United States participates, to oppose, and vote against the extension by such institution of any loan or financial or technical assistance to Burma . . .”).

127. *See* Burmese Freedom and Democracy Act of 2003, § 6(a) (“The President is authorized to deny visas and deny entry to the former and present leadership of the SPDC or the Union Solidarity Development Association.”).

128. *See* Burmese Freedom and Democracy Act of 2003, § 3(b) (“The President may waive the provisions described in this section for any or all articles that are a product of Burma . . .”). The President may waive provisions if he or she “determines . . . that to do so is in the national interest of the United States.” *Id.*

129. *See id.* § 3(a)(3)(A).

130. *See id.* § 3(a)(3)(B). A democratic government would include the “releas[e] [of] all political prisoners; allowing freedom of speech and the press; allowing freedom of association; permitting the peaceful exercise of religion; and . . . democratic elections under the rule of law.” *Id.*

131. Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008, Pub. L.

the SPDC crushed a nationwide protest known as the “Saffron Revolution.”¹³² The Act bans the import of products containing Burmese jadeite and rubies,¹³³ expands the list of Burmese officials subjected to visa bans¹³⁴ and financial sanctions,¹³⁵ and allows restrictions on correspondent accounts.¹³⁶

D. THE RISE OF A CIVILIAN PARLIAMENT WITH THE 2011 DEMISE OF THE JUNTA

In 2011, after years of turmoil and military control, Burma began to see signs of real change when the military junta officially dissolved and established a civilian parliament, thereby appointing then-Prime Minister Thein Sein as President.¹³⁷ Thein Sein’s administration organized various reforms, including “amnesty for most political prisoners, relaxation of censorship, establishment of the National Human Rights Commission, and efforts toward peace with ethnic rebel groups.”¹³⁸ Such changes led Aung San Suu Kyi’s party (NLD) to compete and win in by-elections, but the NLD only filled a small proportion of seats in parliament, controlling “less than one-tenth of the body.”¹³⁹ Then in 2012, the parliament passed a new foreign investment law that “opened up overseas ownership of business

No. 110-286, 122 Stat. 2632 [hereinafter “Tom Lantos Block Burmese JADE Act”].

132. See MARTIN, *supra* note 112, at 14 (attributing the protests to Buddhist monks in the autumn of 2007).

133. See Tom Lantos Block Burmese JADE Act, §2(7) (“In 2006, the Burmese regime earned more than \$500 million from oil and gas projects, over \$500 million from sale of hardwoods, and in excess of \$300 million from the sale of rubies and jade . . . over \$100 million annually in Burmese rubies and jade enters the United States.”).

134. See *id.* §5(a)(1) (restricting visa for travel to the United States to “[f]ormer and present leaders of the SPDC, the Burmese military, or the USDA” that are “involved in the repression of peaceful political activity or in other gross violations of human rights in Burma or in the commission of other human rights abuses, including any current or former officials of the security services and judicial institutions of the SPDC”).

135. See *id.* §5(b).

136. See *id.* §5(c)(1) (“The Secretary of the Treasury . . . may prohibit or impose conditions on the opening or maintaining in the United States of a correspondent account or payable-through account by any financial institution . . .”). The Secretary may prohibit or impose such if they determine that the correspondent account might be used “by a foreign banking institution that holds property or an interest in property belonging to the SPDC . . . [or] to conduct a transaction on behalf of the SPDC . . .” *Id.*

137. See Tan, *supra* note 108, at 1648 (noting that since Sein was sworn in and replaced the military junta, the government has “moved swiftly toward democratization, breaking sharply from the highly centralized and erratic policies of the past”). See also Xu & Albert, *supra* note 100. While the Thein Sein administration saw a period of reform, many top officials in the new administration were former military officers, “leading to concerns about continued military dominance.” *Id.*

138. See Xu & Albert, *supra* note 100.

139. *Id.* “Under the 2008 constitution, 25 percent of the parliament’s seats are reserved for the military, and the military-backed USDP continues to control seats in the powerful defense, home affairs, and border affairs ministries.” *Id.*

ventures and offered tax breaks.”¹⁴⁰ Such reforms led to international powers reestablishing ties with Burma.¹⁴¹

V. THE EMBARGO’S EFFECT ON BURMA’S DEVELOPMENT AND HUMAN RIGHTS

Despite an improved environment for freedom of expression and media that accompanied the change from military to civilian rule, important human rights violations remain.¹⁴² While there have been some human rights advancements, the “military retains autonomy from civilian oversight and extensive power over issues of national security” under their 2008 constitution.¹⁴³ Over the years, the junta has been accused of committing serious human rights violations including “forced labor, the use of child soldiers, forced relocation, summary executions, torture and the rape of women and girls, particularly of members of ethnic minorities.”¹⁴⁴

A. Economic Impact

U.S. sanctions have “systematically weakened the [Burmese] economy by limiting trade, investment and foreign aid.”¹⁴⁵ As a result of sanctions,

140. *Id.* According to the World Bank, Burma’s “net inflow of foreign direct investment (FDI) increased from \$900 million in 2010 to \$2.3 billion in 2013” *Id.* In March 2015, the FDI grew to be more than \$8 billion, “twenty-five times the amount received the year before the military ceded power in 2010.” *Id.*

141. *Id.* Global powers (i.e. the United States, European Union, Australia, and Japan) began to drop previous economic sanctions against Burma. *Id.* Multinational companies also began showing interest in Burma’s investment. *Id.* For the first time in twenty years, the UK Prime Minister, David Cameron, visited the country. *Id.* The World Bank also “subsequently embarked \$245 million in credit and grant funding for the country, marking the first international lending to the nation in twenty-five years.” *Id.*

142. *Burma, Asia*, HUMAN RIGHTS WATCH, <https://www.hrw.org/asia/burma> (last visited Mar. 18, 2018) (detailing increased discrimination and threats to the Rohingya Muslim minority since the civilian-led government took office in March 2016). See also *Burma: Events of 2016*, HUMAN RIGHTS WATCH, *infra* note 154 (“The political transition began promisingly, with the April [2016] release of over 200 political prisoners and detainees. Nonetheless, the NLD-led government has thus far not capitalized on its initial momentum in guiding the country toward substantive reform or the creation of democratic institutions.”). The government, however, faced new challenges, including “constitutional empowerment of the military, repressive legislation, weak rule of law, and a corrupt judiciary.” *Id.*

143. *Burma: Government Forces Implicated in Killings and Rape*, HUMAN RIGHTS WATCH (Jan. 12, 2017, 10:00AM), <https://www.hrw.org/news/2017/01/12/burma-government-forces-implicated-killings-and-rape>.

144. See Ewing-Chow, *supra* note 105, at 155 (noting that additional junta policies have caused harm to “the entire Southeast Asian region, from large refugee outflows, to the spread of HIV/AIDS and other infectious diseases and the trafficking of drugs and human beings”).

145. Jeffrey Sachs, *Myanmar: Sanctions Won’t Work*, THE FINANCIAL TIMES (July 27, 2004), <http://yaleglobal.yale.edu/content/myanmar-sanctions-wont-work>.

Burma has become steadily poorer.¹⁴⁶ For example, U.S. trade restrictions “resulted in the closing of many garment factories, leading to tens of thousands of job losses.”¹⁴⁷ Burma’s concessions and governmental change have garnered international attention, but foreign investment remains low due to the country’s lack of major foreign banks in the country, low-quality banking facilities, various exchange rates, unreliable infrastructure, and petroleum shortages.¹⁴⁸

B. Health

Generally, Burma has received the “lowest level of official development assistance among all of the least developed countries in Asia.”¹⁴⁹ Limited access to adequate diagnosis and antiretroviral treatment as well as the use of counterfeit anti-malarials, has caused increased rates of mortality.¹⁵⁰ Although Burma has made progress on health over the past twenty years, “much remains to be done beyond 2015 to sustain the gains that have been made to date.”¹⁵¹

C. Labor and Women’s Rights

After implementation of the BFDA, the U.S. State Department estimated “a loss of 60,000 jobs in the textile sector alone.”¹⁵² Additionally, U.S. sanctions on Burma have resulted in 400,000 layoffs, greatly affecting

146. See Ewing-Chow, *supra* note 105, at 158 (“The US State Department reports also suggest that per capita incomes in Myanmar fell from US\$300 to US\$225 from 2003 to 2004, a fall largely attributable to the BFDA. Unofficial estimates of the per capita income in 2005 suggest an even greater fall to US \$145 . . .”).

147. *Responsible Investment in Myanmar: The Human Rights Dimension*, INST. FOR HUM. RTS. & BUS., Sept. 2012, at 5, <https://www.ihrb.org/pdf/Occasional-Paper-1-Burma-Myanmar-FINAL.pdf>.

148. *Id.* at 7.

149. Yu Mon Saw et al., *Taking stock of Myanmar’s progress toward the health-related Millennium Development Goals: Current Roadblocks, Paths Ahead*, INT’L J. EQUITY HEALTH, Sept. 11, 2013, at 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3847191/pdf/1475-9276-12-78.pdf>. “Of the 187 countries the [UNDP] evaluated in its [HDI] for 2011, Myanmar ranked 149th.” *Responsible Investment in Myanmar, supra* note 147, at 8. See also *Burma: Health and Transition, infra* note 150 (noting that Burma “has some of the worst health indicators in the world” with a life expectancy of 56 years).

150. *Burma: Health and Transition*, 379 THE LANCET 2313, 2313 (June 23, 2012) (“Burma has more than 50% of all malaria-related deaths in southeast Asia . . . attributed to lack of access to adequate diagnosis and treatment, the use of counterfeit anti-malarials, and conflict. An estimated 15000 people die every year in Burma because of lack of access to antiretroviral treatment . . .”).

151. See Yu Mon Saw et al., *supra* note 149, at 6.

152. See Ewing-Chow, *supra* note 105, at 158.

women working in the textile industry, many of whom have been forced into prostitution, a “prescription for early death from AIDS.”¹⁵³ Overall, displaced women in conflict zones are particularly susceptible to “abductions, enforced disappearances, sexual violence, and exploitation.”¹⁵⁴ Few prosecutions of sexual violence have been publicly reported, yet there are allegations of “more than 115 cases of sexual violence perpetrated by the Burmese army since fighting renewed.”¹⁵⁵ Despite their central role in human rights and democratization, women in Burma have been marginalized in peace process initiatives.¹⁵⁶

D. *Ethnic Conflict and Armed Forces*

“Approximately one third of [Burma’s] population consists of ethnic minority groups.”¹⁵⁷ The Muslim ethnic minorities, the Rohingyas, continue to face systemic human rights violations and have even been denied citizenship, which “has facilitated enduring rights abuses, including restrictions on movement; limitations on access to health care, livelihood, shelter, and education; arbitrary arrests and detention; and forced labor.”¹⁵⁸ Hostility between armed groups has also continued, despite the Nationwide Ceasefire Agreement (“NCA”) that was written under the previous Thein Sein government.¹⁵⁹ The 2012 Rakhine State riots, a series of violent conflicts between the Rakhine Buddhists and the “Rohingya” Muslims, “left

153. HERNÁNDEZ-TRUYOL & POWELL, *supra* note 54.

154. See *Burma: Events of 2016*, World Report 2017, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2017/country-chapters/burma#d5e077> (last visited Mar. 18, 2018) [hereinafter *Burma: Events of 2016*].

155. *Id.* (“In October and November, media and local groups reported numerous incidents of rape and other sexual assault of Rohingya women and girls committed by security forces during the ‘clearing operations’ in Maungdaw district. The government denied all reports of sexual violence, and the military lockdown has prevented independent investigations . . .”). Such governmental suppression is symbolic of “the military’s long-standing refusal to seriously investigate cases of sexual violence.” *Id.*

156. *Id.* (“Women made up less than 10 percent of participants in the peace process, and women’s rights groups were sidelined at the 21st Century Panglong Conference. Women hold only 13 percent of seats in the new parliament; only one woman sits on the 18-person cabinet . . .”).

157. Amnesty Int’l, *The Rohingya Minority: Fundamental Rights Denied*, AI INDEX ASA 16/005/2004 1 (May 2004), <https://www.amnesty.org/download/Documents/92000/asa160052004en.pdf> (“[T]he seven ethnic minority states take their names from the Shan, Kachin, Chin, Kayin, Kayah, Mon, and Rakhine nationalities.”). It should be noted that every Burmese State and Division is comprised of a mixture of ethnic nationalities. *Id.* at 1-2.

158. *Burma: Events of 2016*, *supra* note 154.

159. *Id.* Since the adoption of the NCA, “military operations and clashes between signatory and non-signatory armed groups have continued.” *Id.* In 2016, “fighting between ethnic armed groups and government forces in Karen State displaced about 5,900 civilians.” *Id.*

200 dead and displaced thousands.”¹⁶⁰ Since then, deadly incidents continue to spread, with the most recent incidents resulting in over 120,000 Rohingya people fleeing to Bangladesh.¹⁶¹

E. Freedom of Expression and Assembly

Thein Sein pledged to release all political prisoners by the end of his term, but he continued arresting activists under politically motivated charges at the end of his rule.¹⁶² Even with 235 political prisoners released under the new NLD-led government, restrictions on free speech remain.¹⁶³ For example, many activists were arrested under the Telecommunications Act for “‘defaming’ Aung San Suu Kyi, President Htin Kyaw, or the military in social media posts.”¹⁶⁴ Arrests and prosecutions for participating in peaceful assemblies as well as the criminalization of expression continue to be a problem under the new administration.¹⁶⁵

VI. BURMA’S LIFTED SANCTIONS UNDER THE OBAMA ADMINISTRATION

In 2009, President Obama created a new approach to relations with Burma—sanctions would be maintained, but with a willingness to open “high-level dialogue” with the SPDC.¹⁶⁶ This policy would further the goals of preceding administrations — supporting “a unified, peaceful, prosperous, and democratic Burma that respects the human rights of its citizens” — by pressing Burma’s leaders to release political prisoners, cease conflict with ethnic minorities, end human rights violations, and initiate internal political dialogue.¹⁶⁷ Following Burma’s political transformation towards a quasi-

160. *Why is There Communal Violence in Myanmar?*, BBC NEWS (July 3, 2014), <http://www.bbc.com/news/world-asia-18395788>.

161. John Haltiwanger, *Is Genocide Occurring Against the Rohingya in Myanmar?*, NEWSWEEK (Sept. 5, 2017, 11:21 PM), <http://www.newsweek.com/genocide-occurring-against-rohingya-myanmar-experts-weigh-659841>.

162. *Burma: Events of 2016*, *supra* note 154.

163. *Id.* (“In April, two Muslim interfaith activists were convicted on charges under section 17(1) of the Unlawful Association Act and sentenced to an additional two years in prison . . .”).

164. *See id.* (listing individual activists such as Maung Saungkha, who was sentenced for a period of six months for posting a poem on Facebook, and Aung Win Hlaing, who was sentenced to nine months for referring to the president as an “idiot” and “crazy” on Facebook).

165. *Id.* Expression was perceived as a threat to armed forces, thus various organizations and activists have been charged for accusing the military of humanitarian wrongs. *Id.* For instance, the Ta’ang Women’s Organization was forced to cancel a press conference that documented military abuses against ethnic Palaung. *Id.* Also, Khine Myo Htun, an environmental activist, and Htin Kyaw, a veteran activist, were charged with violating the penal code for “accusing the military of committing human rights abuses.” *Id.*

166. *See Xu & Albert, supra* note 100. Dialogue included international security interests such as “nuclear nonproliferation and North Korean arms sales.” *Id.*

167. MICHAEL F. MARTIN, CONG. RESEARCH SERV., R43035, U.S. POLICY TOWARDS BURMA:

civilian government, the U.S. announced further steps for cooperation in 2012,¹⁶⁸ including reestablishing a United States Agency for International Development mission, easing bans on new investment in Burma, and waiving the previous restrictions of financial services to Burma and the previous import ban of Burmese goods.¹⁶⁹ On October 7, 2016, Obama ordered U.S. economic sanctions on Burma lifted given political reform over the previous five years following decades of oppressive military rule.¹⁷⁰

The current “military’s brutal crackdown on ethnic Rohingya in Rakhine State and other abuses against civilians in ethnic areas,” however, have undermined the “promise of the political transition” towards democratization.¹⁷¹ The new civilian-led government that took office in March of 2016 has “failed to hold the military accountable for persistent human rights violations throughout the country.”¹⁷² In 2016, Human Rights Watch reported that “[a]bout 32,000 Rohingya [were] sheltered in camps administered by the United Nations,” with “hundreds of thousands who have never been allowed to register as refugees or to lodge asylum claims,”

ISSUES FOR THE 133TH CONGRESS 1 (2013). To carry out these goals, the Obama administration “would also call for Burma to sever its political and military ties to North Korea and abandon its alleged nuclear weapons program.” *Id.*

168. *Id.* In response to promising developments in Burma, the Obama administration increased high-level meetings with the Thein Sein government and eased many of the existing sanctions. *Id.* at 2. Since adopting the new policy, “the first U.S. ambassador to Burma in 20 years has been appointed, Hillary Clinton became the first Secretary of State in over 50 years to visit Burma, and President Obama subsequently became the first U.S. President to visit Burma while in office.” *Id.*

169. *See id.*

170. Matthew Pennington, *Obama Orders US Economic Sanctions on Myanmar Lifted*, U.S. NEWS (Oct. 7, 2016, 6:26 PM), <http://www.usnews.com/news/politics/articles/2016-10-07/obama-orders-us-economic-sanctions-on-myanmar-lifted> (easing prohibitions by removing Burma’s national emergency, lifting a ban on jadeite and ruby imports from Burma, and removing banking restrictions). The Executive Order states in part:

I, BARACK OBAMA, President of the United States of America, find that the situation that gave rise to the declaration of a national emergency in Executive Order 13047 of May 20, 1997, with respect to the actions and policies of the Government of Burma . . . has been significantly altered by Burma’s substantial advances to promote democracy, including historic elections in November 2015 that resulted in the former opposition party, the National League for Democracy, winning a majority of seats in the national parliament and the formation of a democratically elected, civilian-led government; the release of many political prisoners; and greater enjoyment of human rights and fundamental freedoms, including freedom of expression and freedom of association and peaceful assembly. Accordingly, I hereby terminate the national emergency declared in Executive Order 13047, and revoke that order

Exec. Order No. 13,742, 81 Fed. Reg. 70,593 (Oct. 7, 2016).

171. *Burma: Government Forces Implicated in Killings and Rape*, HUMAN RIGHTS WATCH (Jan. 12, 2017, 10:00 AM), <https://www.hrw.org/news/2017/01/12/burma-government-forces-implicated-killings-and-rape>.

172. *Id.*

subjecting them to live undocumented, in makeshift camps, or in private dwellings, “vulnerable to human traffickers and exploited as cheap labor.”¹⁷³ While President Trump has not addressed his approach to Obama’s lifted sanctions in Burma, measures should be taken as the Trump administration starts “to formulate its broader policy stance toward Southeast Asia.”¹⁷⁴

VII. A COMPARATIVE ANALYSIS OF U.S. SANCTIONS AGAINST CUBA AND BURMA

As both Cuba and Burma share “long histories of military dictatorship, censorship, human rights abuses, failed socialism, embargoes, and economic devastation,”¹⁷⁵ Burma’s challenges to democratization may serve as an indication of what lies ahead for Cuba. While the policy challenges posed by both countries’ human rights abuses are similar,¹⁷⁶ the differences in the duration and terms of sanctions against Cuba and Burma may demonstrate otherwise. History undeniably influences foreign policy. As such, it is important to appreciate the implications of our past, which in turn allows us to address our present.

Unilateral sanctions were imposed on Cuba under the FAA in 1961, resulting from Fidel Castro seizing power in 1959 and the increased tensions of the Cold War.¹⁷⁷ The result was a total trade ban against Cuba.¹⁷⁸ Burmese sanctions, on the other hand, were not imposed until 1990 under the CTA and upon anti-government protests and SLORC post-election restrictions.¹⁷⁹ The result in this case was not a total ban, but merely conditional sanctions if specified conditions were not met.¹⁸⁰ Upon seizing power in 1962 by staging a coup d’état, General Ne Win imposed similar

173. HUMAN RIGHTS WATCH, WORLD REPORT 2017: EVENTS OF 2016 118 (2017). For recent updates regarding the ongoing discrimination of the Rohingya minorities see Gibbens, *infra* note 203.

174. David Nakamura, *As Trump Administration Focuses On Southeast Asia, Concerns Over its Approach to Burma*, WASH. POST (May 6, 2017) https://www.washingtonpost.com/politics/as-trump-administration-focuses-on-southeast-asia-concerns-over-its-approach-to-burma/2017/05/05/e933156c-3197-11e7-9534-00e4656c22aa_story.html?utm_term=.da71b0d331d8.

175. Casey Cagley, ‘Disciplined Democracy’—Lessons for Cuba from Myanmar, OPENDEMOCRACY (Oct. 4, 2016), <https://www.opendemocracy.net/casey-cagley/disciplined-democracy-lessons-for-cuba-from-myanmar>.

176. See Mauricio Claver-Carone, *To Change Cuba, Stick with the Burma Model*, THE HILL (Apr. 11, 2012, 8:42 PM), <http://thehill.com/blogs/congress-blog/foreign-policy/221065-to-change-cuba-stick-with-the-burma-model-> (comparing political reform and sanctions in Burma and Cuba). U.S. sanctions were weakened by investments from “regime-friendly neighbors” in China, India, and Thailand in the case of Burma and Venezuela, Canada, and Spain in the case of Cuba. *Id.*

177. See Foreign Assistance Act of 1961, *supra* note 21.

178. *Id.*

179. See MARTIN, *supra* note 112, at 11-12.

180. *Id.*

reforms in Burma as Castro had done in Cuba, except without U.S. intrusion.¹⁸¹ Like Castro, Ne Win nationalized the Burmese economy,¹⁸² suppressed protests by jailing and killing thousands of demonstrators,¹⁸³ and mismanaged the country with governmental corruption.¹⁸⁴ In fact, Ne Win's nationalization and isolation policies prior to the sanctions of 1990 resulted in Burma becoming one of the world's poorest countries.¹⁸⁵ Despite the initial relaxed sanctions against Burma whose previous corrupt general, Ne Win, mirrored Castro's human rights violations, both countries gradually experienced worsening sanctions post-1990.

By 1997, the U.S. had prohibited any new assistance in Burma and Cuba.¹⁸⁶ The CDA of 1992 against Cuba and the FOA of 1997 against Burma were similar in that they limited trade and hindered both economies, but the CDA against Cuba ultimately became a multilateral embargo, engendering more economic and international ramifications against Cuba.¹⁸⁷ The CDA of 1992 prohibited all foreign-based subsidiaries of U.S. companies from trading with Cuba, whereas the prohibition of non-humanitarian assistance under the FOA in Burma was limited to the United States.¹⁸⁸ Subsequently, the 1992 CDA caused U.S. trade with Cuba

181. See Nyun, *supra* note 101, at 474.

182. Compare *The Ne Win Years: 1962-1988*, OXFORD BURMA ALLIANCE, <http://www.oxfordburmaalliance.org/1962-coup--ne-win-regime.html> (last visited Mar. 18, 2018), with Suddath, *supra* note 15, and Leon Neyfakh, *Cuba, You Owe Us \$7 Billion*, BOSTON GLOBE (Apr. 18, 2014), <https://www.bostonglobe.com/ideas/2014/04/18/cuba-you-owe-billion/jHAufRfQJ9Bx24TuzQyBNO/story.html> (noting the U.S. assets Castro seized "in the process of nationalizing the Cuban economy").

183. Compare *U Ne Win*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/biography/U-Ne-Win> (last visited Mar. 18, 2018) ("[T]he government [under Ne Win] resorted to brutal measures to suppress the uprisings that included killing hundreds of demonstrators and jailing thousands more."), and *U Ne Win*, BIOGRAPHY, <http://www.biography.com/people/u-ne-win-9422402#synopsis> (last visited Mar. 18, 2018) (discussing how Ne Win replaced Parliament with a military dictatorship and he often jailed his opponents), with *Cuba: Events of 2015*, *supra* note 82 ("Detention is often used preemptively to prevent people from participating in peaceful marches or meetings to discuss politics. Detainees are often beaten, threatened, and held incommunicado for hours or days.").

184. Compare Xu & Albert, *supra* note 100 ("By 1988, widespread corruption and food shortages led to mass protests, spearheaded by students."), with Alejandro Armengol, *Corruption in Cuba: an External Curse or Inherent to the System?*, HAVANA TIMES (May 3, 2017), <http://www.havanatimes.org/?p=125066> (comparing Fidel Castro's lack of uncovering corruption with Raul Castro's priority in prosecuting corruption).

185. See Ewing-Chow, *supra* note 105.

186. See Cuban Democracy Act, *supra* note 32; see also Foreign Operations, Export Financing, and Related Programs Appropriations Act, *supra* note 117.

187. Compare Cuban Democracy Act, 22 U.S.C. § 6003 (seeking international cooperation), with Foreign Operations, Export Financing, and Related Programs Appropriations Act, § 570(a)(1)-(2) (imposing multilateral restrictions only to international financial institutions).

188. Compare Cuban Democracy Act, 22 U.S.C. § 6003(a) (imposing sanctions against countries assisting Cuba), with Foreign Operations, Export Financing, and Related Programs Appropriations Act, § 570(a)(1) ("There shall be no United States assistance to the Government of Burma, other than: (A)

through foreign subsidiaries to fall from \$718 million in 1991 to \$1.6 million in 1992.¹⁸⁹ Notwithstanding these strengthened sanctions, the U.S. eventually relaxed restrictions and offered to end these embargoes on the condition of “substantial and measurable progress” towards ending human rights violations and implementing a democratic government in the case of Burma and the condition of a “democratically elected government in Cuba.”¹⁹⁰ Once again, however, U.S. sanctions disproportionately disadvantaged Cuba because it would be much easier to implement “substantial and measurable progress” than to overthrow Fidel Castro (one of the longest-serving world leaders of all time),¹⁹¹ his brother Raul Castro, or any subsequent dictator.

Over fifteen U.S. sanctions programs assist in addressing “mass atrocities, civil conflict, human rights abuses, and/or political repression,” while usually restricting only limited types of business.¹⁹² With Cuba, however, the U.S. restricted essentially all business,¹⁹³ and in 2016, Cuba ranked as the fifth most comprehensive U.S. sanctions program.¹⁹⁴ Of the four countries subject to more sanctions than Cuba, the U.S. designates three—Iran, Sudan, and Syria—as “state sponsors of terrorism.”¹⁹⁵ Despite the stringent sanctions against Cuba, when the Obama administration lifted the embargo, Cuba had not actually met the conditions required to lift it, namely transitioning to a democratic government.¹⁹⁶

humanitarian assistance . . .”).

189. John W. Boscaroli, *An Anatomy of a Cuban Pyjama Crisis: Reconsidering Blocking Legislation in Response to Extraterritorial Trade Measures of the United States*, 30 LAW & POL’Y INT’L BUS. 439, 448 (1999).

190. Compare Cuban Democracy Act, 22 U.S.C. § 6063(c)(3) (“The president shall, upon determining that a democratically elected government in Cuba is in power, submit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance . . .”), with Burmese Freedom and Democracy Act, § 3(a)(3)(A)-(B) (imposing the conditions of making “substantial and measurable progress to end violations of internationally recognized human rights” and making “measurable and substantial progress toward implementing a democratic government” on the SPDC).

191. Anthony DePalma, *Fidel Castro, Cuban Revolutionary Who Defied U.S., Dies at 90*, N.Y. TIMES, (Nov. 26, 2016), <https://www.nytimes.com/2016/11/26/world/americas/fidel-castro-dies.html> (recounting Fidel Castro’s long-lived power). “Fidel Castro had held on to power longer than any other living national leader except Queen Elizabeth II.” *Id.*

192. Harrell, *supra* note 1, at 11. Aside from Cuba and Burma, the other sanctions programs included: “Belarus . . . Burundi, the Central African Republic, the Ivory Coast . . . the Democratic Republic of Congo . . . Iraq . . . Lebanon . . . Libya, Somalia, South Sudan, Venezuela, Yemen, and Zimbabwe.” *Id.* at 20 n.41.

193. *Id.* at 11.

194. *Id.*

195. *Id.* See also Julie Hirschfeld Davis, *U.S. Removes Cuba From State-Sponsored Terrorism List*, N.Y. TIMES (May 29, 2015), <https://www.nytimes.com/2015/05/30/us/removes-cuba-from-state-terrorism-list.html> (removing Cuba from the State-Sponsored Terrorism List in 2015).

196. Michael Sliwinski, *The U.S. and Cuba: The Path to Normalized Relations*, LAW STREET (Jan.

Contrary to Cuba, Burma had made “substantial advances to promote democracy, including historic elections in November 2015,” thereby meeting its “substantial and measurable progress” requirement needed to lift the embargo.¹⁹⁷ The differences in the circumstances surrounding the lifted embargo speaks to the inefficacy of the severe and outdated embargo against Cuba. If the embargo remained truly about human rights, the U.S. might cease doing business with other countries that defy “internationally accepted standards of human rights,” including one of the United States’ biggest trading partners—China.¹⁹⁸ What might have begun as a means towards democratization has failed to achieve its goal; the embargo harms the people of Cuba and limits an economic opportunity for both the United States and Cuba.

Though Burma and Cuba were both subjected to embargo restrictions, their approaches towards democratization have been different.¹⁹⁹ Burma, for example, has implemented various political reforms, while the Cuban autocratic regime continues to dominate the country with limited economic reform.²⁰⁰ Prior to the 2012 policy changes, the Burmese government had “passed progressive legislation on the right to assemble, allowed for greater personal freedoms, released hundreds of political prisoners and entered into ceasefires with armed ethnic groups.”²⁰¹ This is not to say that Burma has transitioned into a democracy—it is a work in progress. Burma’s military still retains too much control and there remains persecution of political

6, 2015), <https://lawstreetmedia.com/issues/world/u-s-cuba-path-normalized-relations/> (“[T]he embargo could only be lifted if Cuba would: [l]egalize all political activity, release all political prisoners, commit to free and fair elections in the transition to representative democracy, grant freedom to the press, respect internationally recognized human rights, and allow labor unions.”). “Since Cuba has not met these conditions [sic] the embargo has endured.” *Id.*

197. *Obama Orders US Economic Sanctions on Myanmar Lifted*, ALJAZEERA (Oct. 7, 2016), <http://www.aljazeera.com/news/2016/10/obama-economic-sanctions-myanmar-161007215716882.html>.

198. Michael J. Totten, *Letter from Cuba: To Embargo or Not*, WORLD AFFAIRS (Mar./Apr. 2014), <http://www.worldaffairsjournal.org/article/letter-cuba-embargo-or-not>.

199. See Cagley, *supra* note 175 (noting that Burma’s transition over the past five years towards a “disciplined democracy” provides one possible scenario for social and political transition in dictatorships like Cuba).

200. See Mauricio Claver-Carone, *supra* note 176. The Burmese military made a number of changes: “stepped aside in favor of a civilian government; legalized independent labor unions and strikes; authorized the creation of an independent National Human Rights Commission; relaxed press and internet censorship laws; released most political prisoners, and equally important, halted new political arrests.” *Id.* Castro’s economic “reforms,” on the other hand, were limited to “a handful of self-employment measures, mostly recycled from the 1990’s with the regime retaining ownership rights.” *Id.*

201. Erin Murphy, *Parallels in Myanmar and Cuba Policy*, HUFFINGTON POST, http://www.huffingtonpost.com/erinmurphy/parallels-in-myanmar-and-cuba-policy_b_6395342.html (last visited Mar. 18, 2018).

dissidents and ethnic minorities.²⁰² This is especially noticeable regarding the recent Rohingya “refugee crisis,” which has displaced at least 500,000 Rohingya who have fled to Bangladesh since August of 2017.²⁰³ In 2011, Raul Castro created some economic changes through expansion of self-employment, decollectivization, and wider use of market prices.²⁰⁴ He, like the Burmese government, also released political prisoners and increased access to the internet.²⁰⁵ Nevertheless, authoritarian rule continues to dominate Cuba. Although social and economic reforms are important for countries hoping to achieve democratization, a country’s political climate plays a crucial role.

There have been attempts by Cuban society leaders and democracy activists to “learn from Burma’s successes, failures, and ongoing struggles.”²⁰⁶ But Cuba’s current political environment will prevent it from experiencing the level of “political will” achieved by Burma over the last several years;²⁰⁷ real progress will require significant political change.²⁰⁸ Therefore, even if democracy activists and the legislature express interest in a move towards democracy, there will not be significant change in Cuba until there is a change in regime, similar to Burma.²⁰⁹ It should be noted, however, that because the Cuban government faces no organized

202. See Editorial, *Myanmar Has Made a Lot of Progress but not Enough That All Sanctions Should be Lifted*, L.A. TIMES (Sept. 14, 2016, 5:00 AM), <http://www.latimes.com/opinion/editorials/la-ed-myanmar-sanctions-20160913-snap-story.html>; see also Joshua Kurlantzick, *From Rohingya to Ethnic Rebels, Myanmar’s Troubles Go Regional*, WORLD POLITICS REVIEW (June 18, 2015), <http://www.worldpoliticsreview.com/articles/16030/from-rohingya-to-ethnic-rebels-myanmar-s-troubles-go-regional> (recounting one of the worst humanitarian crises in the world with at least 200 killed and more than 50,000 driven out of their homes in a four month period).

203. See Sarah Gibbens, *Myanmar’s Rohingya Are in Crisis – What You Need to Know*, NATIONAL GEOGRAPHIC (Sept. 29, 2017), <http://news.nationalgeographic.com/2017/09/rohingya-refugee-crisis-myanmar-burma-spd/> (detailing the ongoing discrimination of the Rohingya Muslim ethnic minority group).

204. See Murphy, *supra* note 201.

205. *Id.*

206. See Cagley, *supra* note 175. “In August 2016, the International Republican Institute (IRI) convened a group of eminent Cuban civil society leaders and democracy activists in Burma” to learn from their Burmese civil society counterparts. *Id.* The Cubans were able to interact and learn from members of the Burmese parliament and members of the “‘88 Generation’ – the pro-democracy student movement that led protests against the ruling military junta in 1988.” *Id.*

207. Roger R. Betancourt & Jorge A. Sanguinety, *Is There Political Will Towards Democratization in Cuba?*, 18 CUBA IN TRANSITION 313, 313 (2008), <http://www.ascecuba.org/c/wp-content/uploads/2014/09/v18-betancourtsanguinety.pdf> (defining political will as “a government’s commitment and ability to act in the furthering or the reversal of a democratization process” and distinguishing commitment from ability).

208. Burma’s political change, while in the right direction, has not reached the level of democratization required to prevent its ongoing human rights abuses.

209. Betancourt & Sanguinety, *supra* note 207, at 320 (arguing that “[l]egislatures and the judicial system have little influence other than as rubber stamp mechanisms”). “Civil society institutions are weak by design and [those] with an autonomous influence, the dissidents, are frequently persecuted by the current regime” which can serve as a major deterrent. *Id.*

opposition,²¹⁰ it might be in a better position for democratization than Burma, depending on Cuba's future leader.²¹¹ The Burmese constitution of 2008 reserves twenty-five percent of the seats in parliament for the military and grants them control of the most important ministries, including control over all public administration, education, and the economy.²¹² So long as the military holds all of this power and control, it would be difficult for Burma to have a "true democracy."²¹³ Even though Castro holds just as much if not more power as the sole dictator, Fidel Castro's death in 2016 and Raul Castro's future resignation in 2018²¹⁴ represent a historic opportunity for change for Cuba.

VIII. RECOMMENDATIONS FOR REFORM IN CUBA

Currently, democratization in Cuba is especially important with Obama's repeal of "wet foot, dry foot" on January 12, 2017, a policy that allowed most Cuban migrants who reach U.S. soil to stay and become permanent residents after one year.²¹⁵ Democratization is even more critical at this point in time now that Cuban citizens will no longer be able to flee Cuba to escape human rights violations and political grievances as easily as before.

This Note stands for the proposition that comprehensive sanctions against Cuba have been counterproductive in bringing about regime change. Given the negative effects of sanctions as well as the increased cooperation and business opportunities for both U.S. and Cuba as a result of the lifted embargo,²¹⁶ the U.S. should maintain diplomatic relations with Cuba rather than restore full sanctions. Some indicators of progress in Cuba that have provided its citizens with more political and economic liberalization

210. Joshua Kurlantzick, *Is Washington's Myanmar Policy the Model for U.S.-Cuba Normalization?*, WORLD POLITICS REVIEW (Mar. 8, 2016), <https://www.worldpoliticsreview.com/articles/18149/is-washington-s-myanmar-policy-the-model-for-u-s-cuba-normalization>.

211. If Cuba's next leader wants to transition towards democracy, it would be an easier hurdle than Burma, whose military still retains the majority of control over the country.

212. Eliecer Avila, *Lessons from Myanmar*, TRANSLATING CUBA (Sept. 4, 2016), <http://translatingcuba.com/lessons-from-myanmar-14ymedio-eliecer-avila/>.

213. *Id.*

214. See Sesin, *infra* note 216.

215. Alan Gomez, *Obama Ends 'Wet Foot, Dry Foot' Policy for Cubans*, USA TODAY (Jan. 12, 2017, 4:31 PM), <http://www.usatoday.com/story/news/world/2017/01/12/obama-ends-wet-foot-dry-foot-policy-cubans/96505172/> (ending a 20-year-old policy created by President Clinton in 1995). "Effective immediately, Cuban nationals who attempt to enter the United States illegally and do not qualify for humanitarian relief will be subject to removal." *Id.*

216. See generally Carmen Sesin, *Cuba after Castro: How Much Change, and How Quickly?*, NBC NEWS (Nov. 27, 2016, 8:48 AM), <http://www.cnbc.com/2016/11/27/cuba-after-castro-how-much-change-and-how-quickly.html>.

include: business,²¹⁷ national security,²¹⁸ health,²¹⁹ environment,²²⁰ family,²²¹ and entrepreneurship.²²² Furthermore, if the embargo were reinstated in its entirety, it would harm U.S. companies,²²³ disconnect families, make the region less safe, halt collaborative research between the two countries,²²⁴ and have international implications.²²⁵

While real change may not be expected until April 19, 2018²²⁶ — the first time since the Cuban Revolution that a Castro will not be in power — further change in Cuba may depend in part on President Donald Trump and his administration. Even though President Trump’s foreign policy reversing the lifted embargo has yet to be “officially” implemented by legislation, the Trump administration has announced its plans to tighten the economic embargo on Cuba.²²⁷ Therefore, future U.S.-Cuba relations will likely rest in part on the subsequent Cuban regime to “democratize” Cuba, unless “Libertad” is repealed.²²⁸ If the Trump administration were to balance

217. Carlos Gutierrez, *An Opportunity for Donald Trump in Cuba*, THE HILL (Dec. 17, 2016, 1:01 PM), <http://thehill.com/blogs/pundits-blog/the-administration/310864-an-opportunity-for-donald-trump-in-cuba>. Various U.S. businesses have negotiated deals with Cuba, including but not limited to ten airlines, four telecommunications companies, four cruise lines, Airbnb, and Google. *Id.*

218. *Id.* (“Joint counter-narcotics efforts are helping keep our borders safe through cross-border information-sharing, and the U.S. and Cuban governments are continuing to have dialogue on law enforcement issues including counter terrorism, cyber security, and secure travel and trade.”).

219. Both the U.S. and Cuba are working to fight infectious diseases such as Zika and dengue fever. *Id.* Also, the “Roswell Park Cancer Institute is preparing to launch clinical trials of a potentially life-saving cancer vaccine developed in Cuba.” *Id.*

220. The United States and Cuba “signed an environment cooperation agreement” that will help protect both countries’ “coasts and marine life, reduce disaster risks, and address marine pollution.” *Id.*

221. “New programs such as CubaOne are offering young Cuban Americans the opportunity to travel to the island to learn about their heritage.” *Id.* Despite Cuba being the only country in the world where U.S. citizens are restricted by its government to travel as a tourist, “U.S. travel to Cuba has increased by [eighty] percent in the last two years . . .” *Id.*

222. *See* Gutierrez, *supra* note 217 (noting that as a result of the remittances from the lifted embargo, a quarter of the workforce in Cuba has entered the private sector).

223. A 2016 report by the USITC found that “if U.S. restrictions on Cuba were lifted, U.S. exports could increase to \$2.2 billion, up from \$180 million last year.” *Id.*

224. *See* Sesin, *supra* note 216 (determining that the lifted embargo “permits Cuban pharmaceutical companies to do business with the United States and allows the United States and Cuba to conduct joint medical research”).

225. For example, the EU and Cuba recently signed an agreement to normalize ties, which might affect the U.S. companies that have already established business in Cuba. *See* Gutierrez, *supra* note 217 (explaining that as Cuba continues to sign deals with other countries such as Russia, China and Europe, U.S. companies will be locked out).

226. Kaelyn Forge, *Raul Castro: I’m stepping down as Cuba’s president on April 19*, ABC NEWS (Dec. 21, 2017, 7:15 PM), <http://abcnews.go.com/International/raul-castro-stepping-leader-cuba-2018/story?id=51932114>. Due to Hurricane Irma, Cuba’s municipal elections have been extended to March 2018 and its presidential election to April 2018. *Id.*

227. *See* Harris, *supra* note 99.

228. *See* 22 U.S.C. § 6064(a) (“[T]he President, after consultation with the Congress, is authorized to take steps to suspend the economic embargo of Cuba . . . to the extent that such steps contribute to a stable foundation for a democratically elected government in Cuba.”).

democratization with the United States' financial stake in the country, it should realize the potential benefit for both countries. If an embargo implemented primarily to deter human rights abuse in Cuba has been in place for over fifty years, the U.S. should not take steps to further inhibit the already growing Cuban economy and its progress.

Be that as it may, the uncertainty over who will succeed the Castro brothers poses concern regarding a change in policy. Perhaps the Trump administration will want to use the embargo as a foreign policy bargaining tool in the event that Cuba's new leader proves to be more autocratic than Raul and Fidel Castro. In that case, the Trump administration's tactic in unveiling a more restrictive Cuba policy might work to its favor. Another factor to take into account, mentioned by proponents of the embargo, is Cuba's prior hostile responses to U.S. attempts to soften sanctions.²²⁹ Nonetheless, when balancing humanitarian efforts with the interests of the United States as a whole, this Note suggests that the Trump administration take a middle ground amidst the uncertainty of Castro's successor and Cuba's failure in meeting the Libertad conditions required to lift the embargo in the first place.²³⁰ A middle ground approach could consist of applying a more targeted sanction program as opposed to the previously severe and comprehensive embargo against Cuba.²³¹ President Trump's proposed directive in some ways strikes this balance by limiting the United States from engaging in business with firms controlled by the Cuban military, intelligence, or security services.²³² However, debate persists over the extent of the military's control of the Cuban economy.²³³ Additionally,

229. See Carol J. Williams, *Widely Condemned U.S. Policy on Cuba Unlikely to Change Soon*, L.A. TIMES (Nov. 16, 2012), <http://articles.latimes.com/2012/nov/16/world/la-fg-wn-us-cuba-embargo-20121115>. President Carter tried to normalize relations with Cuba, "only to be rebuffed by the 1980 Mariel boatlift that carried 125,000 would-be emigres, prisoners and mental patients to U.S. shores." *Id.* Under President Clinton, "Cuban defense forces shot down two planes in international airspace that had been searching for Cuban rafters." *Id.* Under President Obama, Cuba detained Alan Gross, a U.S. government emissary who was caught installing technological communications equipment in Cuba. *Id.*

230. See Cuban Liberty and Democratic Solidarity Act, *supra* note 39.

231. See Harrell, *supra* note 1; see also *supra* Section I (detailing the history of the Cuban Embargo, starting from *el Bloqueo* in 1960 under Eisenhower, to the FAA of 1961, to the CDA of 1992, to Libertad in 1996, to the TSRA of 2000).

232. See Davis, *supra* note 95.

233. Compare Marc Frank, *Cuban Military's Tentacles Reach Deep Into Economy*, REUTERS (June 15, 2017, 5:59 PM), <https://www.reuters.com/article/us-usa-cuba-military/cuban-militarys-tentacles-reach-deep-into-economy-idUSKBN1962VK> ("Trump's expected limits on U.S. business deals will target the Armed Forces Business Enterprises Group (GAESA), a conglomerate involved in all sectors of the economy" which "boasts dozens of companies that control anywhere from 40 percent to 60 percent of the Caribbean island's foreign exchange earnings, according to Cuban economists."), with William M. LeoGrande, *Does the Cuban Military Really Control Sixty Percent of the Economy?*, HUFFINGTON POST (June 28, 2017, 11:39 AM), https://www.huffingtonpost.com/entry/does-the-cuban-military-really-control-sixty-percent_us_59530b0ee4b0f078efd985d8 ("Emilio Morales at the Havana

limiting American tourism could do more harm than good, resulting in economic hardship to the Cuban people while failing to achieve the ostensible goal of contributing towards the democratization process.

IX. CONCLUSION

By looking to Burma's progress towards a civilian parliament, Cuba can see the potential for implementing democratic change in its own country. Burma's current ongoing violence against the Rohingya people does not discount this as a learning opportunity for Cuba and the United States alike – it further reveals how the process towards democratization does not always amount to lower rates of human rights violations. The United States' embargo against Cuba, lasting almost sixty years,²³⁴ has proved to be inefficient at promoting democracy and human rights. The U.S. and Cuban governments recently began a complex process of creating an amicable bilateral relationship, and a complete repeal of the lifted embargo might undue the United States' inability to overcome six decades of mistrust. But the fact remains that Cuba has yet to make the necessary changes toward democratization. Thus, if further progress is not reached under the new Cuban "President,"²³⁵ the Trump administration should continue to work with Congress to create a more targeted sanctions program that is tailored to advancing U.S. interests in Cuban democratization, while providing support for the Cuban people.

*Stephanie Amador**

Consulting Group . . . estimates GAESA's total current revenue at \$3.8 billion" which "constitutes 21% of total hard currency income from both state enterprises and the private sector, 8% of total state revenue, and just 4% of GDP . . . a long way from 60% of the economy . . .").

234. See Harrell, *supra* note 1.

235. See Forge, *supra* note 226 (predicting the successor to be Miguel Diaz-Canal, Cuba's current vice president). This transition to a non-Castro regime "could result in a further opening with the U.S., as the Libertad Act of 1996, which strengthened the U.S. embargo against Cuba, lists as one of its requirements for a transition government that it 'not include Fidel Castro and Raul Castro'. . . ." *Id.*

* Executive Notes Editor, *Washington University Global Studies Law Review*; J.D. Candidate (2018), Washington University in St. Louis; A.B. Sociology (2013), Duke University. First and foremost, I would like to thank my grandparents, Julia and Pedro Rivero, who provided a pathway to my American Dream after they immigrated to the United States from Cuba. I would also like to thank my parents, Connie Rivero and Emilio Amador, for their unwavering love and support. Finally, I would like to thank the editorial board and staff of the *Global Studies Law Review* for their meticulous work in preparing this Note for publication.