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OFFERED BY MR. ENGEL OF NEW YORK

At the end of title XII, add the following new subtitle:

Subtitle ____—Matters Relating to Burma

SEC. 12–1. IMPOSITION OF EXISTING AND ADDITIONAL SANCTIONS FOR THE VIOLATION OF HUMAN RIGHTS AND THE COMMISSION OF HUMAN RIGHTS ABUSES IN BURMA.

(a) SANCTIONS PURSUANT TO EXISTING AUTHORITIES.—The President shall impose sanctions—

(1) against officials in Burma, including Commander in Chief of the Armed Forces of Myanmar Min Aung Hlaing, under the Global Magnitsky Human Rights Accountability Act (22 U.S.C. 2656 note); and

(2) against military-owned enterprises, including the Myanmar Economic Corporation and Union of Myanmar Economic Holding, under the Burmese Freedom and Democracy Act (50 U.S.C. 1701 note),
the Tom Lantos Block Burmese JADE (Junta’s
Anti-Democratic Efforts) Act of 2008 (50 U.S.C. 1701 note), and other relevant statutory authorities.

(b) ADDITIONAL SANCTIONS.—For the 8-year period beginning on the date that is 180 days after the date of the enactment of this subtitle, the President shall impose the sanctions described in subsection (c) with respect to each foreign person that the President determines, based on credible evidence—

(1) is a current or former senior official of the military or security forces of Burma who—

(A) knowingly perpetrated, ordered, or otherwise directed serious human rights abuses in Burma; or

(B) has taken significant steps to impede investigations or prosecutions of alleged serious human rights abuses, including against the Rohingya community in Rakhine State;

(2) is an entity owned or controlled by any person described in paragraph (1);

(3) is an entity, such as the Myanmar Economic Cooperation or the Myanmar Economic Holding Corporation, that is owned or controlled, directly or indirectly, by the military or security forces of Burma, including through collective or cooperative structures, from which one or more persons de-
scribed in paragraph (1) derive significant revenue
or financial benefit; or

(4) has knowingly—

(A) provided significant financial, material,
or technological support—

(i) to a foreign person described in
paragraph (1) in furtherance of any of the
acts described in subparagraph (A) or (B)
of such paragraph; or

(ii) to any entity owned or controlled
by such person or an immediate family
member of such person; or

(B) received significant financial, material,
or technological support from a foreign person
described in paragraph (1) or an entity owned
or controlled by such person or an immediate
family member of such person.

(c) SANCTIONS DESCRIBED; EXCEPTIONS.—

(1) SANCTIONS.—The sanctions described in
this subsection are the following:

(A) ASSET BLOCKING.—Notwithstanding
the requirements of section 202 of the Inter-
national Emergency Economic Powers Act (50
U.S.C. 1701), the exercise of all powers granted
to the President by such Act to the extent nec-
necessary to block and prohibit all transactions in all property and interests in property of a foreign person the President determines meets one or more of the criteria described in subsection (b) if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

(B) Ineligibility for admission.—In the case of a foreign person who is an individual, such person shall be—

(i) inadmissible to the United States;

(ii) ineligible to receive a visa or other documentation to enter the United States; and

(iii) otherwise ineligible to be admitted or paroled into the United States or to receive any other benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(C) Current visas revoked.—

(i) The issuing consular officer or the Secretary of State, (or a designee of the Secretary of State) shall, in accordance with section 221(i) of the Immigration and
Nationality Act (8 U.S.C. 1201(i)), revoke
any visa or other entry documentation
issued to a foreign person who is an indi-
vidual regardless of when the visa or other
entry documentation is issued.

(ii) A revocation under clause (i) shall
take effect immediately and automatically
cancel any other valid visa or entry docu-
mentation that is in the person’s posses-
sion.

(D) APPLICABILITY TO FOREIGN ENTITIES
AND FOREIGN GOVERNMENTS.—Subparagraphs
(B) and (C) of this section shall also apply with
respect to aliens who are officials of, agents or
instrumentalities of, working or acting on be-
half of, or otherwise associated with, a foreign
entity or foreign government that is a foreign
person subject to the imposition of sanctions
under subsection (b), if such aliens are deter-
mined by the Secretary of State to have know-
ingly authorized, conspired to commit, been re-
sponsible for, engaged in, or otherwise assisted
or facilitated the actions described in such sub-
section.
(2) Exception to comply with United Nations Headquarters Agreement. —Sanctions under this section shall not apply with respect to an alien if admitting or paroling the alien into the United States is necessary to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States, or other applicable international obligations.

(d) Penalties. —Any person that violates, attempts to violate, conspires to violate, or causes a violation of this section or any regulation, license, or order issued to carry out subsection (c) shall be subject to the penalties set forth in subsections (b) and (e) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.

(e) Implementation. —The President may exercise all authorities provided under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) to carry out this section and shall issue such regulations, licenses, and orders as are necessary to carry out this section.
(f) WAIVER.—The President may annually waive the application of sanctions imposed on a foreign person pursuant to subsection (b) if the President—

(1) determines that a waiver with respect to such foreign person is in the national interest of the United States; and

(2) not later than the date on which such waiver will take effect, submits to the following committees notice of and justification for such waiver:

(A) The Committee on Foreign Affairs, the Committee on Appropriations, and the Committee on Financial Services of the House of Representatives.

(B) The Committee on Foreign Relations, the Committee on Appropriations, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(g) EXCEPTION RELATING TO THE IMPORTATION OF GOODS.—

(1) IN GENERAL.—The authorities and requirements to impose sanctions under this subtitle shall not include the authority or requirement to impose sanctions on the importation of goods.

(2) GOOD DEFINED.—In this subsection, the term “good” means any article, natural or man-
made substance, material, supply or manufactured
product, including inspection and test equipment,
and excluding technical data.

(h) DEFINITIONS.—In this section—

(1) ADMITTED; ALIEN.—The terms “admitted”
and “alien” have the meanings given those terms in
section 101 of the Immigration and Nationality Act

(2) FOREIGN PERSON.—The term “foreign per-
son” means a person that is not a United States
person.

(3) KNOWINGLY.—The term “knowingly”
means, with respect to conduct, a circumstance, or
a result, means that a person has actual knowledge,
or should have known, of the conduct, the cir-
cumstance, or the result.

(4) UNITED STATES PERSON.—The term
“United States person” means—

(A) a United States citizen, an alien law-
fully admitted for permanent residence to the
United States, or any other individual subject
to the jurisdiction of the United States; or

(B) an entity organized under the laws of
the United States or of any jurisdiction within
the United States, including a foreign branch of
such entity.

SEC. 12. GUIDANCE RELATING TO THE MINING SECTOR
OF BURMA.

(a) FINDINGS.—Congress finds the following:

(1) In 2015, the nongovernmental organization
Global Witness estimated that the value of total pro-
duction of jade in Burma in 2014 was
$31,000,000,000, almost 48 percent of the official
gross domestic product of Burma. As much as 80
percent of that jade sold is smuggled out of Burma.

(2) Burma’s military and associated entities, in-
cluding companies owned or controlled by Myanmar
Economic Corporation and Myanmar Economic
Holding Limited, their affiliated companies, and
companies owned or controlled by current and
former senior military officers or their family mem-
bers, are linked to the mining sector, including the
gemstone industry, and benefit financially from
widespread illegal smuggling of jade and rubies from
Burma.

(3) Illegal trafficking in precious and
semiprecious stones from Burma, including the trade
in high-value jade and rubies, deprives the people of
Burma and the civilian government of critical rev-
enue and instead benefits military-linked entities, non-state armed groups, and transnational organized criminal networks.

(4) In 2016, the Government of Burma began to take steps to reform aspects of the mining sector, but the Gemstone Law adopted in January 2019 does not adequately address corruption and tax avoidance, conflicts of interest, or the factors fueling conflict in Kachin State and other gemstone mining areas.

(5) The lifting in October 2016 of United States sanctions on the importation of jade and jadeite and rubies from Burma allowed such gemstones to legally enter the United States market, but some retailers have refrained from sourcing gemstones of Burmese origin due to governance and reputational concerns.

(b) Sense of Congress.—It is the sense of Congress that—

(1) notwithstanding Burma’s “Trafficking in Persons” ranking, the President should continue to provide assistance to Burma, pursuant to the waiver authority under section 110(d)(4) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(d)(4)), in order to re-engage with the Govern-
ment of Burma with respect to the mining sector and should make available technical, capacity-building and other assistance through the Department of State or the United States Agency for International Development to support the Government of Burma in efforts to reform the gemstone industry; and

(2) companies that seek to import to the United States gemstones or minerals that may be of Burmese origin or articles of jewelry containing such gemstones should—

(A) obtain such materials exclusively from entities that satisfy the transparency criteria described in subsection (d)(2) or from third parties that can demonstrate that they sourced the materials from entities that meet such criteria; and

(B) undertake robust due diligence procedures in line with the “Due Diligence Guidance for Responsible Business Conduct” and “Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas” promulgated by the Organization for Economic Cooperation and Development.
(c) LIST OF PARTICIPATING WHITE-LIST ENTITIES.—Not later than 120 days after the date of the enactment of this subtitle, and annually thereafter until the date described in subsection (e), the Secretary of State shall submit to the appropriate congressional committees, and publish on a publicly available website, a list of each entity described in subsection (d)(1) that—

(1) participates in Burma’s mining sector;

(2) publicly discloses beneficial ownership, as such term is defined for purposes of the Myanmar Extractive Industry Transparency Initiative (“Myanmar EITI”);

(3) is not owned or controlled, either directly or indirectly, by the Burmese military or security forces, any current or former senior Burmese military officer, or any person sanctioned by the United States pursuant to any relevant sanctions authority; and

(4) is making significant progress toward meeting the criteria described in subsection (d)(2).

(d) ENTITIES AND CRITERIA DESCRIBED.—

(1) ENTITIES DESCRIBED.—The entities described in this subsection are the following:

(A) Entities that produce or process precious and semiprecious gemstones.
(B) Entities that sell or export precious and semiprecious gemstones from Burma or articles of jewelry containing such gemstones.

(2) CRITERIA DESCRIBED.—The criteria described in this subsection are the following:

(A) The entity publicly discloses any politically exposed persons, officers, directors or beneficial owners, as defined under the Myanmar EITI.

(B) The entity publicly discloses valid authorization, license, or permit to produce, process, sell, or export minerals or gemstones, as applicable.

(C) The entity publicly discloses payments to the Government of Burma, including tax and non-tax, license, or royalty payments, and other payments or contract terms as may be required under Myanmar EITI standards.

(D) The entity undertakes due diligence, in line with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, including public reporting.
(e) Periodic Updating.—The Secretary shall periodically update the publicly available version of the list described in subsection (c) as appropriate.

(f) Guidance and White-list Entities.—The Secretary shall issue guidance for entities in the United States private sector with respect to the best practices for supply-chain due diligence that are applicable to importation of gemstones or minerals that may be of Burmese origin or articles of jewelry containing such gemstones, including with respect to transactions with entities approved for inclusion in the list published pursuant subsection (c), in order to mitigate potential risks and legal liabilities associated with the importation of such items.

(g) Termination.—The date described in this section is the date on which the President certifies to the appropriate congressional committees that the Government of Burma has taken substantial measures to reform the mining sector in Burma, including the following:

1. Require the mandatory disclosure of payments, permit and license allocations, project revenues, contracts, and beneficial ownership, including the identification any politically exposed persons who are beneficial owners, consistent with the approach agreed under the Myanmar EITI and with due regard for civil society participation.
(2) Separate the commercial, regulatory, and revenue collection responsibilities within the Myanmar Gems Enterprise and other key state-owned enterprises to remove existing conflicts of interest.

(3) Monitor and undertake enforcement actions, as warranted, to ensure that entities—

(A) adhere to environmental and social impact assessment and management standards in accordance with international responsible mining practices, the country’s environmental conservation law, and other applicable laws and regulations; and

(B) uphold occupational health and safety standards and codes of conduct that are aligned with the core labor standards of the International Labour Organisation and with domestic law.

(4) Address the transparent and fair distribution of benefits from natural resources, including through local benefit-sharing.

(5) Reform the process for valuation of gemstones at the mine-site, including developing an independent valuation system to prevent undervaluation and tax evasion.
(6) Require companies bidding for jade and ruby mining, finishing, or export permits to be independently audited upon the request of the Government of Burma and making the results of all such audits public.

(7) Establish credible and transparent procedures for permit allocations that are independent from external influence, including scrutiny of applicants that prevents unscrupulous entities from gaining access to concessions or the right to trade in minerals or gemstones.

(8) Establish effective oversight of state-owned enterprises operating in such sector, including through parliamentary oversight or requirements for independent financial auditing.

SEC. 12. REPORT AND DETERMINATION ON ACCOUNTABILITY FOR WAR CRIMES, CRIMES AGAINST HUMANITY, AND GENOCIDE IN BURMA.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this subtitle, the Secretary of State shall submit to the appropriate congressional committees a report that—

(1) summarizes credible reports of serious human rights violations, including war crimes, committed against the Rohingya or other ethnic minori-
ties in Burma between 2012 and the date of the submission of the report;

(2) describes any potential transitional justice mechanisms in Burma;

(3) provides an analysis of whether the serious human rights violations summarized pursuant to paragraph (1) amount to war crimes, crimes against humanity, or genocide; and

(4) includes a determination of the Secretary whether—

(A) the events that took place in the state of Rakhine in Burma, starting on August 25, 2017, constitute war crimes, crimes against humanity, or genocide; or

(B) the situation faced by the Rohingya in Rakhine State, between 2012 and the date of the submission of the report, amounts to or has amounted to the crime of apartheid.

(b) ELEMENTS.—The report required by subsection (a) shall also include each of the following:

(1) A description of—

(A) each incident for which there is credible evidence that the incident may constitute war crimes, crimes against humanity, or genocide committed by the Burmese military or se-
curity forces against the Rohingya and other ethnic minorities, including the identities of any other actors involved in such incident;

(B) the role of the civilian government in the commission of any such incidents;

(C) each incident for which there is credible evidence that the incident may constitute war crime, crimes against humanity, or genocide committed by violent extremist groups in Burma;

(D) each attack on health workers, health facilities, health transport, or patients and, to the extent possible, the identities of any individuals who engaged in or organized such incidents in Burma; and

(E) to the extent possible, a description of the conventional and unconventional weapons used for any such crimes and the sources of such weapons.

(2) A description and assessment, in consultation with the Administrator of the United States Agency for International Development, the Attorney General, and other heads of any other appropriate Federal departments or agencies, of the effectiveness of any programs that the United States has already
undertaken to ensure accountability for war crimes, crimes against humanity, and genocide perpetrated against the Rohingya by the military and security forces of Burma, the Rakhine State government, pro-government militias, and all other armed groups operating fighting in Rakhine, including programs to—

(A) train civilian investigators within and outside of Burma and Bangladesh on how to document, investigate, develop findings of, identify, and locate alleged perpetrators of war crimes, crimes against humanity, or genocide in Burma;

(B) promote and prepare for a transitional justice process or processes for the perpetrators of war crimes, crimes against humanity, and genocide occurring in the State of Rakhine in 2017; and

(C) document, collect, preserve, and protect evidence of war crimes, crimes against humanity, and genocide in Burma, including by providing support for Burmese, Bangladeshi, foreign, and international nongovernmental organizations, the United Nations Human Rights
Council’s investigative team, and other entities engaged in such investigative activities.

(3) A detailed study of the feasibility and desirability of potential transitional justice mechanisms for Burma, such as an international tribunal, a hybrid tribunal, or other international options, that includes—

(A) a discussion of the use of universal jurisdiction or of legal cases brought against the country of Burma by other sovereign countries at the International Court of Justice to address war crimes, crimes against humanity, and genocide perpetrated in Burma;

(B) recommendations on which transitional justice mechanisms the United States should support, why such mechanisms should be supported, and what type of support should be offered; and

(C) close consultation regarding transitional justice mechanisms with Rohingya representatives and those of other ethnic minorities who have suffered grave human rights abuses.

(e) PROTECTION OF WITNESSES AND EVIDENCE.—The Secretary of State shall ensure that the identification of witnesses and physical evidence for purposes of the re-
port required by subsection (a) are not publicly disclosed in a manner that might place such persons at risk of harm or encourage the destruction of such evidence by the military or Government of Burma.

(d) Crime of Apartheid.—In this section, the term “crime of apartheid” means inhumane acts that—

(1) are of a character similar to the acts referred to in subparagraphs (A) through (H) of section 1285(2);

(2) are committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group; and

(3) are committed with the intention of maintaining such regime.

(e) Authorization to Provide Technical Assistance.—The Secretary of State is authorized to provide assistance to support appropriate civilian or international entities that are undertaking the efforts described in subsection (f) with respect to war crimes, crimes against humanity, and genocide perpetrated by the military and security forces of Burma, the Rakhine State government, pro-government militias, or any other armed groups fighting in Rakhine State.
(f) Efforts Against Human Rights Abuses.—
The efforts described in this subsection are the following:

(1) Identifying suspected perpetrators of war crimes, crimes against humanity, and genocide.

(2) Collecting, documenting, and protecting evidence of such crimes and preserve the chain of custody for such evidence.

(3) Conducting criminal investigations.

(4) Supporting investigations conducted by other countries, as appropriate.

(g) Authorization for Transitional Justice Mechanisms.—The Secretary of State, taking into account any relevant findings in the report required by subsection (a), is authorized to provide support for the creation and operation of transitional justice mechanisms, including a potential hybrid tribunal, to prosecute individuals suspected of committing war crimes, crimes against humanity, or genocide in Burma.

SEC. 12 4. Definitions.

In this subtitle:

(1) Appropriate congressional committees.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs, the Committee on Armed Services, and the Com-
mittee on Ways and Means of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Armed Services of the Senate.

(2) CRIMES AGAINST HUMANITY.—The term “crimes against humanity” includes, when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack—

(A) murder;

(B) deportation or forcible transfer of population;

(C) torture;

(D) extermination;

(E) enslavement;

(F) rape, sexual slavery, or any other form of sexual violence of comparable severity;

(G) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law; and

(H) enforced disappearance of persons.
(3) GENOCIDE.—The term “genocide” means any offense described in section 1091(a) of title 18, United States Code.

(4) TRANSITIONAL JUSTICE.—The term “transitional justice” means the range of judicial, non-judicial, formal, informal, retributive, and restorative measures employed by countries transitioning out of armed conflict or repressive regimes to redress legacies of atrocities and to promote long-term, sustainable peace.

(5) WAR CRIME.—The term “war crime” has the meaning given the term in section 2441(c) of title 18, United States Code.