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## Sacrificing Burma to Save Free Trade: The Burma Freedom Act and the World Trade Organization

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# SACRIFICING BURMA TO SAVE FREE TRADE: THE BURMA FREEDOM ACT AND THE WORLD TRADE ORGANIZATION

*Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.*<sup>1</sup>

## I. INTRODUCTION

In 1996, the Commonwealth of Massachusetts enacted a law that prohibits state agencies from purchasing goods and services from corporations contracting with Burma.<sup>2</sup> Burma<sup>3</sup> is a country in Southeast Asia ruled by a military government notorious for egregious human rights violations against its citizens, through such practices as political killings, torture,<sup>4</sup> and forced labor.<sup>5</sup> At least

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1. MARTIN LUTHER KING, JR., WHY WE CAN'T WAIT 77 (1964) ("Letter from the Birmingham Jail").

2. See generally MASS. GEN. LAWS ANN., ch. 7, §§ 22G-22M (West 1996 & Supp. 2001).

3. As noted by the Supreme Court in *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000), the Burmese government changed the name of the country to Myanmar in 1989. The Supreme Court, however, followed the decision of the Court of Appeals, which used the name Burma "since both parties and *amici curiae*, the state law, and the federal law all do so." *Id.* at 366 n.1 (citing *Nat'l Foreign Trade Council v. Natsios*, 181 F.3d 38, 45 n.1 (9th Cir. 1999)). Neither the Court, nor this author, intends the use of this term to reflect a particular political opinion.

4. See Andrea Witt Sendlenski, Note, *Taking Our Money and Going Home: State Divestment Policy and the Foreign Affairs, Foreign Commerce, and Supremacy Clauses*, 24 SUFFOLK TRANSNAT'L L. REV. 317, 322-23 (2001).

5. See Ako Miyaki-Murphy, Comment, *In the Wake of Crosby v. National Foreign Trade Council: The Impact Upon Selective Purchasing Legislation Throughout the United States*, 34 J. MARSHALL L. REV. 827, 832 (2001).

twenty-two jurisdictions in the United States have passed similar laws.<sup>6</sup>

In 2000, the Supreme Court decided *Crosby v. National Foreign Trade Council*.<sup>7</sup> The decision declared the Massachusetts law and, by inference, all similar state and municipal legislation unconstitutional.<sup>8</sup> One year later, identical bills were proposed in the U.S. House of Representatives and the Senate,<sup>9</sup> known as the “Burma Freedom Act,”<sup>10</sup> which aim to do almost exactly what the Massachusetts law sought to accomplish. This Note first explores the constitutional pitfalls of the Massachusetts law, then examines the newly proposed federal bills, which avoid any such pitfalls, but face a potential threat in the World Trade Organization.

Part II of this Note looks at the Massachusetts legislation in three sections. The first section offers a brief modern history of Burma, providing an understanding of what motivated the Massachusetts government and the federal government to adopt such regulatory legislation. The second section juxtaposes the recently proposed Burma Freedom Act with the state law itself. The third section considers the United States Supreme Court’s decision in *Crosby*, looking at Justice Souter’s opinion for the Court and examining the constitutional issues that forced Massachusetts to bury its regulatory law, paying special attention to the federal statute that preempted the Massachusetts law. This consideration aids in determining whether the measures delineated in the proposed Burma Freedom Act will pass the constitutional analysis conducted by the Court in *Crosby*. Upon determining that it does, in fact, pass the rigors of this test, this Note will look at the impact such legislation might have on social change.

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6. See *id.* at 838; see, e.g., LOS ANGELES CITY COUNCIL, *Burma (Myanmar)*, DOCID 97-1861 (Nov. 21, 2000), available at <http://citycouncil.cityofla.org>.

7. 530 U.S. 363 (2000).

8. See *id.* at 372.

9. Burma Freedom Act, H.R. 2211, 107th Cong. (1st Sess. 2001); S. 926, 107th Cong. § 1 (2001).

10. Although the title “Burma Freedom Act” is used in the House bill only, the term will be used throughout this Note to refer to both the House bill and the Senate bill for simplicity, as they are virtually identical in their purposes and procedures.

Part III examines the next and potentially greatest threat to federal trade sanction legislation and the freedom of our government to create such legislation, a threat that might surface upon the implementation of the Burma Freedom Act. This threat is from the World Trade Organization (WTO), an international organization which governs trade between nations and whose rules have the force of law.<sup>11</sup> Next, this section will analyze the principles and positions of the WTO that explain its opposition to boycotts and its “business first” ideal.<sup>12</sup> This section then discusses whether such trade sanction statutes are worth the effort, exploring the broader question of whether sanctions are productive or counterproductive in the global market. This discussion, coupled with the stance the WTO takes regarding sanctions, will lead to a consideration of the potential conflict that lies ahead if the United States decides to violate the WTO and enforce the Burma Freedom Act. Following this analysis of a potential conflict between the United States and the WTO, this Note will consider measures the United States could take to prevent WTO action.

In Part IV, this Note advocates a broader, more encompassing humanitarian perspective when considering the role the United States plays in the global market. It points to a realization that the world, and the global market itself, is full of agencies that support boycotts and the freedom to boycott, and one agency that does not but claims to have the final word—the WTO.

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11. See World Trade Organization, *What is the WTO?*, at [http://www.wto.org/english/thewto\\_e/whatis\\_e/whatis\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm) (last visited Mar. 18, 2002).

12. See Christopher H. Smith, *Hearing On “China, the WTO, and Human Rights,”* (Dec. 8, 1999) at [http://www.house.gov/international\\_relations/hr/wtochs.htm](http://www.house.gov/international_relations/hr/wtochs.htm) (last visited Mar. 23, 2001) [hereinafter *Hearing*] (stating that “[t]he selective use of rhetoric denouncing ‘unilateral sanctions’ hides an implicit prioritization of profits above fundamental human rights.”).

## II. WHAT TANGLED WEBS WE WEAVE: FROM THE MASSACHUSETTS LAW TO THE BURMA FREEDOM ACT

### A. *Burma: A Brief History of Injustice*

Burma achieved independence from British colonial rule in 1948.<sup>13</sup> From 1948 to 1962, Burma had a parliamentary democracy under the elected leadership of Prime Minister U Nu, which ended when General Ne Win overthrew him in a military coup.<sup>14</sup> Until 1988, Ne Win's military regime, the Burma Socialist Programme Party (BSPP), held power.<sup>15</sup> Although there were political demonstrations to express resistance to the BSPP's rule, the citizens were effectively repressed through violence and the threat of violence.<sup>16</sup> In addition, the country remained in isolation, virtually unnoticed by the rest of the global community.<sup>17</sup> The economy continued to deteriorate and the situation reached "crisis proportions."<sup>18</sup>

The Burmese citizens finally had enough. On August 8, 1988, just two weeks before the Tienanmen Square uprising in China, a student-led demonstration was held in Rangoon, the capital of Burma.<sup>19</sup> What began as a peaceful demonstration demanding the replacement of the BSPP by a democratically elected government soon ended in the death of thousands of demonstrators at the hands of the military government.<sup>20</sup> The government did respond to the demonstrators a month later, declaring that the "State Law and Order Restoration Council" (SLORC) had taken control of the country.<sup>21</sup> There was no real difference between this "new" leadership and that

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13. See Sendlenski, *supra* note 4, at 320.

14. See Miyaki-Murphy, *supra* note 5, at 831; see also BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, BURMA—COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2000, (Feb. 2001) [hereinafter COUNTRY REPORTS] (noting that since 1962, active military officers have held most of the important positions in all levels of government), available at <http://www.state.gov/g/drl/rls/hrrpt/2000/eap/678.htm> (last visited Mar. 23, 2002).

15. See COUNTRY REPORTS, *supra* note 14.

16. See *id.*

17. See *id.*; see also Sendlenski, *supra* note 4, at 320-21.

18. Sendlenski, *supra* note 4, at 321.

19. See *id.*

20. See *id.*

21. See *id.*

of the BSPP, and the civilian demonstrations that would follow shared the same result as the student demonstration of August 8, 1988.<sup>22</sup>

In 1990, in an attempt to win over the allegiance of the Burmese people, the SLORC held a free election.<sup>23</sup> The National League for Democracy, headed by Daw Aung San Suu Kyi, the Nobel Peace Prize Winner who had been under house arrest since 1989,<sup>24</sup> won 392 of 485 parliamentary seats; while the National Union Party, supported by the SLORC, won only 10 seats.<sup>25</sup> Despite the vote, the SLORC refused to hand over power to the National League for Democracy.<sup>26</sup> The Burmese government has since imposed a ban on the formation or existence of opposition parties and on public meetings.<sup>27</sup>

Since 1990, the condition of the country has gone from bad to worse. The junta, a group of ruling military officials, has cultivated a successful drug trade that comprises most of the country's income, mainly through the exportation of heroin and opium.<sup>28</sup> The health conditions of the country are very harsh<sup>29</sup> and equally appalling are the political conditions. Human rights violations by the government are a frequent occurrence, with the erection of forced labor camps and the widespread use of child labor,<sup>30</sup> torture and other inhumane

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22. *See id.*

23. *See id.* at 321-22.

24. *See* CIA, *The World Fact Book—Burma*, at <http://www.odci.gov/cia/publications/factbook/geos/bm.html> (last visited Mar. 18, 2002). She was under house arrest until 1995, was rearrested in September 2000, and has remained under house arrest since.

25. *See* Sendlenski, *supra* note 4, at 321-22; *see also* Miyaki-Murphy, *supra* note 5, at 831.

26. *See* Miyaki-Murphy, *supra* note 5, at 831.

27. *See id.*

28. *See id.* at 832. In fact, it is estimated that over sixty percent of the heroin sold in the United States comes from Burma. *See id.*

29. *See* CIA, *supra* note 24. The AIDS epidemic has hit Burma hard, accounting for about 48,000 deaths in 1999. *See id.*

30. *See* S. 926, 107th Cong. § 2(a)(2)(A) (2001); *see also* COUNTRY REPORTS, *supra* note 14 (indicating that forced labor was used to support the public works and military). In 1997, the Burmese government filed an objection with the U.N. secretariat of the Commission on Human Rights regarding the use of the term "forced labor." They did, however, acknowledge that "'citizens are upon occasion requested to donate their labor.'" KATARINA TOMAŠEVSKI, *RESPONDING TO HUMAN RIGHTS VIOLATIONS: 1946-1999* 211 (2000).

forms of punishment, the disappearance of political activists,<sup>31</sup> the use of "arbitrary arrest, detention, or exile,"<sup>32</sup> the "denial of fair public trials,"<sup>33</sup> and the "use of excessive force and violations of humanitarian law in internal conflicts."<sup>34</sup> Additionally, without democratic political process, there can be no change for the people of Burma by the people of Burma.<sup>35</sup> Despite the condemnation of the SLORC and its ruling government by the United Nations Human Rights Commission and various nations, there has been no perceptible change in the situation.<sup>36</sup>

It is this dire situation in Burma that prompted the Massachusetts legislature to adopt what it termed "An Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar)."<sup>37</sup> At the urging of Suu Kyi, who also asked international companies to stop investing in Burma, Massachusetts (and several American cities following Massachusetts's lead) enacted selective purchasing legislation.<sup>38</sup> This legislation was designed to economically force the Burmese government to heed the desires of its citizens, and to recognize the choice those citizens made for democracy, as well as ending human rights violations in Burma.<sup>39</sup>

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31. See Sendlenski, *supra* note 4, at 323; see also COUNTRY REPORTS, *supra* note 14, at § 1(c) (Torture and Other Cruel Inhuman, or Degrading Treatment or Punishment):

The most common forms of mistreatment were sleep and food deprivation coupled with around-the-clock questioning under bright lights . . . [o]fficials place metal rods between prisoners' fingers and squeeze them in an attempt to injure the prisoners' hands; hot wax also is poured on the prisoners' backs.).

32. Sendlenski, *supra* note 4, at 323; see also COUNTRY REPORTS, *supra* note 14.

33. Sendlenski, *supra* note 4, at 323.

34. *Id.*

35. See *id.* at 326.

36. See Miyaki-Murphy, *supra* note 5, at 832.

37. Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 366-67 (2000).

38. See Miyaki-Murphy, *supra* note 5, at 832.

39. See generally MASS. GEN. LAWS ANN., ch. 7, §§ 22G-22M (West 1996 & Supp. 2001) (from the provisions and stipulations in the Massachusetts law, it is clear the legislature intended to force change in Burma by affecting the government economically).

### B. Sanctions, in Three Acts

The Massachusetts law “generally bars state entities from buying goods or services from any person (defined to include a business organization) identified on a ‘restricted purchase list’ of those doing business with Burma.”<sup>40</sup> At the time the National Foreign Trade Council (NFTC) filed its complaint in *National Foreign Trade Council v. Natsios*,<sup>41</sup> the restricted companies on the list numbered 346; of these, forty-four were American companies.<sup>42</sup> The state law seemed to work. By the end of its first week of enactment, several U.S. companies pulled out of Burma, citing the law as the stimulus of such actions.<sup>43</sup> The Supreme Court noted that the Massachusetts statute was broad in its definition of what exactly constituted “doing business” with Burma.<sup>44</sup>

As stipulated by the Massachusetts law, should a state contract be entered into with a company on the restricted purchase list, the contract would be void.<sup>45</sup> The law charged the State Secretary of Administration and Finance<sup>46</sup> with the responsibility of creating and maintaining the list.<sup>47</sup> The statute also instructed that the list be updated “at least once every three months.”<sup>48</sup> If a company wanted to bid on a contract with the state of Massachusetts, it would have to submit a sworn declaration providing information on any business it was already conducting with the Burmese government.<sup>49</sup> Thus, the law gave a clear ultimatum to those companies in business with

40. *Crosby*, 530 U.S. at 367.

41. 181 F.3d 38 (9th Cir. 1999).

42. *See* Miyaki-Murphy, *supra* note 5, at 835.

43. *See id.* at 833.

44. MASS. GEN. LAWS ANN., ch. 7, § 22G (West 1996 & Supp. 2001). The statute defines the “Government of Burma” to mean “any public or quasi-public entity operating within Burma... including, but not limited to, municipal, provincial, national or other governmental and military bodies, including all departments and agencies of such bodies, public utilities, public facilities, or any national corporation in which Burma... has a financial interest or operational responsibilities.” *Id.*

45. *See id.* § 22L.

46. *See id.* § 22G.

47. *See id.* § 22J. The list shall be established using information derived from the Investor Responsibility Research Center, the Associates to Develop Democratic Burma, United Nations reports, and “other reliable sources.” *Id.* § 22J(b).

48. *Id.* § 22J(c).

49. *See* Miyaki-Murphy, *supra* note 5, at 836.



Burma who wished to also contract with Massachusetts state agencies.

In September of 1996, Congress passed a statute that imposed sanctions on Burma similar to those set out in the Massachusetts law.<sup>50</sup> There were three sanctions defined in this federal statute. It restricted aid to the government of Burma<sup>51</sup> and required federal representatives of “international financial institutions” to vote against proposed financial assistance to Burma.<sup>52</sup> It also prohibited the issuance of visas to Burmese government officials who did not fall into one of two allowed criteria: officials whose presence was required by treaty, and officials who were part of a “Burmese mission to the United Nations.”<sup>53</sup> The federal statute gave discretion to the Executive Office in determining when the sanctions may be lifted.<sup>54</sup>

Along with the discretion to determine when the sanctions should be lifted, the President also was given the discretion to prohibit individuals in the United States from initiating “new investment” in Burma, as set out in the second series of sanctions.<sup>55</sup>

50. See Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, Pub. L. No. 104-208, § 570, 110 Stat. 3009-166 to 3009-167, enacted by the Omnibus Consolidated Appropriations Act, § 101(c), 110 Stat. 3009-121 to 3009-172 (1997).

51. See *Crosby*, 530 U.S. at 368. The Court notes that the Act does, however, allow humanitarian aid, as well as “counternarcotics efforts” and “promotion of human rights and democracy.” *Id.* at 368. The resemblance to the Massachusetts law, § 22I, is obvious. Section 22I of the Massachusetts law allowed for the shipment of specific medical supplies to Burma. See MASS. GEN. LAWS ANN. § 22I (West 1996 & Supp. 2001).

52. See *Crosby*, 530 U.S. at 368.

53. *Id.*

54. See *id.* The Court further explains the President’s discretionary powers under the federal statute: “These restrictions are to remain in effect [u]ntil such time as the President determines and certifies to Congress that Burma has made measurable and substantial progress in improving human rights practices and implementing democratic government.” *Id.*

55. See *id.* at 369. The Act defines “new investment” as:

[E]ntry into a contract that would favor the ‘economical development of resources located in Burma,’ or would provide ownership interests in or benefits from such development . . . but the term specifically excludes (and thus excludes from any Presidential prohibition) ‘entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology.’

*Id.*

Furthermore, the statute required that the President prohibit investment by such persons if he “determines and certifies to Congress that the Burmese Government has physically harmed, rearrested, or exiled Daw Aung San Suu Kyi . . . or has committed ‘large-scale repression of or violence against the Democratic opposition.’”<sup>56</sup>

It is important to note here the difference between the terms of the federal statute and the Massachusetts law, in that the Massachusetts law prohibits doing business with corporations and companies already in Burma—for example, doing business with the Burmese government, according to the terms of the Massachusetts law.<sup>57</sup> The federal statute, in contrast, prohibits new investment, but does not specifically address existing contracts or contracts that may be renewed.<sup>58</sup> It is apparent that this federal statute adopted a more political, less economic method of dissuading the Burmese government from continuing its injustices.<sup>59</sup>

The third set of sanctions required the President to “develop ‘a comprehensive, multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma[,]’” working with the Association of Southeast Asian Nations (ASEAN) and other countries who have financial interests in Burma.<sup>60</sup> The President was also directed to work toward the goal of establishing a dialogue between SLORC and democratic groups in Burma.<sup>61</sup>

In May of 1997, when President Clinton issued the Burma Executive Order under the power granted to him by Congress through the federal statute discussed above, the sanctions went into

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56. *Id.* In May of 1997, President Clinton certified, in compliance with the Act and upon issuance of the Burma Executive Order, that the Burmese government had repressed democratic opposition and that their actions were to be considered a threat to the United States’ national security and foreign policy. *See id.* at 370. This threat was termed a national emergency. *See id.*

57. *See* MASS. GEN. LAWS ANN., ch. 7, §§ 22G-M (West 1996 & Supp. 2001).

58. *See Crosby*, 530 U.S. at 369.

59. It will become clear in the analysis of the Burma Freedom Act to be considered in Congress, that the United States is now willing to adopt a more economic approach, similar to the Massachusetts law, to convince the Burmese government to change its ways.

60. *Crosby*, 530 U.S. at 369.

61. *See id.*

effect.<sup>62</sup> There was to be no new investment in Burma by U.S. persons and a prohibition against approving or allowing new investment by foreign parties was also triggered.<sup>63</sup> The issuance of this order, and the federal statute in general, tolled the end for the Massachusetts law and other similar state laws.<sup>64</sup>

On May 22, 2001, four years after President Clinton's issuance of the Executive Order under the federal statute discussed above, and a year after the Massachusetts law was struck down in the *Crosby* case,<sup>65</sup> a bill was introduced in the Senate and referred to the Committee on Finance.<sup>66</sup> This bill (the companion bill to the Burma Freedom Act that would be introduced in the House and referred to the Committee on Ways and Means one month later)<sup>67</sup> is intended "[t]o prohibit the importation of any article that is produced, manufactured, or grown in Burma."<sup>68</sup> The House bill expresses the same goal.<sup>69</sup> In a similar vein to the Massachusetts law, the bill imposes an economic sanction on Burma, although not directly through the boycott of businesses that contract with the Burmese government.<sup>70</sup> Instead, the Burma Freedom Act blocks any products,

62. *See supra* note 54 and accompanying text; *see also Crosby*, 530 U.S. at 370.

63. *See Crosby*, 530 U.S. at 370. The President delegated the authority to work with ASEAN on the development of "a strategy for democracy, human rights, and the quality of life in Burma" as well as filing the necessary Congressional reports to the Secretary of State. *Id.* To the Secretary of the Treasury, President Clinton granted the authority to implement the designed policy "in consultation with the Secretary of State." *Id.* at 370 n.3. The Secretary of the Treasury implemented this Executive Order one year later. *See id.*

64. The NFTC filed suit in the United States District Court for the District of Massachusetts against Massachusetts state officials. *See id.* at 371. The Council argued that the state law was unconstitutional in its violation of the Foreign Commerce Clause, and that it was also preempted by the federal statute. *See id.* at 368, 370-71 (discussing *National Foreign Trade Council v. Natsios*, 181 F.3d 38 (1st Cir. 1999)).

65. *See id.* (holding that the Massachusetts statute conflicted with Congress's grant of authority to the President and was preempted under the Supremacy Clause).

66. *See* S. 926, 107th Cong. (2001).

67. *See* H.R. 2211, 107th Cong. (2001).

68. S. 926.

69. *See* H.R. 2211.

70. *See id.* § 3(a)(1).

presumably including the merchandise that results from such contracts, from entering the United States.<sup>71</sup>

The Burma Freedom Act is the response to a resolution adopted by the International Labor Organization (ILO) in 2000, requiring Burma's State Peace and Development Council to "take concrete actions to end forced labor in Burma."<sup>72</sup>

More importantly, the Burma Freedom Act is not an arbitrary sanction the ILO and the United States government simply felt compelled to impose for their own political reasons. The call for sanctions comes from the people of Burma themselves, the ones who would potentially suffer from economic distress due to the impositions of sanctions, but who would apparently choose that suffering over the suffering they experience at the hands of the military junta.<sup>73</sup> The leaders of the Burmese opposition, the National League for Democracy, have made the call to the international community to institute sanctions against the Burmese government:

We would like the world to know that economic sanctions do not hurt the common people of Burma. When Burma was opened up to what they called the market economy a decade ago, it did not open a door for the common people of Burma. What it did was to give the military authorities and those connected with them a chance to consolidate their economic position in the same way in which they had consolidated their power base. This is why we think that economic sanctions are good and necessary for the fast democratization of Burma.<sup>74</sup>

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71. *See id.*

72. H.R. 2211 § 2; S. 926 § 1.

73. *See* Daw Aung San Suu Kyi, *Statement: "For Us, Every Day is a Special Day for Democracy,"* in THE BURMA FUND (Sept. 1999), at <http://www.burmafund.org/Pathfinders/nld/ASSK/Economic%20sanctions%20are%20necessary.htm>.

74. *Id.* As Daw Aung San Suu Kyi explains, the decision to support sanctions was a difficult one:

We . . . hesitated before endorsing the movement for economic sanctions several years ago. We . . . wanted to give the military authorities a chance to prove that they were sincere in their claim that they too were working for democracy. However, as it became obvious that the military authorities were not interested in bringing democracy to Burma . . . we decided that economic sanctions were necessary.

*Id.*

In considering such legislation as the Burma Freedom Act, the United States is affirmatively answering a request to impose sanctions on Burma in order to bring about democracy within that country.

As stated before, the Burma Freedom Act is a sort of synthesis between the defeated Massachusetts law and the 1996 federal statute.<sup>75</sup> Like the 1996 federal statute, the Burma Freedom Act does not mention existing contracts with the Burmese government; but, unlike the statute, the Burma Freedom Act does not discuss new investments either.<sup>76</sup> In complete opposition to the 1996 federal statute, which did not prohibit the performance of a contract to sell or purchase goods from Burma,<sup>77</sup> the Burma Freedom Act calls for an absolute trade ban against any “article that is produced, manufactured, or grown in Burma.”<sup>78</sup> Based on principles that echo the economic position taken by the Massachusetts legislature in drafting the Massachusetts law, the Burma Freedom Act goes farther than the 1996 federal statute in that it truly does, in simple terms, hit the Burmese government where it hurts. Burma’s place in the global market is predicated upon the products it produces under contracts with international sources that take advantage of Burma’s cheap labor costs.<sup>79</sup> The imposition of sanctions on such products would have a major effect on the Burmese economy, as it would be a rather easy decision for international parties to pick up and move their operations to another developing country with equally cheap labor.

The imposition of sanctions also impacts the deals Burma has struck with Unocal, which has been utilizing Burma’s rich well of resources, building a pipeline through the Burmese rain forests to gather oil in its Yadana Gas Pipeline Project—the single largest foreign investment project in Burma—and selling the fuel in the United States.<sup>80</sup> Under the broad auspices of the Burma Freedom

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75. See *supra* note 9 and accompanying text.

76. See *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 369 (2000); H.R. 2211 § 3(a)(1); S. 926 § 2(a)(1).

77. See *supra* note 55 and accompanying text.

78. H.R. 2211 § 3(a)(1); S. 926 § 2(a)(1).

79. See TOMAŠEVSKI, *supra* note 30, at 188, 204-13.

80. See EarthRights International, *Burma Project: Yadana Natural Gas Pipeline Project*, at <http://www.earthrights.org/burma/yadana.html> (last updated Nov. 19, 2001). For Unocal’s position on the Pipeline project, see

Act, it is conceivable that gas from the pipeline would be restricted from entering the United States as a product from Burma.<sup>81</sup> Should such a lucrative business relationship with Unocal come to an end, and if Unocal were forced to pull out of Burma, this would be a significantly debilitating blow to the Burmese government.<sup>82</sup>

Also similar to the 1996 federal statute is the Burma Freedom Act's deference to the President in determining when the sanctions should be lifted.<sup>83</sup> The Burma Freedom Act, however, does not give the President the authority to prohibit trade or investment, as did the 1996 federal statute. The authority to do so comes directly from Congress.<sup>84</sup> Although the authority is different, the message sent by such a resolution is the same in the Burma Freedom Act and the federal statute: the United States condemns the actions of the Burmese government against its citizens, and refuses to support such a regime.<sup>85</sup>

### C. *Considering the Burma Freedom Act Under the Constitutional Analysis of Crosby v. NFTC*

In considering the constitutionality of the Massachusetts law in *Crosby*, the Supreme Court emphasized that, "[w]hen Congress intends federal law to 'occupy the field,' state law in that area is preempted."<sup>86</sup> The Court held that the Massachusetts law was a stumbling block to Congress's ability to accomplish its objectives.

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Unocal, *The story you haven't heard about... Unocal in Myanmar*, at <http://www.unocal.com/myanmar/index.htm> (last visited Jan. 25, 2002).

81. See H.R. 2211 § 3(a)(1); S. 926 § 2(a)(1).

82. On June 11, 2002, Los Angeles Superior Court Judge Victoria Gerrard Chaney ruled that Unocal "could be tried for human rights violations, including forced labor, that allegedly occurred during construction of [the pipeline]." Lisa Girion, *Judge OKs Unocal Abuse Lawsuit*, L.A. TIMES, June 12, 2002, at C1. This is an important development, since Unocal is not being tried for direct liability, but for vicarious liability due to its support of the Burmese military government. "[I]f they are held liable, it means that companies are going to be held by the courts to the same standards that they are held to in this country . . . . And companies will not be able to go abroad and take advantage of the much looser regulatory environment or the corruption of the government to treat their workers in an inhumane way." *Id.* at C6.

83. See *id.*

84. See *id.*

85. See H.R. 2211 §§ 2, 3; S. 926.

86. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000).

It is clear that the Burma Freedom Act does not face defeat under the constitutional analysis conducted by the Court in *Crosby*.<sup>87</sup> As a federal statute, it is not subject to the same fate as the Massachusetts law, in that it is not preempted, which was the major fault the Court found with the Massachusetts law, and was ultimately what led to its end.<sup>88</sup> The Court in *Crosby* was also urged to strike down the Massachusetts law for violating the Foreign Affairs doctrine and the dormant Foreign Commerce Clause of the Constitution. However, the Court found no need to address these issues since the preemption argument was enough to defeat the state legislation.<sup>89</sup> Nevertheless, consideration of these issues regarding the Burma Freedom Act would not lead to any constitutional issues anyway. The Foreign Affairs doctrine has been interpreted by the Court to confer the power to conduct affairs with other nations upon the federal government.<sup>90</sup> Thus, the Burma Freedom Act is well within Congress's authority, as it is the result of a decision by the federal government to conduct affairs with Burma in a particular way.<sup>91</sup> Arguably, this is a constitutional exercise of congressional power.

Likewise, the Foreign Commerce Clause is in no way violated by the Burma Freedom Act. The Foreign Commerce Clause of the Constitution grants Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."<sup>92</sup> The Burma Freedom Act does precisely that, as it regulates commerce with the nation of Burma, prohibiting trade until the Burmese government satisfies the required stipulations.<sup>93</sup> Thus, the Burma Freedom Act is a perfectly constitutional exercise of the federal government's power under the Foreign Commerce Clause. The proposed congressional bills pass the rigors of the *Crosby* analysis, but that does not mean that they have the ability to survive. They may potentially face a different kind of challenge in the World

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87. *See id.*

88. *See id.* at 373-74.

89. *See id.* at 374 n.8.

90. *See United States v. Belmont*, 301 U.S. 324, 330 (1937).

91. *See U.S. CONST.* art. I, § 10, cls. 1-3; art. II, § 2, cl. 2.

92. *U.S. CONST.* art. I, § 8, cl. 3.

93. *See Burma Freedom Act*, H.R. 2211, 107th Cong. § 3(a)(1) (1st Sess. 2001); S. 926, 107th Cong. § 2(a)(1) (2001).

Trade Organization, and this challenge could prevent them from ever effectively changing the political situation in Burma.

### III. THE WORLD TRADE ORGANIZATION: THE "HUMAN RIGHTS PRINCIPLE" GOES HEAD TO HEAD WITH THE "TRIBUNALS OF GLOBALIZATION"<sup>94</sup>

#### A. *The World Trade Organization and its Stance on Sanctions*

The creation of the WTO heralds an important change in international trade law: regulation is now found in "treaty-based rules."<sup>95</sup> This means that there is "less room for state discretion and unilateral action"—the very action that enabled the United States to impose sanctions against South Africa, and now enables it to impose sanctions against Burma.<sup>96</sup> Should a nation like the United States impose a sanction against the WTO, such as the Burma Freedom Act, other nations would most likely challenge it in a WTO proceeding, which was done against the Massachusetts legislation, as cited in *Crosby*.<sup>97</sup> The basis for challenging such a measure would probably be that it violates most-favored-nation rules and national treatment rules.<sup>98</sup>

The issue is not just that the WTO prohibits member nations from imposing sanctions on other nations based on human rights principles. The WTO has angered many by refusing to use its power

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94. See Frank J. Garcia, *The Global Market and Human Rights: Trading Away the Human Rights Principle*, 25 BROOK. J. INT'L L. 51, 54 (1999).

95. *Id.* at 62.

96. *See id.*

97. *See Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 383-84 (2000).

This point has been consistently echoed in the State Department:

"While the [Massachusetts sanctions on Burma] were adopted in pursuit of a noble goal . . . these measures also risk shifting the focus of the debate . . . away from the best way to bring pressure against the [SLORC] to a potential WTO dispute over its consistency with our international obligations."

*Id.* at 384.

98. *See Garcia, supra* note 94, at 78. Professor Garcia goes on to hypothesize that "[t]he challenged measure would be determined a *prima facie* Article I violation . . . [and] a *prima facie* Article III violation [under GATT]." *Id.*



to aid in the struggle for human rights by setting standards.<sup>99</sup> Standards set by a body like the WTO would be tremendously effective, and it is easy to see why. It controls the economic dealings of nations through potential economic sanctions, and because these nations want to continue to receive the economic benefits that the WTO provides, they would be under great pressure to comply with any requirements imposed by the WTO.<sup>100</sup> It is clear that the WTO could easily use its power for good. However, the WTO takes a “business-first” approach to the global market, and this approach leaves no room for the consideration of less economic concepts like human rights.<sup>101</sup>

The WTO has directly addressed the accusation that it “tramples over labor and human rights.”<sup>102</sup> It claims to resist including labor standards in its rules because member nations regard such standards as nothing more than a “guise for protectionism in developed-country markets” and that “sanctions imposed against countries with lower labour standards would merely perpetuate poverty and delay

99. See *The World Trade Organisation and Human Rights*, POSITION PAPER, FÉDÉRATION INTERNATIONALE DES LIGUES DES DROITS DE L'HOMME, Nov. 1999, [hereinafter POSITION PAPER], available at <http://www.fidh.imaginet.fr/rapports/wto-fidh.htm>.

100. See BERNARD M. HOEKMAN & MICHEL M. KOSTECKI, *THE POLITICAL ECONOMY OF THE WORLD TRADING SYSTEM: FROM GATT TO WTO* 36-55 (1995) (explaining the function and effectiveness of the WTO, including its transparency policy and method of dispute settlement); see also BHARGIRATH LAL DAS, *AN INTRODUCTION TO THE WTO AGREEMENTS* 7 (1998) (stating that the WTO's main objective “is to provide full competitive opportunity of trade among the member countries”). See generally BERNARD M. HOEKMAN, *TRADE LAWS AND INSTITUTIONS: GOOD PRACTICES AND THE WORLD TRADE ORGANIZATION* (1995) (discussing the effectiveness of the WTO; focusing on its dispute resolution mechanism and trade agreements and procedures).

101. In his Wincott Lecture, Professor Jagdish Bhagwati explains the WTO's rationale for declining to determine labor or environmental standards, or prohibitions against human rights violations, including child labor. See JAGDISH BHAGWATI, *FREE TRADE, 'FAIRNESS' AND THE NEW PROTECTIONISM: REFLECTIONS ON AN AGENDA FOR THE WORLD TRADE ORGANIZATION* 17-32 (1994). Professor Bhagwati also discusses other options for countries who want to “advance their own views of what are ‘good’ labour standards,” such as private boycotts like those advocated by Mahatma Gandhi and Martin Luther King, Jr. *Id.* at 32.

102. World Trade Organization, *Top 10 Reasons to Oppose the World Trade Organization: Criticism, yes . . . misinformation, no!*, at [http://www.wto.org/english/thewto\\_e/minist\\_e/min99\\_e/english/misin\\_f\\_e/031a\\_b\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min99_e/english/misin_f_e/031a_b_e.htm) (last visited Mar. 18, 2002) [hereinafter *Top 10*].

improvements in workplace standards.”<sup>103</sup> The former argument, that the WTO’s member nations regard labor standards as nothing more than a guise, seems to fuel the very accusation the WTO is trying to refute—that free trade comes before the rights of people living under oppressive conditions.<sup>104</sup> The concern is that such regulation would limit the competition between nations that have strong labor laws and those nations that have lax ones.<sup>105</sup> Preservation of this competition ranks higher than preventing the exploitation of workers in developing nations; in fact, preservation of this competition depends on the exploitation of workers.

The success of a campaign like the one waged upon South Africa during the Apartheid era can refute the argument that sanctions would only harm the very party it was designed to help.<sup>106</sup> In 1960, the American Committee on Africa began its sanction campaign here in the U.S.<sup>107</sup> In 1986, Congress overrode President Ronald Reagan’s veto and imposed strict economic sanctions against

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103. *Id.*

104. *See id.*

105. *See* POSITION PAPER, *supra* note 99. *But cf.* Ruth Mayne & Caroline Le Quesne, *Calls for a Social Trade*, in GLOBAL TRADE AND GLOBAL SOCIAL ISSUES 91 (1999) (arguing that the real price for cheap labor is paid by the laborers themselves because investments in cheap labor lead to exacerbated poverty and inequality).

106. There is a continuing and fascinating debate over the success and importance of the sanctions against South Africa, and the role that campaign played in bringing about the end of Apartheid. *See generally* HOW SANCTIONS WORK: LESSONS FROM SOUTH AFRICA (Neta C. Crawford & Audie Klotz eds., 1999) (discussing the campaign and analyzing the specific reasons for its success); THE CASE FOR SANCTIONS AGAINST SOUTH AFRICA (United Nations ed., 1982) (detailing more information regarding the view on the success of the campaign adopted by this Note). To learn more about the opinion of the opposing view, see generally ECONOMIC SANCTIONS AND DEVELOPMENT (Hans Köchler ed., 1997). To understand the United States government’s decision to terminate economic sanctions against South Africa, see generally *The Termination of Economic Sanctions Against South Africa: Joint Hearing Before the Subcommittees on International Economic Policy and Trade and Africa Committee on Foreign Affairs, House of Representatives*, 102nd Cong. (1991).

107. *See generally Appendix: Chronology of Sanctions Against Apartheid*, in HOW SANCTIONS WORK: LESSONS FROM SOUTH AFRICA 283 (Neta Crawford & Audie Klotz eds., 1999) [hereinafter *Appendix*].

South Africa,<sup>108</sup> and in 1989, the largest remaining U.S. companies in South Africa, Mobil and Goodyear, withdrew.<sup>109</sup>

In his article, Professor Frank Garcia argues that human rights are inalienable and take priority over economic concerns, an idea he refers to as the “human rights principle.”<sup>110</sup> At odds with this principle are the “tribunals of globalization,” namely the WTO’s dispute settlement mechanism.<sup>111</sup> The WTO has not ruled on the issue over trade with Burma, and in accordance with General Agreement on Tariffs and Trade (GATT) Article 21, countries have the right to follow U.N. decisions (as was the case with the sanctions against South Africa under Apartheid).<sup>112</sup> The issue of unilateral sanctions, such as those found under the Burma Freedom Act, however, have not been addressed, and would presumably be challenged under the WTO’s charter since there is no U.N. decision to impose sanctions against Burma in the way proposed by the Burma Freedom Act.<sup>113</sup> If there is a challenge to the imposition of sanctions, the WTO might very well find that such sanctions are illegal under its agreements.<sup>114</sup> As a member of the WTO, the United States would then be forced to relinquish its right to enforce sanctions against foreign governments that violate human rights and maintain unfair labor practices and standards.<sup>115</sup> Without a U.N. call to impose sanctions, the United States may consequently have to continue its financial support of oppressive regimes like the Burmese government.<sup>116</sup>

### *B. Why Bother? Considering the Productivity of Sanctions*

Sanctions are a controversial creature. On one side, proponents claim that sanctions imposed by some nations against other nations committing civil rights violations can put a necessary strain on such

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108. See *South Africa’s Apartheid Era and the Transition to Multiracial Democracy*, at <http://www.facts.com/cd/o94317.htm> (last visited Feb. 15, 2002).

109. See *Appendix*, *supra* note 107, at 286.

110. See Garcia, *supra* note 94, at 51-56.

111. *Id.*

112. See *Top 10*, *supra* note 102.

113. See *id.*

114. See *supra* note 97 and accompanying text.

115. See *supra* note 96 and accompanying text.

116. See *supra* Part II.A.

governments.<sup>117</sup> These sanctions can force them to end their egregious activities and to act in accordance with the standards delineated by the country imposing the sanctions.<sup>118</sup> However, opponents claim that the only people hurt by such sanctions are those who are already the victims of their governments, for example, those laborers who are being underpaid, and those civilians suffering under an oppressive government.<sup>119</sup> Without buyers in the global market, the laborers get even less because their government becomes even more tight-fisted with the money it makes in exports.<sup>120</sup> Opponents to sanctions point to countries like Cuba, where sanctions can be interpreted as doing more harm than good.<sup>121</sup> These arguments are not without merit, but the difference between successful sanctions and those unsuccessful campaigns that result in more harm than good is pivotal in determining whether or not the imposition of sanctions is a worthwhile endeavor.

Sanctions must be employed responsibly, or indeed they will only end up hurting those they are meant to help.<sup>122</sup> It is better to discuss sanctions not in the abstract, but by looking at a real-world example of a successful campaign, to discern what it is that makes sanctions successful and why they are instrumental to maintaining human rights. We can recognize several similarities between South Africa and Burma. South Africa was ruled by an oppressive regime, as Burma is today.<sup>123</sup> The call for sanctions came from within South Africa itself, with the full support of those living under the very

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117. See Audie Klotz, *Making Sanctions Work: Comparative Lessons*, in HOW SANCTIONS WORK: LESSONS FROM SOUTH AFRICA 264, 273-81 (Neta Crawford & Audie Klotz eds., 1999).

118. See *id.*

119. See generally Ali M. Farfer, *Sanctions and Development: Some Hypotheses*, in ECONOMIC SANCTIONS AND DEVELOPMENT 13 (Hans Köchler ed., 1997).

120. See *id.*

121. See generally Alfredo Puig, *Economic Sanctions and Their Impact on Development: The Case of Cuba*, in ECONOMIC SANCTIONS AND DEVELOPMENT 65 (Hans Köchler ed., 1997).

122. See *id.*; see also Appendix, "Economic Sanctions and Human Rights": Joint Appeal of NGOs, in ECONOMIC SANCTIONS AND DEVELOPMENT 70, 70-73 (Hans Köchler ed., 1997).

123. See Neta C. Crawford, *Trump Card or Theater?: An Introduction to Two Sanctions Debates*, in HOW SANCTIONS WORK: LESSONS FROM SOUTH AFRICA 3, 6-9 (Neta Crawford & Audie Klotz eds., 1999); see also Appendix, *supra* note 107, at 283-87.

conditions the sanctions were designed to remove.<sup>124</sup> The sanctions were not independently imposed upon South Africa at the discretion of the U.S. and other governments and organizations.<sup>125</sup> Rather, they were a response to the request of the people of South Africa:

One of the strongest arguments against the use of economic sanctions is that often ordinary people in the target state—rather than the political elite—are most hurt. This unintended effect may be counterproductive, especially if sanctions begin to lose popular support within the target state as a result of job losses and deepening poverty. It is important to keep in mind, therefore, that in the South African case, the call for isolation was part of the overall political strategy of the internal black opposition.<sup>126</sup>

In passing legislation such as the Burma Freedom Act, the United States is affirmatively answering a request to impose sanctions on Burma to bring about democracy within that country. As was the case in South Africa, the request for sanctions is internal, coming from the people within the troubled country.<sup>127</sup> By doing things according to the method recommended by the Burmese people, the U.S. can help countries such as Burma achieve success through sanctions. This is the responsible way to implement sanctions, and that responsibility is the key to their success.

It is ironic that although the WTO downplays and even doubts the effectiveness of sanctions,<sup>128</sup> it does not hesitate to use them to force nations to comply with its regulations: “Under article 22.2 of the WTO’s Understanding on Rules and Procedures Governing the Settlement of Disputes, the final means of vindicating a claim against a non-complying member is the imposition of unilateral, retaliatory sanctions by any other nation that may choose to impose such sanctions.”<sup>129</sup> It is ironic because the WTO does, after all, believe in

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124. See generally Tshidiso Maloka, “Sanctions Hurt but Apartheid Kills!”: *The Sanctions Campaign and Black Workers*, in *HOW SANCTIONS WORK: LESSONS FROM SOUTH AFRICA* 178 (Neta Crawford & Audie Klotz eds., 1999).

125. See *Appendix*, *supra* note 107, at 283-87.

126. Maloka, *supra* note 124, at 178.

127. See Aung San Suu Kyi, *supra* note 73; see also *supra* note 74 and accompanying text.

128. See *Top 10*, *supra* note 102.

129. *Hearing*, *supra* note 12.

stronger nation protecting a weaker one. This possibility strikes at the core of the constitutional principles mentioned by the Court in *Crosby*, and discussed earlier in this Note.<sup>137</sup> Under the Foreign Affairs Power and Foreign Commerce Clause of the U.S. Constitution, the power to make decisions regarding issues with foreign nations on any ground<sup>138</sup> and to regulate commerce with other nations<sup>139</sup> is held by the federal government—Congress. The danger is that the WTO could potentially strip the U.S. federal government of this power, this right under the Constitution, if it prohibits its member nations from imposing sanctions based on human rights violations.<sup>140</sup> This would restrict the U.S. government's ability to make decisions regarding foreign affairs and commerce. In fact, its decisions would have already been made by the WTO—impose no sanctions, pay no mind to the violations of human rights. In essence, the U.S. Constitution is dismissed in deference to the regulations of the WTO:

Although the WTO is still of recent origin it yields considerable (and unexpected) power. The substantive terms of its agreements limit the scope of action for national regulation, stripping power away from states. Its enhanced dispute resolution mimics a form of hierarchical supremacy: WTO rules act as a super-constitutional text with a force superior to ordinary national enactments. Once the WTO Dispute Settlement Body finds that a national measure is inconsistent with a WTO obligation, the WTO member is expected to bring its law into conformity . . . . [T]he mark of WTO supremacy is apparent: national law is expected to give way.<sup>141</sup>

The question is no longer whether the U.S. should sacrifice saving Burma for the benefits of free trade, but rather whether free trade is

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137. See *supra* Part II.C.

138. See *United States v. Belmont*, 301 U.S. 324, 330 (1937).

139. See U.S. CONST. art. I, § 8, cl. 3.

140. See *supra* note 97 and accompanying text.

141. Jeffery Atik, *Democratizing the WTO*, 33 GEO. WASH. INT'L L. REV. 451, 452 (2001); see also Claude E. Barfield, *Free Trade, Sovereignty, Democracy: The Future of the World Trade Organization*, 2 CHI. J. INT'L L. 403, 403 (2001) (stating that “[the United States] must continue to balance and rebalance a defense of national sovereignty against grants of authority over economic and social policy to international organizations such as the WTO.”).

the effectiveness of sanctions, but will only allow the use of sanctions to further economic and business interests.<sup>130</sup> Sanctions can be used to protect the trading rights of nations in a free market, but not to protect the lives of workers or political prisoners.<sup>131</sup>

### C. *The Potential Conflict to Come: Implications and Consequences*

Professor Garcia points out that although market globalization has the potential to present an opportunity for human rights law, such as the implementation of labor standards, “the globalization of the market economy may also pose a threat to the continued effectiveness of human rights law, just as the rise of the market economy itself has been blamed for leading to conditions requiring the formal development of human rights law.”<sup>132</sup> The WTO has made no motion to incorporate labor standards into its agreements, and the question of sanctions based upon human rights violations has yet to be addressed.<sup>133</sup>

Whether the WTO will oppose trade sanctions against Burma remains to be seen.<sup>134</sup> If its charter is taken literally, any type of sanction would be opposed simply on the principle that it prohibits free trade.<sup>135</sup> However, the WTO has indicated that it recognizes the need to uphold labor standards in order to gain international trust—which it obviously does not have, as evidenced by the Seattle riots and other similar social demonstrations.<sup>136</sup>

The possibility of having to submit to the rules of the WTO in this situation has broader implications than simply the morality of a

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130. See *id.* (stating that “the question before us is not ‘Can economic sanctions work?’ It is, ‘Why do we use sanctions to protect software, but not human life; to protect musical recordings but not the rights of religious believers, workers, and political prisoners; to stop movie piracy, but not torture?’”).

131. See *Hearing, supra* note 12.

132. Garcia, *supra* note 94, at 53.

133. See POSITION PAPER, *supra* note 99.

134. See *supra* Part III.A.

135. See Yuji Iwasata, *Lawfulness of Unilateral Economic Retaliation Under International Law*, in *WTO & ASIA-PACIFIC—THE ASIA-PACIFIC REGION AND THE EXPANDING BORDERS OF THE WTO: IMPLICATIONS, CHALLENGES, AND OPPORTUNITIES* 75, 81-85 (Mark A. Buchanan ed., 1996).

136. See Pierre Marc Johnson, *Creating Sustainable Global Governance*, in *GUIDING GLOBAL ORDER: G8 GOVERNANCE IN THE TWENTY-FIRST CENTURY* 245, 245-46 (John J. Kirton et al. eds., 2001).

worth sacrificing the most powerful government's constitutional right to independently regulate foreign affairs and commerce.

#### *D. An Ounce of Prevention*

A WTO challenge has not yet occurred, and it would be useful to consider steps the United States could take to fend off WTO action. Claude Barfield suggests "increasing the democratic accountability and legitimacy of the WTO" through a congressional commission that would have two responsibilities: first, "to report on the implications of the WTO dispute settlement system on the U.S. constitutional system and on U.S. domestic laws and regulations," and second, "to report on the cumulative impact of rulings, pronouncements, and resolutions that have emerged from . . . organizations such as . . . the International Labor Organization."<sup>142</sup> The result would be an enhanced awareness for the federal government regarding the effects of international policy on the United States' domestic policy.<sup>143</sup>

Another effective measure would be greater support of those non-government organizations (NGOs) already working to force the WTO to incorporate labor and human rights standards into its agreements. If the U.S. government wants to enjoy sovereignty while simultaneously reaping the benefits of membership in the WTO, it should consider using its weight to encourage changes in the WTO agreements. There are NGOs throughout the world that have been pushing for such change since the inception of the WTO. The United States should join forces with other member nations of the WTO and demand that the WTO include trade and labor standards in the agreements. If the WTO's members fight for such standards, the WTO will no doubt have to comply—it is nothing without its members. The United States enjoys a comfortable position in the WTO; this country is a powerful player in global trade and economics. The United States, therefore, is in a prime position to take steps to institute change in the WTO that will not only lead to improved labor and human rights in countries such as Burma, but will also lead to a preservation of sovereignty for governments like the United States.

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142. Barfield, *supra* note 141, at 414.

143. *See id.*



## IV. CONCLUSION

The potential consequences of the U.S. government's actions raise some frightening questions: In pursuit of free trade in a global market, will the United States be forced to compromise its ideal of democracy? Is cheaper labor worth the cost of abandoning the principle of freedom that is the foundation of the U.S. Constitution? The Burma Freedom Act is emblematic of the deep moral consciousness and social responsibility at the heart of the American ideals preserved in the Constitution, and the canons of law which have their foundation therein. As Representative Christopher H. Smith states, "We must not abandon the American ideals of freedom and democracy for the sake of marginally cheaper consumer goods and access to cheap labor. We must condition expanded trade relations upon at least minimal respect for fundamental human rights. American interests and American values demand no less."<sup>144</sup> Indeed, enactment of the Burma Freedom Act would signal the U.S. government's agreement with this assessment.

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144. *Hearing, supra* note 12.

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