

## COVALENCE INTERN ANALYST PAPERS

### **Multinational Corporations and Global Governance: Is Corporate Social Responsibility Enough? A study of Chevron's Yadana Gas Pipeline Operations in Burma**

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## **Introduction**

The rise of globalization and a globalized economy, particularly the proliferation of Multinational Corporations (MNCs), have raised questions about the role of business in global governance. The increased presence of MNCs in the International Political Economy has led to the startling reality that companies can be political entities and their influence as political actors can be sizeable, both in positive and negative capacities. A contemporaneous trend used to combat the negative actions of MNCs has been the emergence of Corporate Social Responsibility (CSR), the principle that companies have a duty to practice better business norms and use their resources for the best interest of the international community.

Nevertheless the nature of certain corporate practices continues to be controversial, sparking a debate on the best way to regulate business across national borders. MNCs have been evaluated and studied from both internal and external frameworks with accountability awarded to the companies themselves, the governments of the home country, the governments of the host country, the citizens of the host country, transnational soft law agreements, and the global social community. The discrepancies in the resulting literature conclude the only real conclusion is that there is no transparent path to standardize to corporate citizenship.

This paper will attempt to analyze the most promising approach of corporate regulation by exploring the effectiveness of legal, political, ethical measures taken against MNCs. The paper will evaluate these three approaches using the case study of human rights abuses in US oil giant Chevron's continued presence in Burma. The ruling military government of Burma and the prominence of Chevron on the international stage provide a view into the current trends of global governance within a high-risk environment.

## Literature Review

The rise of MNCs in global governance has facilitated a debate in the literature over corporate capacity and responsibility in that role. Many scholars begin their inquiry by examining and evaluating legitimacy of MNCs as political actors. In the edited work, *The Emergence of Private Authority in Global Governance*, Rodney Bruce Hall and Thomas J. Biersteker discuss the legitimacy of private actors on an international level. They attribute the rise of corporate political authority to the social relationship between corporations and the countries where they operate concluding, “the consent to authority is socially constructed through a variety of different political and rhetorical practices--ranging from behavioral consent to routines, norms, and public declarations of recognition.”<sup>1</sup> Hall and Biersteker argue that the current social context of international business has provided MNCs with several necessary social conditions to achieve political legitimacy, and that legitimacy is established in a number of different ways. While Hall and Biersteker allow for a multifaceted approach to legitimacy, Susan Strange believes that as long as the communities in which MNCs operate accept them as legitimate authorities, they are in fact legitimate authorities.<sup>2</sup> Under Strange’s assumptions MNCs do not need any claim or declaration of legitimacy as long as there is no challenge or objection to their authority. In another paper by Nicola M. Black, the political influence of MNCs is regarded as important and integral to global governance because unlike state actors, these corporations have a transnational character providing them with a broader scope.<sup>3</sup> Black’s argument further illustrates the relationship between globalization and the political nature of business.

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<sup>1</sup> Thomas J. Biersteker and Rodney Bruce Hall, “The Emergence of Private Authority in the International System,” in *The Emergence of Private Authority in Global Governance*, ed. Thomas J. Biersteker and Rodney Bruce Hall (Cambridge: Cambridge University Press, 2002), 6.

<sup>2</sup> Biersteker and Hall, 6.

<sup>3</sup> Nicola M. Black, “Blood Money: A Grounded Theory of Corporate Citizenship Myanmar (Burma) as a Case in Point,” 2009, 451.

The previous authors illustrate a common consensus on the rise of MNCs in global governance, however this is not universally accepted. The Danish Institute for Human Rights questions the political authority of MNCs in, “Doing Business in High-Risk Human Rights Environments.” The report states, “human rights are violated or fulfilled within national political contexts. Companies are not political actors, and as a general rule they should not interfere in the internal political affairs of the countries in which they operate.”<sup>4</sup> The Danish Institute of Human Rights ignores the relationship between states and MNCs within the International Political Economy and therefore ignores the opportunities of corporate political authority to combat human rights. Although MNCs are not sovereign states or national governments, this article diminishes their role in global governance by refuting them as non-state political actors. This paper will henceforth accept the legitimacy of MNCs in the political arena to address the most effective outlet to regulate MNC behavior in that role.

One approach to MNC regulation in global governance is legal liability. However, the effectiveness of legal action has been hindered by limitations in international law. Rachel Chambers addresses the lack of a “binding international legal framework to govern the behavior of transnational corporations.”<sup>5</sup> Without an institutionalized framework prosecuting MNCs becomes a question of jurisdiction. Peter Muchlinski underscores the problem of jurisdiction, “despite the convincing arguments for extending responsibility for human rights violations to TNCs, the legal responsibility of TNCs for such violations remains uncertain.”<sup>6</sup> It is unclear whether MNCs are legally responsible to their home country or to the country in which they are operating, making it increasingly difficult to regulate companies using legal practices. Both Chambers and Muchlinski continue their arguments to state what they find to

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<sup>4</sup> “Doing Business in High-Risk Human Rights Environment,” *The Danish Institute for Human Rights*, February 18, 2010, 22.

<sup>5</sup> Rachel Chambers, “The Unocal Settlement: Implications for the Developing Law on Corporate Complicity in Human Rights Abuses,” *Human Rights Brief*, 2005, 14.

<sup>6</sup> Peter Muchlinski, “The Development of human rights responsibilities for multinational enterprises,” in *Business and Human Rights: Dilemmas and Solutions*, ed. Rory Sullivan (Sheffield, UK: Greenleaf Publishing Limited, 2003), 37.

be the most promising aspects of legal accountability. Chambers addresses the importance of individual court cases. She notes that court cases have the ability to set a legal precedent; meaning decisions in emerging MNC lawsuits are actually building the legal framework for future disputes.<sup>7</sup> This paper will examine the influence of court cases with respect to the Doe v. Unocal case. The Doe v. Unocal case is specifically relevant to Chevron's presence in Burma Unocal, was acquired by Chevron shortly after the lawsuit. Unlike Chambers, Muchlinski points to the advancements of soft law as a regulator of MNCs and human rights in the absence of a more traditional hard law framework.<sup>8</sup> This paper will also address the emergence of soft law agreements, such as the Global Compact, as a means of regulation.

The legal arena is not the only approach lacking in a unified method to guide the actions of corporations. Political accountability is similarly decentralized. As Black notes, "however, there is as yet no clear or accountable process that adheres to democratic principles, through which the corporation may balance these demands."<sup>9</sup> Black identifies the challenge of applying democratic norms to mediate the needs of both governments and civil societies in both nations of origin and operations. Black concludes her article by providing a "theoretical description of Corporate Citizenship."<sup>10</sup> For the purpose of this paper the philosophical arguments of Black's grounded theory are not relevant to the current evaluation of Chevron's political measures and mediation.

The aforementioned debates of legal and political methods are echoed in ethical regulation. Current ethical measures of MNCs are generally concentrated in the corporation's CSR policies. The actuality of CSR has been questioned in recent literature. Prakash Sethi provides a disbelieving view of CSR in *Setting Global Standards: Guidelines for Creating Codes of Conduct in Multinational Corporations*. Sethi considers CSR in many

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<sup>7</sup> Chambers, 14.

<sup>8</sup> Muchlinski, 38.

<sup>9</sup> Black, 453.

<sup>10</sup> Black, 444.

corporations to be “public relations rhetoric” and then continues to outline a formulaic approach to CSR in which MNCs “point to the benefits these operations bring to poor people in developing countries, who would otherwise be worse off than before. (3) They accuse critics of creating misinformation and arousing exaggerated expectations of what companies should do to correct problems.”<sup>11</sup> Sethi attributes CSR as nothing more than a communications stunt used by MNCs to appear ethical. A similar view of the oil industry is shared by Matthias Beck and Charles Woolfson, who argue that CSR is used as “an integral and useful part of their business strategy.”<sup>12</sup> Beck and Woolfson agree with Sethi that CSR has become more about business than about social responsibility. However CSR initiatives can be interpreted in different ways. Black provides the distinction between philanthropy and “addressing systemic weaknesses in development capacities.”<sup>13</sup> Black believes CSR can be an effective tool, but there is a big difference between charity or goodwill and CSR programs rooted in political change and improvement. The divergent literature on the ethical nature of corporations makes it apparent that a closer examination of CSR activities is needed to determine if a company is committed to bolstering its image or implementing meaningful change.

The debate on the role of MNCs in global governance is varied and contradictory. This paper intends to provide a view of the successes and failures of MNC regulation to highlight the most effective methods for the future of corporation regulation.

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<sup>11</sup> Prakash Sethi, *Setting Global Standards: Guidelines for Creating Codes of Conduct in Multinational Corporations* (Hoboken, New Jersey: John Wiley & Sons, Inc., 2003), 45–46.

<sup>12</sup> Matthias Beck and Charles Woolfson, “Corporate social responsibility failures in the oil industry,” in *Business and Human Rights: Dilemmas and Solutions*, ed. Rory Sullivan (Sheffield, UK: Greenleaf Publishing Limited, 2003), 123.

<sup>13</sup> Black, 456.

## **Research Design**

This paper aims to examine the possibility for the future of MNC regulation in a global governance capacity by framing regulation efforts into three main approaches. The paper will use a case study method to narrow the search field to one specific organization, Chevron, and its operations in one specific location, Burma.

For a more comprehensive and clear exploration of regulatory measures, this paper operationalizes regulation by dividing it into three distinct areas: legal, political, and ethical. This three-dimensional approach allows for comparison and evaluation across sectors and provides a structure for qualifying the numerous factors of MNC governance regulations. Legal methods of regulation will refer to legal documents and proceedings aimed at providing a regulatory function and legal liability to corporations. Legal measures will include a discussion of *Doe v. Unocal* and the success of previous court judgments, as well as legal sanctions implemented to restrict corporate involvement in Burma.

The political method contains the rise in soft law agreements and political relationships to both the home and host governments. Soft law treaties are included under political measures because they are not legal measures forced on corporations, but voluntary declarations of a commitment to responsible governance. By becoming signatories to these soft law documents companies are choosing to exercise their obligation as non-state political actors to advocate within their sphere of influence. The relationship to home and host governments provides a view into the political influence non-state actors can have on the state itself.

The ethical method consists of self-regulatory mechanisms, primarily in the form of CSR initiatives. CSR represents the company's internal ethical commitment to global governance. Chevron's CSR profile will be examined from both an internal and external view



in an attempt to qualify the effectiveness and the intent of justice for the Burmese people, economy, and environment.

This paper relies on sources from Nongovernmental Organizations (NGOs), various news sources, legal documents, and Chevron itself. NGOs provide an important base of information because many of them are principally concerned with the situation in Burma. For example, The Burma Campaign UK has been raising awareness and advocating for the Burmese people since 1991. The Burma Campaign and other NGOs offer reliable information regarding the state of Burma, which cannot be received from the military junta. NGOs are an important source because although there are human rights abuses going on and democracy is impeded, Burma is not considered a state of emergency or a humanitarian disaster and the military junta is recognized as a sovereign government, creating a decreased amount of involvement from other states and the UN. News articles also provide information on Chevron in Burma, from a neutral third party perspective. As Chevron is a US based corporation, the American media follows the actions of Chevron abroad. Legal documents, especially in the form of court decisions and sanctions, are comprehensive explanations of legal measures. Lastly, the Chevron perspective is integral to this paper because it illustrates the corporation's ethics and CSR from the inside.

This paper chooses to use the case study of Chevron in Burma because it offers favorable conditions for an inquiry into MNC regulation and global governance. Burma is, as aforementioned, governed internally and independently, but the controversial nature of the military junta and human rights record of the regime make Burma a high-risk area for MNC involvement. Chevron has not pulled out of Burma and has been there for a long time, in one capacity or another. Chevron is uniquely positioned in Burma because of the Doe v. Unocal case and its acquisition of Unocal in 2005. Chevron's involvement in Burma, therefore, presents a strong opportunity to evaluate the current trends of regulation.

## **Case Study: Chevron in Burma**

### **Background**

The Union of Burma gained independence in 1948. In 1962 there was a military coup and a military junta took control of the country under the Burma Socialist Program Party (BSPP). In the following years, the BSPP ruled Burma under strict conditions providing citizens with no civil or political liberties. The BSPP regime was highly contested and a strong resistance movement came into force by the late 1980s. The resistance culminated in the 8888 uprising, so named because it began on August 8, 1988, which saw the military open fire on demonstrators, killing thousands and sending the country into complete turmoil. In September 1988 the junta declared martial law under the State Law and Order Restoration Council (SLORC) and the military had effectively repositioned themselves back in power. In 1990 the SLORC did hold elections but when the results were not in their favor they declared new election rules to insure that they remained the ruling party. Since that time the military has continued to govern Burma (the SLORC was replaced by the State Peace and Development Council (SPDC) but it is still a military body) and the country has yet to see true democratic progress.<sup>14</sup> One of the most prominent figures of opposition to the junta is Aung San Suu Kyi, a famous Burmese pro-democracy leader and Nobel Peace Prize winner, who has been under house arrest for 14 years. Along with containing democratic opposition and eliminating competition to stay in power, the military junta has committed serious human rights violations against the Burmese people. The UN, Amnesty International, and Human Rights Watch have all reported abuses including: murder, torture, rape, detention without

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<sup>14</sup> In recent months, especially with the election of US President Barack Obama diplomatic relations with Burma have ameliorated and Burma is scheduled to hold elections later this year. For the purpose of this paper the recent developments are not discussed because the regulation efforts being evaluated occurred before that time.

trial, and forced labor.<sup>15</sup> Additionally, the International Labor Organization (ILO) has continued to pressure Burma for gross proliferation of forced labor.<sup>16</sup> The military junta has been able to remain in power despite these crimes against the Burmese people.

The junta also controls much of Burmese economy especially in the field of foreign investment. As The Burma Campaign UK notes, "full foreign ownership of companies operating in Burma is forbidden and almost all large investment in Burma is carried out through joint ventures with the military regime."<sup>17</sup> The forced close relationship with the military junta, including excessive monetary gains, has made foreign investment in Burma controversial and a major target of criticism on the international stage. One of the most notable attempts at pressuring companies to leave Burma is "The Dirty List" published by The Burma Campaign UK. "The Dirty List," is a list of all of the companies operating in Burma, with a description of their investment, urging people to write letters and demand corporate withdrawal from the state.<sup>18</sup> The campaign has seen considerable success. As Black states, "divestment campaigns have been highly successful at raising the international profile of the democracy movement in Myanmar. Through powerful, strategic public campaigns, they have made it illegal (through their role in encouraging formal sanctions), or reputationally untenable for the majority of Western companies to invest in Myanmar."<sup>19</sup> Although divestment campaigns have experienced success, Chevron has not pulled out of Burma in spite of increased pressure to do so.

Chevron has been a principle member of the Yadana gas pipeline project since they bought out Unocal in 2005. The other primary stakeholders in the pipeline which delivers gas to Thailand, include the Burmese military regime, French oil company Total, and a Thai oil

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<sup>15</sup> "Human Rights," *Burma Campaign UK*.

<sup>16</sup> Marwaan Macan-Markar, "ILO Turns Spotlight on Burma to End Forced Labor," *The Irawaddy*, September 4, 2009.

<sup>17</sup> "Foreign Investment," *Burma Campaign UK*.

<sup>18</sup> "The Dirty List," *Burma Campaign UK*.

<sup>19</sup> Black, Cover Letter.

company. The pipeline was constructed under human rights violations, such as forced labor.<sup>20</sup> “The Dirty List” estimates the value of the Yadana project to the military junta to be in the millions.<sup>21</sup> A description of Chevron’s involvement in Burma found on the Chevron website creates a strikingly different image of Chevron’s operations. “As one of four partners, Chevron has a minority, nonoperating interest in the Yadana gas field offshore Myanmar in the Andaman Sea and in a 249-mile (400-km) natural gas pipeline. The gas helps meet Southeast Asia’s demand for energy.”<sup>22</sup> Not only does Chevron downplay their involvement with Burma, but they disregard any claims against human rights in the area. A report called “The True Cost of Chevron,” written in response to Chevron’s “2008 Annual Report,” attempts to provide an accurate description of Chevron’s impact in 2008 that has not been altered by the corporation. “The True Cost of Chevron” finds forced labor, torture, rape and murder all to be characteristic of the Yadana pipeline project.<sup>23</sup> Not only has Chevron not withdrawn from Burma but it continues to take part in a project where human rights violations are being committed by a government that is not accountable to its people. The following sections will look deeper into the international responses to Chevron in Burma and evaluate the regulation measure taken to correct Chevron’s role.

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<sup>20</sup> Amy Goodman, “Chevron supports Myanmar’s brutal regime,” *Seattle Pi*, October 3, 2007.

<sup>21</sup> “The Dirty List.”

<sup>22</sup> “Chevron Myanmar- Strengthening Corporate Responses to Disease,” *Chevron*.

<sup>23</sup> Antonia Juhasz, “The True Cost of Chevron,” *InHumane Energy*, May 2009, 23.

## Legal Regulations

To understand Chevron's presence in Burma it is necessary to start with the court rulings and foundation of the Doe v. Unocal litigation. In 1996 a group of Burmese workers brought a lawsuit against Unocal for its complicity in human rights abuses committed by the Burmese military during construction of the Yadana gas pipeline. The case was determined to be tried in the US under the Alien Claims Tort Act (ACTA). Originally the courts found in favor of Unocal, attributing full responsibility of human rights violations to the Burmese military. However, the US Court of Appeals for the Ninth Circuit ruled that, "Unocal could be held liable on the basis of aiding and abetting under the ATCA for abuses that it knew about and substantially assisted through practical encouragement or support."<sup>24</sup> This decision was extremely important because it established that corporations could be held liable for complicity in human rights violations without being the primary or direct actor. Following the summary judgment by the US Court of Appeals, Unocal and the Burmese plaintiffs reached a settlement agreement. The exact terms of the settlement remain confidential. It is not clear what further "judicial scrutiny" could have determined about indirect liability of MNCs, but it is clear that Unocal did not want to risk further involvement with the courts.<sup>25</sup> Although the case was settled out of court its success and influence cannot be underestimated, especially regarding the new treatment of the ACTA. The summary judgment offered "affirmation of the applicability of the law relating to aiding and abetting."<sup>26</sup> This application of ACTA legislation presents a possible outlet of MNC accountability in foreign investment.<sup>27</sup> Although the *Unocal* decision forced a settlement agreement, it did not force Unocal to divest from Burma. Instead the financial strain provided an opportunity for Chevron to make its move.

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<sup>24</sup> Chambers, 15.

<sup>25</sup> Chambers, 16.

<sup>26</sup> Muchlinski, 45.

<sup>27</sup> "Alien Claims Tort Act," *Global Policy Forum*.

In 2005 Chevron purchased Unocal and its stake in the Yadana gas pipeline for \$17.5 billion. The acquisition was encouraged by congress as, “the affair was openly portrayed as a US-China race for access to Asia’s hydrocarbon resources and the US government wanted to retain control of the area.”<sup>28</sup> The *Unocal* settlement was not an effective deterrent to keep Chevron from investing in the project. Chevron’s buy out of Unocal also affords them certain privileges under US Sanction law because their involvement now legally dates back to Unocal’s initial investment in the project. The impact of this legal distinction will be explored in the following discussion of sanctions in Burma.

Since 1997 the US government has limited foreign investment in Burma using economic sanctions.<sup>29</sup> The range of these sanctions includes prohibiting financial assets to anyone connected to the Burmese military regime, blocking of property, and banning new investment. The most relevant sanction to Chevron is the ban on new investment. The Office of Foreign Assets Control of the US Department of the Treasury describes the new investment ban as, "prohibit new investment in Burma by U.S. persons on or after May 21, 1997, unless such investment is pursuant to an agreement in place prior to that date. A number of criteria are used to determine whether or not a specific activity is "grandfathered," including the clarity of the scope of the agreement, the degree of specificity with which the activity is described, and the extent to which the terms of the agreement are legally enforceable."<sup>30</sup> Chevron purchased Unocal in 2005, but because Unocal’s involvement predates 1997, Chevron’s activities are considered “grandfathered” in. Under the new investment provision Chevron is not effectively regulated in their Burmese operations. In 2007, with increased pressure on the US government to do something about Chevron’s presence in Burma, the government introduced a new sanction that would directly regulate the tax policies of the

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<sup>28</sup> “Unocal still in Burma,” *World War 4 Report*, October 2, 2007.

<sup>29</sup> This paper focuses on sanctions in the United States because Chevron is a US based company and therefore it is subject to US sanction laws.

<sup>30</sup> “An Overview of the Burmese Sanctions Regulations – Title 31 Part 537 of the US Code of Federal Regulations,” *Office of Foreign Assets Control, US Department of the Treasury*, December 5, 2008.

corporation. The new law would have increased taxes paid to the US government and eliminated taxes paid to the Burmese military junta.<sup>31</sup> However in 2008, congress dropped the stricter sanctions against Chevron. As Marco Simons, legal director of EarthRights International, said in a radio interview, “there's been a compromise worked out which although it doesn't include the Chevron tax penalty, it does include other tough sanctions, and sanctions that very well may have more of an impact on the military regime, such as blocking trade in Burmese gemstones.”<sup>32</sup> Although congress increased sanctions on the Burmese military, Chevron again escaped US regulation. Congress’s decision to exclude Chevron from sanctions was a move to retain US control of the Burmese resources and prevent Chinese or Indian corporations from taking over the Yadana pipeline.<sup>33</sup> The US decision to protect its oil resources from other nations is indicative of the problem with unilateral sanctions. Sanctions from the West have been largely ineffective because there is a lack of global consensus on the Burmese regime.<sup>34</sup> Legal sanctions against Chevron have been hindered because of US economic interest in Burma.

The use of sanctions as corporate regulation in Burma has been a controversial issue resulting from varying opinions on the value of sanctions in general. Simons argues that Chevron is not a factor in the Burmese economy at all and that the Thai government is what funds the military by purchasing the gas.<sup>35</sup> Even though Simons’ argument is accurate about the monetary transactions between Burma and Thailand, Chevron should not be ignored for its stake in the project and the political, social, and economic impact that it has on both the military regime and the people of Burma. Another argument against sanctions, made by Leon T. Hader, is that they are harmful to the Burmese economy because they “run contrary to free trade and open markets and deny the Burmese people the ability to enjoy the fruits of the

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<sup>31</sup> “Congress Moves to End Chevron's Myanmar Operations,” *ABC News*, October 25, 2007.

<sup>32</sup> “US Reverses Decision to Sanction Chevron over Burma,” *Radio Australia*, July 17, 2008.

<sup>33</sup> “US Lawmakers Ease Pressure on Chevron in Myanmar,” *Google*, July 15 2008.

<sup>34</sup> Black, 235.

<sup>35</sup> “US Reverse Decision to Sanction Chevron over Burma.”

global economy.”<sup>36</sup> Hader believes the current state of sanctions on Burma may actually be helping Chevron act without competition or transparency because other US firms are blocked from entering. However as Gemma Richardson notes, “most pro-democracy Burmese groups support targeted sanctions. Even Nobel laureate and imprisoned pro-Democracy leader Aung San Suu Kyi disputes the harm that sanctions cause for the average Burmese person.”<sup>37</sup> The problem with the current sanctions imposed on Burma, is that their benefit to Burmese society is currently outweighed by their benefit to Chevron. Chevron is allowed to maintain operations in a closed market, without competition while other businesses are locked out because of the oppressive regime. Either Chevron must withdraw and forfeit its current position or Burma must be opened to the global market in attempts to strengthen civil society and the economy over the government. The political implications of corporate involvement in Burma have been a hindrance to the legal measures taken against Chevron. A greater discussion of the political situation follows in the next section.

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<sup>36</sup> Leon T. Hader, “US Sanctions Against Burma, A Failure on all Fronts,” *Trade Policy Analysis No 1.*, March 26, 1998.

<sup>37</sup> Gemma Richardson, “Companies Operating in Myanmar Profit at the Expense of the People,” *Suite 101*, March 22, 2009.



## Political Regulations

An emerging trend in political regulation and accountability of MNCs is universal soft law agreements. Soft law documents are aimed at providing a written commitment to governance standards. These political dedications can be interpreted as corporate constitutions and help direct MNC behavior in the International Political Economy. One of the most influential soft law treaties in which Chevron has opted not to participate, is the UN Global Compact. The Global Compact includes a list of 10 principles that corporations should follow to be responsible corporate citizens. The principles are derived from four main sources: the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. One of the principles most relevant to the case of Chevron in Burma states, “make sure [businesses] are not complicit in human rights abuses.”<sup>38</sup> Chevron is not among the 7700 business participants to the Global Compact, a clear indication of their commitment level to global governance.

Another important multilateral initiative is the OECD Guidelines for Multinational Enterprises. The Organization for Economic Co-Operation and Development (OECD), started in 1961, is a group of 30 member states working for the world’s economy. The US is one of the OECD members, creating a responsibility for US corporations to uphold the goals of the organization. In 2008 the OECD wrote the OECD Guidelines for Multinational Enterprises, including under General Policies, “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.”<sup>39</sup> This principle is particularly relevant because it discusses a corporation’s duty to collaborate with the host government in providing fundamental safeties and liberties to populations. In the case of Chevron in Burma, it is the same collaboration of corporation and government that is

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<sup>38</sup> “The Ten Principles,” *UN Global Compact*, July 26, 2000.

<sup>39</sup> “OECD Guidelines for Multinational Enterprises,” *OECD*, 2008.

committing the human rights abuses. One soft law document that Chevron has voluntarily supported is the Global Sullivan Principles. The Global Sullivan Principles “are to support economic, social and political justice by companies where they do business; to support human rights and to encourage equal opportunity at all levels of employment.”<sup>40</sup> Even though Chevron has endorsed the Global Sullivan Principles on paper, the corporation has not followed the principles in practice. The Global Sullivan Principles, the OECD Guidelines, and the Global Compact have all been unable to influence Chevron or regulate its involvement in Burma.

In addition to these universal documents Chevron has created its own policy on human rights. The Chevron “Human Rights Statement” reads as follows:

to "Although governments bear primary responsibility for safeguarding human rights, we believe that companies can play a positive role in contributing to the protection and promotion of human rights. To that end, we engage with key stakeholders – including representatives of governments and civil society – on these issues. We work actively to conduct our global operations in a manner consistent with human rights principles applicable to business. This includes recognizing and respecting the relevant ideals expressed in the Universal Declaration of Human Rights."<sup>41</sup>

Chevron does not even adhere to the human rights statement drafted by the company itself. From these various examples it is evident that soft law written commitments to global governance have not been effective in regulating Chevron’s human rights policies in Burma.

Chevron’s “Human Rights Statement” also addresses the importance of its relationships to representatives of government. Chevron has built unique relationships with both the US and Burmese governments creating favorable conditions for their continued presence in the Yadana gas pipeline. As a powerful business Chevron uses its strongest advantage in its relationships with its home and host governments, money. In 2008 Chevron recorded \$24 billion in profits, making it the second most profitable corporation in the US.<sup>42</sup>

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<sup>40</sup> “Global Sullivan Principles,” *Global Sullivan Principles*.

<sup>41</sup> “Human Rights Statement,” *Chevron*.

<sup>42</sup> “The True Cost of Chevron,” 1.

Chevron influences the Burmese military junta with a share in these profits and the monetary success of the Yadana pipeline. The amount of money exchanged between Chevron and the Burmese government is difficult to determine. There is no revenue transparency in Burma under the military junta and Chevron has not published their payments to the regime.<sup>43</sup> This lack of transparency has created various claims about remunerations to the Burmese government. One article claimed in 2007, that Chevron and the other partners in the pipeline project paid the Burmese government more than \$2 billion.<sup>44</sup> Another article from 2009 states, "energy giants Total and Chevron are propping up Myanmar's junta with a gas project that has allowed the regime to stash nearly five billion dollars in Singaporean banks, a rights group said Thursday."<sup>45</sup> Although the exact amount of funds is not clear, it is apparent that the military junta profits generously from Chevron's stake in the country and Chevron has considerable monetary influence over the government. Furthermore the Burmese military has also used financial incentives to keep Chevron in the Yadana pipeline. "Under Myanmar law, if Chevron sold its stake, it might have to pay the military junta much of the company's capital gains on the project -- estimated to be around 500 million dollars."<sup>46</sup> The political relationship between Chevron and the Burmese government has been mutually founded on and directed by money.

Similarly, Chevron has close monetary ties to the US government. However the money in the US is primarily spent on lobbying. Unlike Burma, the US is a nation with democracy and political competition causing Chevron to spend money on lobbying and campaigning for policies and persons that will allow them continued access to Burma. In 2007 Chevron spent \$4.3 million on lobbying the US government.<sup>47</sup> In 2008 Chevron's lobbying money was spent against legislation to improve environmental, public health,

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<sup>43</sup> "The True Cost of Chevron," 23.

<sup>44</sup> "Congress Moves to End Chevron's Myanmar Operations."

<sup>45</sup> "Total, Chevron propping up Myanmar regime: rights group," *ABS-CBN News*, September 10, 2009.

<sup>46</sup> "US lawmakers ease pressure on Chevron in Myanmar."

<sup>47</sup> "Congress Moves to End Chevron's Myanmar Operations."

worker, consumer, and human rights protections among other things.<sup>48</sup> Chevron lobbies against legislation that will make it more difficult or impossible to continue its operations in countries such as Burma. Chevron uses the same tactics in support for US politicians.

“Chevron is among the all-time largest corporate contributors to US federal elections giving more than \$10.5 million since 1990—75% of which went to Republican candidates.”<sup>49</sup>

Chevron has donated serious contributions to the Republican Party to retain favorable conditions in Burma.<sup>50</sup> The political relationship between Chevron and the US government is similar to the relationship between Chevron and the Burmese military junta; both relationships are built on mutual profitability.

Chevron’s presence in Burma has also had an influence on the political relationship between the US and Burmese governments. As the Burma Campaign UK notes, “significant Western investment in itself tends to become a factor in foreign policy formulation. The greater the stakes held by American and European companies, the less likely are their governments to take a strong stand against even a cruelly dictatorial regime.”<sup>51</sup> The Burma Campaign views MNC involvement as an impediment of stronger stances against the military junta from Western nations. Chevron has used the political relationships it has with the Burmese and US governments to ameliorate relations between the two states. Political regulatory measures have not been effective against Chevron in Burma because Chevron has been able to leverage itself into a position of power with both nations.

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<sup>48</sup> “The True Cost of Chevron,” 5.

<sup>49</sup> “The True Cost of Chevron,” 3.

<sup>50</sup> As noted in note 14, it will be necessary to reevaluate political regulations under new Democratic president Obama.

<sup>51</sup> “Foreign Investment.”

## **Ethical Regulations**

The last method of regulations focuses on Chevron's ethical measures to self-regulate principally in the form of CSR programs. "These activities may include socio-economic programs through which the E&P enterprise provides public goods (such as roads, housing, employment, education and health-care), the development of reporting systems for human rights violations, or the modeling of more participatory forms of governance at the local and state level."<sup>52</sup> CSR initiatives can make MNC presence in fragile states a positive force for global governance, but they can also be used in public relations to distract from the reality of what is happening in these countries. It is difficult to evaluate CSR because as an internal mechanism, the MNC itself is the foremost authority on its CSR measures, however, as noted above, corporations will want to make their programs seem as effective as possible and will not focus on the negative aspects. This paper will examine Chevron's CSR and ethical policies from the viewpoint of the company, followed by a discussion of third party opinion and ethical reputation.

Chevron devotes a large portion of its website to addressing what they call "global issues." Under this section there is a discussion of human rights including a special section dedicated to Myanmar (Burma). Chevron uses their website to promote the money they have donated to the country and focus on their relationship to NGOs working in the area. The website states:

"In addition, Chevron independently funds projects through Pact, an NGO that has been providing health, microfinance and other programs in Myanmar for 10 years. From 2003 through 2008, Chevron contributed \$1,694,000 to the Pact health project Strengthening Community Response to Disease (SCR). In partnership with Chevron, SCR provides village-based workshops during which communities assess their existing community development situation, set goals for change and develop plans to address community defined development priorities. A second workshop assists villages in establishing locally financed health and development funds. Training is provided for funds

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<sup>52</sup> Black, 452.

management and HIV/AIDS and for caretaking programs to help decrease the incidence of tuberculosis, malaria."<sup>53</sup>

Chevron's funding of Pact is the main focus of their section on Myanmar along with a few other highlights of monetary contributions. Chevron portrays all of the community sponsoring and donations it has given in recent years, but it does not address human rights abuses, its relationship with the military junta, or any unilateral efforts to implement change in Burma. In its "Developing Partnerships: 2008 Corporate Responsibility Report," Chevron again uses the opportunity to talk about money, championing a \$2 million donation to Burma after Cyclone Nargis hit in 2008.<sup>54</sup> Additionally, the page dedicated to Myanmar in the 2008 report is the exact same as what is written on the website. The identical and brief account of Chevron's human rights record in Burma shows that Chevron has a company policy on the issue and does not offer greater transparency of their involvement. It is apparent that Chevron offers money to support Burma, but its CSR programs are sufficiently lacking institutional reform. "Chevron has denied any part in any human rights abuses. Its executives argue that staying in troubled countries - even pariahs such as Burma - does more good than harm by employing locals and funding health and education programs."<sup>55</sup> Chevron attempts to use money, in the form of donations and sponsorship, to distract from its cooperation with the Burmese military junta and complicity in human rights abuses. The following paragraph will examine the effectiveness of these distractions from outside opinions of Chevron.

Starting before Chevron took over Unocal's operations in the Yadana pipeline, the benefits of having an MNC in Burma was controversial. In 1998 Hader addressed the advantages of Unocal's presence as creating economic opportunity for Burmese, providing medical care, education, and sustainable development.<sup>56</sup> However, since that time the opinion

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<sup>53</sup> "Myanmar: Strengthening Community Responses to Disease," *Chevron*, May 2009.

<sup>54</sup> "Developing Partnerships: 2008 Corporate Responsibility Report," *Chevron*, May 2009, 31.

<sup>55</sup> David R. Baker, "Chevron's links to Burma stir critics to demand it to pull out," *SF Gate*, October 4, 2007.

<sup>56</sup> Hader.

of Chevron's presence and CSR efforts in Burma has been overwhelming negative. "The True Cost of Chevron" notes, "people in the project area and concerned stakeholders are in agreement that there are no offsets. Chevron and its partners cannot escape their culpability by building schools or health clinics."<sup>57</sup> EarthRights International (ERI), an NGO that works in Burma, echoes the same sentiment that no matter how effective the socio-economic programs of Chevron are, they in no way make up for the human rights abuses and other detrimental results of their continued presence.<sup>58</sup> ERI agrees that the negative influences of Chevron greatly outweigh any positive forces that the corporation may bring. Humanitarian organizations are even hesitant to accept donations from Chevron because its actions contradict their humanitarian mission. One organization, Mercy Corps, defends accepting money from Chevron on the grounds of severe need alone.<sup>59</sup> The money from Chevron is necessary to help other organizations provide humanitarian assistance to the Burmese people, but the organizations would rather the money not come from an MNC complicit in causing the conditions that precipitate humanitarian need in the first place.

Another example of Chevron using its CSR efforts in international public relations is the hiring of the Collaborative for Development Action (CDA). Chevron and the other stakeholders in the pipeline had CDA evaluate the state of their operations in Burma. "Mary Anderson, president of CDA, said CDA has been told in hundreds of interviews with villagers, diplomats and others that forced labor generally does not occur in the pipeline corridor because the company stops it if it does."<sup>60</sup> However, the results found by the CDA have been refuted and the legitimacy of their investigation has been questioned. As one article

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<sup>57</sup> "The True Cost of Chevron," 24.

<sup>58</sup> "Total Impact: The Human Rights, Environmental, and Financial Impacts of Total and Chevron's Yadana Gas Project in Military-Ruled Burma (Myanmar)," *EarthRights International*, September 2009, 47.

<sup>59</sup> Richard Read, "Oregon-based Mercy Corps defends Chevron gift to aid Myanmar," *OregonLive*, May 17, 2008.

<sup>60</sup> Michael Erman, "Watchdog group says Chevron complicit in Myanmar," *Reuters*, April 29, 2008.

states, "CDA visited villages in the pipeline area on five occasions but only with escorts from the oil company and interpreters from Total, while villagers were warned by security members not to give bad news."<sup>61</sup> Chevron has repeatedly proven that its CSR programs are not sufficient and that it does not use its stake in Burma as a positive force in global governance. Despite Chevron's efforts to promote its CSR initiatives and sustainability in public relations, it is not viewed as an ethically sound corporation. Covalence, a company that ranks MNCs based on their ethical reputations, awarded Chevron its lowest grade and ranked it 579/581 companies in March of 2010.<sup>62</sup> Chevron has one of the absolute worst ethical reputations of the corporations tracked by Covalence, yet they continue to operate profitably in Burma. Ethical standards, ethical reputations, and CSR have been unable to regulate Chevron's role in Burma.

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<sup>61</sup> "Total, Chevron propping up Myanmar regime: rights group."

<sup>62</sup> "Ethical Snapshot: Chevron Corp. (Oil and Gas)," *Covalence*, March 31, 2010.



## **Recommendations and Conclusion**

Burma has been under military rule since 1962. The military junta leading the country has not only been undemocratic, it has committed various human rights violations against the Burmese people. The Yadana gas pipeline has been one of many sites where human rights abuses are prevalent. Chevron's complicity in these human rights abuses, its continued presence in Burma, and profitable success in the region are indicative of the challenges to regulating the corporate role in global governance. MNCs are increasingly being considered political actors and they are becoming major players in the International Political Economy. Unlike political actors though, MNCs do not have the same network of accountability to ensure responsible participation. The rise of companies in global governance happened too quickly for a unified response. Even the terms used to discuss the corporations are not agreed upon. They can be called Transnational Corporations (TNC), Multinational Enterprises (MNE), Multinational Corporations (MNC) and their role in global governance can be considered corporate citizenship or corporate social responsibility. The lack of consensus on business and global governance has contributed to a multilayered approach to regulation. This paper has operationalized the many aspects of regulation into legal, political, and ethical methods.

Chevron has been granted uninterrupted access to Burmese resources under US sanctions law. The Doe v. Unocal lawsuit, although providing a major step in legal precedent for MNC accountability in foreign countries, prompted Chevron's acquisition of the Unocal stake but did not force divestment from Burma. Chevron has opted out of some voluntary soft law treaties and ignored others avoiding accountability on an international level. Additionally, its political relationships with both the US and Burmese governments have been mutually beneficial and in some cases encouraged Chevron's operations in Burma. Both legal and political external factors have proved ineffective to manage Chevron's presence in Burma. As

outside actors have not been able to regulate Chevron, it is left to the company itself to manage through internal ethics. Ethical measures taken by Chevron have also been insignificant in offering development or change to the Burmese people, economy, or political realities. Chevron's CSR has earned them a severely negative ethical reputation, yet the company still has not divested from Burma. Neither internal CSR or external ethical views have dissuaded the company from further operations in Burma. In the case of Chevron in Burma, none of the regulatory methods have been successful in forcing the company to take a positive role in the human rights situation or governance of the oppressed state.

Chevron has continued operations in the Yadana gas pipeline despite the extremely controversial nature of its investment because it has continued to be a profitable enterprise. Regardless of legal, political, and ethical measures, in some cases business is still business. In light of that truth, the best way to regulate MNCs in global governance might be to use business norms. Lifting sanctions, ethical campaigns, and other restrictions to Burma and successfully opening the economic market could let business practices dictate the future. It may be an unpopular solution at first, but after time a free market economy in Burma might prove to be more effective than current regulatory methods. If economic competition were allowed maybe the people of Burma could attract a more responsible corporation to replace Chevron. Additionally, competition in the economy could help facilitate a transition to democratic competition in the government. CSR is an important development for the future of transnational business and some corporations have already adopted significantly more ethical practices, but for some companies it's still all about the bottom line.

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