The Leahy Amendment: Is It an Effective Coercive Strategy?

A Thesis
submitted to the Faculty of the
Graduate School of Arts and Sciences
of Georgetown University
in partial fulfillment of the requirements for the
degree of
Master of Arts
in Security Studies

By

James R. Johnson, B.A.

Washington, DC
April 13, 2011
THE LEAHY AMENDMENT: IS IT AN EFFECTIVE COERCIVE STRATEGY?

James R. Johnson, B.A.

Thesis Advisor: Carol Christine Fair, Ph.D.

ABSTRACT

A Congressional-mandated restriction, commonly referred to as the Leahy amendment, requires the suspension of foreign military assistance and training to individuals or units credibly accused of gross human rights violations with impunity. I examine the effectiveness of the Leahy amendment as a coercive strategy by conducting a cross-case analysis of five Leahy applications in Colombia, Indonesia, Nepal, Sri Lanka, and Turkey. I employ five variables of coercive success derived from my literature review and compare these variables with the actual outcomes to test the coercive potential of Leahy applications in each case. Several conclusions emerge from the research. First, at different points in the cases, it is evident that the more the Leahy applications employed the coercive variables, the more coercive pressure the application exerted. Second, the Leahy amendment lacks an institutional process to translate the law into a coercive strategy that weakens its employment. Finally, policymakers should temper expectations of what the Leahy amendment can reasonably achieve, defining them in terms of progress instead of full compliance.
The research and writing of this thesis
is dedicated to Michael and Caleb, my precious wife and son, who offered many helpful insights
and distractions throughout the writing process.

Disclaimer.
The views expressed in this thesis are those of the author and do not reflect the official policy or
position of the United States Army, Department of Defense, or the United States Government.

Many thanks,
James R. Johnson
TABLE OF CONTENTS

Chapter 1: Introduction ......................................................................................................................... 1
Chapter 2: Origins and Applications of the Leahy Amendment ......................................................... 3
Chapter 3: Literature Review .............................................................................................................. 6
Chapter 4: Methodology, Data, and Data Caveats ............................................................................. 12
Chapter 5: The Leahy Amendment Country Case Studies ................................................................. 22
Chapter 6: The Leahy Amendment Coercive Strategy Assessment .................................................... 62
Chapter 7: Summary and Implications ............................................................................................... 71
Appendix A: Percentage of Total Military Expenditures ................................................................. 74
Bibliography ........................................................................................................................................ 76
LIST OF TABLES

Table 1: Variable Coding.............................................................................................................. 13
Table 2: Coding Relative Motivation .......................................................................................... 13
Table 3: Coding Coercive Outcomes.......................................................................................... 18
Table 4: Summary of Colombia Case Study ............................................................................. 23
Table 5: Summary of Turkey Case Study.................................................................................... 32
Table 6: Summary of Indonesia Case Study .............................................................................. 37
Table 7: Summary of Nepal Case Study..................................................................................... 49
Table 8: Summary of Sri Lanka Case Study .............................................................................. 55
Table 9: Summary of Leahy Case Studies................................................................................... 62
Table 10: Percentage of U.S. Military Assistance to Total Military Expenditures .... 74
CHAPTER 1: INTRODUCTION

On July 22, 2010, Secretary of Defense Robert Gates announced that the United States was lifting the final training restrictions against the Indonesian military after 11 years under the Leahy amendment. A Congressional-mandated restriction, commonly referred to as the Leahy amendment, requires the suspension of foreign military assistance/training to individuals/units credibly accused of gross human rights violations with impunity. The Leahy amendment provides an institutional check of “do no harm,” but it also seeks to compel change in human rights behavior, specifically ending judicial impunity for offenders.

The recent internal debate over how to characterize the outcome of the Indonesian episode reflects the challenge to define what constitutes change under the Leahy amendment. Secretary Gates highlighted the positive trends of military and judicial reform over the last decade as justification for lifting the restrictions, while Senator Patrick Leahy criticized the lack of judicial convictions and continued impunity as justification for sustaining them. Human Rights Groups expressed concern that the reforms were too minor to warrant lifting the ban, undermining the human rights agenda.

Aside from practical considerations, the larger empirical question is: Does the suspension of U.S. military assistance (under the Leahy amendment) act as a viable coercive tool that alters the human rights practices of foreign militaries that receive U.S. military assistance? From this question, I propose the following testable hypothesis: the Leahy amendment should meet the basic criteria of a coercive strategy in order to coerce another foreign military. I then evaluate the potential efficacy of the Leahy amendment by using elements of coercive success, derived from my literature review of coercive strategies.


2 Bumiller, Elisabeth, and Norimitsu Onishi. “U.S. Lifts Ban on Contact” The New York Times
I aim to provide the first theoretical assessment of the coercive potential of the Leahy amendment and the country specific conditions it applies to military assistance. While there are numerous studies on sanctions episodes, my literature review did not discover any analysis that contextualized the Leahy amendments within the broader theoretical understanding of coercive strategies. My conclusions seek to assist policymakers in validating, refining, or revising the means by which the Leahy amendment is currently employed. It also provides a useful template to evaluate future applications of the Leahy amendment. Because the Leahy amendment affects all U.S. military engagement with foreign forces, it is critical for policymakers and practitioners to understand its’ requirements, strategy, and potential efficacy.

To examine the coercive strategy, I employ five case studies from the Leahy’s amendment actual applications (Colombia, Indonesia, Nepal, Sri Lanka, and Turkey). While the Leahy amendment has been applied to numerous units and individuals from other countries, these five countries received country specific restrictions, flowing from Leahy violations and the subsequent lack of prosecutions. The data comes from various government reports, foreign appropriations bills, congressional hearings, public judicial proceedings/military training documents, human rights reports, and foreign leaders’ public assessments of Leahy.

The second chapter introduces the origins, codification, and implementation of the Leahy amendment while the third chapter reviews the applicable literature for evaluating effective coercive strategies. The fourth chapter discusses the data and methods used to explore the Leahy amendments as a coercive strategy and the fifth chapter examines the specific case studies of the Leahy amendment. The sixth chapter summarizes the overall findings and look at cross-case trends from the five countries. Finally, the last chapter summarizes the implications and recommendations based the potential efficacy of the Leahy amendment as a coercive strategy.
CHAPTER 2: ORIGINS AND APPLICATIONS OF THE LEAHY AMENDMENT

The Leahy amendment was not the first attempt to restrict military assistance as a punitive measure for human rights violations. In 1976, the Carter administration developed a policy of suspending military aid as a coercive tool. It suspended grant military assistance initially to Argentina, Ethiopia, and Uruguay, and later to 15 different countries. Surveying these 15 countries, a Congressional Research Service report in 1979 found change in only five of these countries. This report charted many of the same issues surrounding the current implementation of the Leahy amendment: inconsistencies due to national interests and bureaucratic practices, the merits of public vs. private diplomacy, and what constitutes substantive change. The report also attributes the potential mixture of inducements or carrots along with quiet diplomacy as explanatory factors in some of the successful episodes.

The Leahy amendment first appeared in 1997 as part of the Foreign Operations Act (P.L. 104-238) and only applied to the U.S. State Department’s International Narcotics Control unit. The amendment then expanded in 1998 to include all security assistance authorized under the Foreign Operations Act, and in 1999 to cover training authorized under the Defense Appropriations Act. In 2008, Public Law 110-161 codified the Leahy amendment in Section 620j (22 U.S.C 2378d) of the Foreign Assistance Act of 1961. Section 620j, the Leahy amendment, states:

No assistance shall be furnished under this Act or the Arms Export Control Act to any unit of the security forces of a foreign country if the Secretary of State has

---

4 Center for International Policy. Limitation on Assistance to Security Forces (The "Leahy Law") (September 2, 2003) http://ciponline.org/facts/leahy.htm
credible evidence that such unit has committed gross violations of human rights. The prohibition in subsection (a) shall not apply if the Secretary determines and reports to the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, and the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice. 

The U.S. Department of Defense (DOD) restriction is similar except it refers to “any training program” and “unless all necessary corrective steps have been taken.”

In Section 502b, the 1961 Foreign Assistance Act establishes the promotion of internationally recognized human rights as a principal goal of foreign policy. Furthermore, in section 502b, it defines “gross human rights violations” as including: torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person. Based on these goals and the Leahy amendment’s objectives, it should serve as a foreign policy tool designed to promote adherence to human rights norms by other militaries and compel them to bring human rights violators to justice.

In the universe of Leahy applications, it is important to distinguish between countries that have had units or individuals restricted, and countries that have received country specific conditions outlined in Congressional Foreign Appropriation Acts (FOAA). The Leahy amendment, including country specific conditions, has applied broadly to five countries including: Colombia, Indonesia, Nepal, Sri Lanka, and Turkey. Colombia remains the longest

---

active Leahy application, while Indonesia is the only country where all units and military assistance has been restored. The U.S. Congress still maintains conditionality on some amounts of military assistance based on progress in human rights issues. Nepal and Sri Lanka are newer Leahy applications, within the last five years, and they represent the employment of Leahy conditions against smaller countries. The Turkey application was only a short-term restriction on the sell of Armored Personnel Carriers to specific Turkish units in 1998. Pakistan recently had units restricted in November 2010, but it has not received wider country specific conditions. In considering the universe of Leahy amendment applications, I limited the thesis to an exploration of actual Leahy applications, although there are other examples of countries that might be worthy of receiving restrictions based on their human rights record.

---

CHAPTER 3: LITERATURE REVIEW

Although coercion has been studied since the work of Thomas Schelling *Arms and Influence* in 1966, these studies were initially framed in discussions of nuclear threats, deterrence, and a bipolar world. In the 1990s, the unipolar geopolitical world renewed interest in coercive strategies as a policy option. Without a formal typological theory about coercion, most authors discuss multiple variables/elements of coercive success based on case study analysis.\(^{11}\) This section will cover relevant literature about the definitions, theories, and criteria of a coercive strategy. Then, it will examine the elements that make a coercive strategy successful.

Before beginning the discussion on coercive strategies, it is important to clarify the definition of coercion. In *Arms and Influence*, Schelling divides the concept of coercion into passive (deterrence) and active (compellence) forms. Deterrence prevents an actor from initiating something; whereas, compellence attempts to make an adversary do something.\(^{12}\) Different authors label this process with different names such as: compellence, coercive diplomacy, strategic coercion, coercive bargaining, and forceful persuasion. For the purposes of this thesis, I adopt Patrick Bratton’s simple definition of coercion as the use of threats or actions to influence another’s behavior.\(^{13}\) I also focus on the Leahy amendment as an active coercive tool because it seeks to compel a target country to bring human rights violators to justice.

3.1 Coercive Strategies and Criteria for Analysis

Two seminal works framed the debates about coercive strategies. *Forceful Persuasion*

---

3\(^{13}\) Bratton, Patrick C. “When Is Coercion Successful? And Why Can't We Agree on It?” *Naval War College* June 22, 2005 http://handle.dtic.mil/100.2/ADA521130 1
outlined a general model of coercive strategies, its critical variables, and its conditions for success while *Economic Sanctions Reconsidered* reframed the sanctions efficacy debate, after years of conventional wisdom that sanctions were ineffective tools of coercion. Alexander George defines coercive strategies as the act of placing a demand on an adversary with a threat of punishment that must be credible enough to coerce compliance with the demand.\(^{14}\)

These works then propose conditional variables for coercive success.\(^{15}\) Alexander George establishes seven variables that favor successful coercive strategies: clarity of objective, strength of motivation, asymmetry of motivation, a sense of urgency (time pressure), adequate domestic/international support, fear of unacceptable escalation, and clarity on the terms of the settlement.\(^{16}\) Building on George’s work, Robert Art and Patrick Cronin generally follow these same criteria and find them robust in evaluating other cases.\(^{17}\) Gregory Treverton expands the criteria further with 13 different prescriptions for coercive strategies.\(^{18}\)

By contrast, other authors attempt to limit the variables. In *Economic Sanctions Reconsidered*, the authors highlight critical statistical determinants of success: the difficulty of the goal, the costs of damage on the target, target’s nature, and the sender’s relationship.\(^{19}\) In *International Conflict Resolution*, Bruce Jentleson includes: clear objectives, decisive imposition to show resolve, a targeted irreplaceable good, enforcement, and a broad policy view.\(^ {20}\) Daniel Byman and Matthew Waxman reduce the essentials to two elements: escalation dominance and


\(^{16}\) George, Alexander. *Forceful Persuasion: Coercive Diplomacy* 75-82


\(^{18}\) Treverton, Gregory. *Framing Compellent Strategies* (Santa Monica, CA: Rand Corporation, 2000) 12


pressure points. They define escalation dominance as the ability to increase the threatened costs to the target while denying the ability to negate these costs or counter escalate.\textsuperscript{21} In their footnotes, they acknowledge that strength of motivation, time urgency, and objective clarity are all aspects of escalation dominance. Pressure points refer to items that a target state values.

In \textit{Counterinsurgency in Pakistan}, Christine Fair and Seth Jones provide a current, salient summary of critical variables including: clear demands, deadline for compliance, carrots and sticks, and an enforcement mechanism. These criteria are a good synopsis of the relevant literature, and these criteria incorporate a solid theoretical framework to evaluate coercive strategies. Based on these relevant works of literature, I hypothesize: \textit{the Leahy amendment should meet the basic criteria of a coercive strategy in order to coerce another foreign military.} I adopt Fair and Jones basic criteria to examine the Leahy amendment, while adding the relative motivation of the target and sender from George’s analysis.

\subsection*{3.2 Elements of a Successful Coercive Strategy}

Clear demands are the first basic element of a successful coercive strategy. Fair and Jones propose that demands must be clear and unambiguous for the target to meet the stated demands.\textsuperscript{22} Furthermore, as George and Simons conclude, clear demands give the target state a range of responses and demonstrate the sender’s resolve.\textsuperscript{23} Confusion in demands directly impacts the motivation of the target state to believe resistance is possible. Lawrence Freedman provides a cautionary point, noting that the public proclamation of a threat increases the cost to

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{21} Byman, Daniel, and Waxman, Matthew. \textit{The Dynamics of Coercion: American Foreign Policy and the Limits of Military Might} (New York: Cambridge University Press, 2002) 38
\item \textsuperscript{22} Jones, Seth, and C. Christine Fair. \textit{Counterinsurgency in Pakistan} (Santa Monica, CA: Rand Corporation, 2010) 108
\item \textsuperscript{23} George and Simons quoted in Jones, Seth, and C. Christine Fair. \textit{Counterinsurgency in Pakistan} 108
\end{itemize}
\end{footnotesize}
the target country’s reputation with compliance. Daniel Drezner cites the Carter administration’s public proclamations as undermining the efficacy of several sanction episodes in relations to human rights in the 1970’s.

Successful coercive strategies also incorporate a mixture of carrots and sticks. Sticks are the punitive action designed to inflict harm or damage against a state. They aim at raising the costs of defiance in a cost-benefit calculus. Carrots are inducements provided to a state to raise the value of concessions. Several authors, including George, Simons, and Baldwin, all argue that resolution of a dispute is far more likely if they are combined. Drezner cites the lack of inducements as a reason why the Carter administration’s human rights sanctions proved to be ineffective. Carrots and sticks increase the pain of resistance and the value of cooperation.

George further argues that the sender must add a sense of urgency for compliance. The more urgent the time constraint, the more pressure is applied. Schelling famously stated that “there must be a deadline, or tomorrow never comes.” Treverton presents a more balanced view. He posits that too strict a deadline makes compliance impossible, but too lenient makes it unnecessary. The lack of a time constraint might serve to allow conservative institutions and government laws in the target state to evolve and meet the demands.

To make compliance possible, there must be an enforcement mechanism in the coercive strategy. Jentleson characterizes this aspect as the coercer’s credibility. In discussing coercive success, Jentleson further articulates that the sender must communicate the ability and will to

---

26 Byman, Daniel, and Waxman, Matthew. *The Dynamics of Coercion* 9
28 Drezner, Daniel W. *The Sanctions Paradox* 81
29 George, Alexander. *Forceful Persuasion* 77
30 Schelling quoted in Jones, Seth, and C. Christine Fair. *Counterinsurgency in Pakistan* 110
31 Treverton, Gregory. *Framing Compellent* 10
32 Jentleson, Bruce. “Coercive Diplomacy: Scope and Limits in the Contemporary World.” 4
implement the threat. Thus, enforcement is a two-sided problem. The sender must be able to sustain the actual threat or punishment, and the target cannot have a black knight or alternative solution to reduce the impact. This black knight can either emerge internally in a non-sanctioned domestic entity or as a separate international actor. For George, this is the role of “unacceptable escalation” whereby the sender expends the necessary resources to enforce the policy. This expenditure communicates that failure to comply will continue to escalate the conflict situation for the target. A lack of enforcement signals a lack of resolve or credibility; whereas, the higher the enforcement, the more credible the coercion.

The final element of success in a coercive strategy is motivation. George argues that strength of motivation while necessary is not sufficient for coercive success. Rather, relative motivation also involves as George calls it an asymmetry of motivation. The target must believe that the sender is more highly motivated to coerce than it is to resist. To achieve this relative motivation, in designing the coercive strategy, Fair and Jones add the sender’s cost-benefit calculus to the more traditional lens of evaluating the target’s cost-benefit calculus. Thus, the sender’s cost-benefit calculus affects the strength and credibility of the coercive episode. Interacting with the other elements of success, George notes that to achieve this relative motivation the sender has two options. The sender can avoid demands that engage the target’s vital interests or offer a carrot to reduce the target’s resistance. Thus, motivation both shapes and is informed by the other elements of coercive success.

3.3 Summary

33 Jentleson, Bruce. “Coercive Diplomacy: Scope and Limits in the Contemporary World.” 4
34 George, Alexander. Forceful Persuasion 77
35 Jones, Seth, and C. Christine Fair. Counterinsurgency in Pakistan 110
36 George, Alexander. Forceful Persuasion 77
The literature provides the basic criteria and elements of successful application necessary to implement a coercive strategy including: relative motivation, clear demands, time urgency, carrots and sticks, and an enforcement mechanism. In the subsequent sections, I use these identified criteria of a successful coercive strategy to evaluate the predicted success of the Leahy amendment in its coercive applications.
CHAPTER 4: METHODOLOGY, DATA, AND DATA CAVEATS

This chapter will outline the methodology, data, and data caveats used to test my hypothesis in a cross-case analysis of the Leahy amendment’s application in Colombia, Indonesia, Nepal, Sri Lanka, and Turkey. The first section will discuss methodological considerations of evaluating coercive success and coercive outcomes of each case study. The second section will discuss the data employed to estimate each element of coercive success and each case study’s coercive outcome. The final section will discuss data caveats that could possibly influence the evaluations of the elements of success and the coercive outcomes.

4.1 Methodology: Case Selection and Variable Coding

The following section outlines three areas: selection of case studies, coding criteria for the five variables of coercive success, and the coding criteria for the coercive outcomes.

4.1.1 Selection of Cases

Though the Leahy amendment has applied to many individuals and units across many countries, Colombia, Indonesia, Nepal, Sri Lanka, and Turkey all received specific country conditions stemming from their inability to meet the requirements of the Leahy amendment. Pakistan recently had units negatively vetted under the Leahy amendment, but it has not received any country conditions under the Foreign Operations Appropriations Act as March 1, 2011, which is the project’s data cut-off point. This sampling does not represent the broad universe of countries sanctioned by the United States due to human rights concerns, but it specifically isolates Leahy-sanctioned countries and their coercive episodes.
4.1.2 Variable Coding of the Elements of Coercive Success

The following chart outlines the range of values assigned to each element of coercive success with a subsequent discussion explaining the criteria for each value.

**Table 1 Variable Coding**

<table>
<thead>
<tr>
<th>Elements of Coercive Success</th>
<th>Range of Possible Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relative Motivation</td>
<td>Strong/Weak/Not Present</td>
</tr>
<tr>
<td>Clear Demands</td>
<td>Strong/Moderate/Weak/Not Present</td>
</tr>
<tr>
<td>Time Urgency</td>
<td>Strong/Weak/Not Present</td>
</tr>
<tr>
<td>Carrots and Sticks</td>
<td>Significant/Limited/None</td>
</tr>
<tr>
<td>Enforcement Mechanism</td>
<td>Strong/Weak/None</td>
</tr>
</tbody>
</table>

To assess the variable “relative motivation,” I focus on how U.S. strategic interests and policy priorities affect its resolve to restrict aid, and how a target country’s interests affect its ability and resolve to resist. To code this variable, I assign the relative values of strong, weak, or not present. I assign a value of “strong” when the sender has an asymmetry of motivation, favoring the sender. I assign a relative value of “weak” when there is a parity of motivation, giving neither the sender or target an advantage. I assign a relative value of “not present” when the target country has an asymmetry of motivation, favoring the target. The following chart summarizes how each country’s interests effects the relative motivation of the coercive episode.

**Table 2 Coding Relative Motivation**

<table>
<thead>
<tr>
<th>Relative Motivation</th>
<th>U.S. Motivation to Restrict</th>
<th>Foreign Motivation to Resist</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strong</td>
<td>Strong</td>
<td>Weak</td>
</tr>
<tr>
<td>Weak</td>
<td>Strong</td>
<td>Strong</td>
</tr>
</tbody>
</table>
I assign a value of “strong” to the U.S. motivation to restrict when human rights concerns take priority over other competing foreign policy interests. For example, in the Indonesia case, the initial U.S. posture was predominantly human rights driven in 1999, but strategic interests after 9/11 increased the desire to cooperate and diminished the motivation to restrict. I assign a value of “weak” to the U.S. motivation when human rights are subordinated to other strategic interests, or the security relationship is not a key aspect of global or regional security. To assign values to the “foreign motivation to resist,” I adopt George’s analysis of avoiding another national’s vital interests or offering a large enough carrot to weaken resistance.\(^{37}\) I assign a value of “strong” when a stated demand attacks the target’s vital interests or there is the absence of a large carrot. For example, if the domestic government must consolidate power in its system during a power transition, the government may not be able to take on a strong, entrenched interest like the military or appear weak to its domestic audience. I assign a value of “weak” when the target country’s government has political power to meet the stated demand, or the carrot provides a justifiable reason to comply for its domestic audience or specialized interests.

To assess the variable “clear demands,” I focus on whether the United States sent clear demands to the target state through its official communications. To code this variable, I assign four values for the strength of this communication: strong, moderate, weak, and not present. I assign a value of “strong” when the United States communicates consistent, specific demands from the start to the finish of a coercive episode. For example, a “clear demand” is when the United States stipulates that a foreign country allow the United Nations be allowed to establish a

\(^{37}\) George, Alexander. *Forceful Persuasion* 77
human rights office or field presence in the host nation. I assign a value of “moderate” when the demands are clear, but they change throughout the coercive episode. For example, the United States might add or subtract demands without a corresponding concession. I assign a value of “weak” when demands are ambiguous or not proportional to the human rights violation. For example, the United States demands that a country improve all of civil liberties or improve all its freedoms of speech, press, and religion. Finally, I assign a variable of “not present” when there are no demands attached to the country specific restriction.

To assess the variable “time urgency,” I focus on determining the coercive pressure applied through a tangible loss/gain that is attached to a time related certification or ultimatum. The Leahy amendment, as a law, does not provide this time component, but the country conditions attached as part of its coercive strategy can apply this pressure. To code this variable, I assign the following values: strong, weak, not present. I assign a value of “strong” when a tangible loss/gain exists from noncompliance in a certain timeframe. For example, the United States restricts 50 percent of its security assistance funding until an annual certification is given by the Secretary of State to release these funds based on compliance with stated demands. I assign a value of “weak” when the conditions lack one of the necessary components: a tangible loss/gain, the potential for noncompliance, or a designated timeframe for review. For example, the United States restricts Foreign Military Financing (FMF), but there is no knowledge of the amount loss/gain in the demand. Likewise, the United States does not designate an annual requirement to review for compliance, or the United States always certifies a country. Finally, I assign a value of “not present” when none of these elements are present in the country conditions.

To assess the variable “carrots and sticks,” I focus on the monetary value of military
assistance as a proxy for the value of aid resumption for the target country along with an estimate of the prestige of military assistance from the United States. I establish the baseline value of aid by examining the total military expenditures of the case study countries compared to the yearly value of U.S. security assistance. I then estimate the percentage of Total Military Expenditures (TME) to U.S. aid to estimate the value of a potential restriction. For the value of resumed aid, I look at budget requests or any officially stated promises of military assistance that a country might anticipate receiving if the certification or restriction is lifted.

To code the variable “carrots and sticks,” I assign the following range of values: significant, limited, and none. I assign a value of “significant” when the target country lost at least 1 percent of its TME, had the possibility of gaining at least 1 percent of its TME from a resumption of aid, and expressed public desire for the resumption of training or aid. I assign a value of “limited” when a country does not meet these thresholds, but they actually experience a reduction in aid during the coercive episode, or they are offered a carrot. I assign a value of “none” when a carrot is not offered, and a stick is not present. Also, the initial value of U.S. aid is under 0.5 percent of its TME.

To assess the variable “enforcement mechanism,” I focus on the credibility of the actual human rights vetting process, and the estimated value of the black knights phenomenon. For coding, I assign the following values: strong, weak, none. I assign a value of “strong” when there is evidence of active vetting, and there was not a foreign actor or alternate internal provision that weakened the coercive pressure of the restrictions. For example, during the coercive episode, another actor did not match the value of restricted aid through alternate solutions, and internal accountability reports verified active human rights vetting. I assign a value of “weak” when there was a partial solution to the loss of aid without meeting the
restrictions, or there was only a partial enforcement of human rights vetting. I assign a value of “none” when there was an alternate solution that made enforcement of the restriction useless, or there was a report that showed the complete lack of human rights vetting in providing military assistance.

4.1.3 Coding Coercive Outcomes

To compare the predicted success of the Leahy amendment, I also code the actual outcome of the Leahy applications. To assess these coercive outcomes, I focus on the change/alteration in human rights behavior explicitly sought by the Leahy amendment, namely the elimination of impunity. The Leahy amendment demands that a target country must be “taking effective measures to bring the responsible members of the security forces unit to justice.” In 1999, the Congressional Committee defined effective measures as, “an active, credible investigation underway and that the individuals involved face appropriate disciplinary action or impartial criminal prosecution in accordance with local law.” The presence of punitive measures or impunity provides critical evidence of a successful coercive episode. I also concentrate on judicial/military reforms because public leaders from the United States often emphasize progress either in human rights practices, judicial reforms, or military reforms as a metric that justifies lifting the Leahy restrictions. These reforms function to prevent future violations and emplace an adequate legal structure for their prevention and prosecution.

The following chart represents the range of values assigned to coercive outcomes, adapted from Daniel Drezner’s range of possible sanction outcomes.39


39 Drezner, Daniel W. The Sanctions Paradox 25
**Table 3 Coding Coercive Outcomes**

<table>
<thead>
<tr>
<th>Leahy Restricted Country</th>
<th>Range of Values for Coercive Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Target Country X</td>
<td>Significant/Moderate/Minor/None</td>
</tr>
</tbody>
</table>

I assign a value of “significant” concessions when the target country fully prosecutes all human rights violations and demonstrates a commitment to bringing to justice all future violators in accordance with international norms. For example, the United States assesses restrictions for 5 separate incidents of human rights violations and the target country prosecutes and punishes all five cases according to local laws derived from international norms. Likewise, the target demonstrates the capacity (judicial and military) to pursue policies that will not promote or condone continuing violations. I assign a value of “moderate” when the target country brings to justice a majority of the disputed cases, and there are concrete reforms within its security establishment that enable the effective prosecution and punishment of violators. I assign a value of “minor” concessions when the target country brings some personnel to justice, but the punishments or trials are overturned or remain disputed. Likewise, the target country only initiates a few limited reforms that do not enable the system to properly administer justice or prevent future violations. Finally, I assign a value of “none” when there is a straightforward refusal to bring personnel to justice or change human rights behaviors.

**4.2 Data**

The data for the case study analysis comes primarily from U.S. official documents in an attempt to determine how the United States employed each of the elements of successful of a coercive strategy. The following sections detail the specific data sources used to estimate each
element of a successful coercive strategy and the coercive outcomes of each case.

4.2.1 Data Sources Used for Variable Coding

To assess values for the variable “relative motivation,” I use U.S. strategy documents including: National Security Strategy, Quadrennial Defense Reviews, and the National Intelligence Council’s Global Trends 2025 report. I supplement this data with Congressional hearings about U.S. national interests in the respective country, and State Department budget justifications. In evaluating the target’s motivation, speeches and statements from foreign officials describe the level of importance of engagement with the United States.

To assign values for the variable “clear demands,” I use official communications from Foreign Appropriations Acts (FOAA), U.S. House and Senate Committee Reports, and statements before Congress by concerned Congress representatives, like Senator Leahy. I supplement this data with any comments by foreign leaders or statements evaluating their perception of the clarity of demands.

To assign values for the variable “time urgency,” I use available State Department releases, certification documents publicly obtained by human rights groups, and time demands in Foreign Appropriations Acts.

To assign values for the variable “carrots and sticks,” I first determine the baseline value of aid using data from USAID’s Greenbook for Overseas Loans and Grants. Other data comes from Department of Defense documents and Congressional Research Survey (CRS) reports that provide details of other DOD fund sources such as 1206 Counterterrorism funding. The military expenditure database from the Stockholm International Peace Research Institute (SIPRI) provides the data for estimating the target country’s total military expenditures per year. In
estimating the value of resumed aid, data is taken from U.S. State Department Foreign Military Training Reports on fiscal year requests. Foreign Appropriations Act also detail some amounts of aid, and the percentages attached to certifications by the Secretary of State.

To assign values for the variable “enforcement mechanism,” Department of State Human Rights reports, Government Accountability Office (GAO) reports, and newspaper articles provide insight into quality of human rights vetting. For the black knights phenomenon, the SIPRI Arms Transfer Database and newspaper articles documenting reported arms deals between foreign countries provide data on the level of alternate support received by these countries.

4.2.2 Data for Coercive Outcomes

To assign values for the variable “coercive outcome,” I rely upon State Department Human Rights Reports as the primary U.S. assessment of current levels of impunity. I supplement this assessment with reports from Human Rights Groups, United Nation’s Universal Periodic Reviews of a country’s human rights, and available U.S. certification documents. Finally, I employ statements from Congressional representatives and foreign press reports to demonstrate how leaders’ interpret the analysis from these other groups. To ascertain military and judicial reforms, foreign documents about initiatives, open source training programs, and Congressional testimonies track these various developments in other countries. 40

4.3 Data and Methodological Caveats

As a data limitation, I recognize IAW Section620j(c) that the Secretary of State is legally bound to “promptly inform the foreign government of the basis for such action and shall, to the maximum extent practicable, assist the foreign government in taking effective measures to bring
the responsible members of the security forces to justice."\textsuperscript{41} This diplomatic communication might give more perspective on the demands, carrots, specificity, and time urgency of the coercive episode, but it is not accessible information except where foreign leaders have explicitly commented on these interactions. Second, as a member of the United States Armed Forces, I am professionally prohibited from utilizing any relevant data from the Wiki leaks release of classified U.S. cables. Third, as part of the program requirements, human subject reviews are not permitted. This restriction limits interaction with members of the Department of State’s Bureau of Democracy, Human Rights, and Labor, experienced security assistance officials, and other personnel with operational knowledge of Leahy applications. Finally, Jentleson argues that coercive episodes should be evaluated against three criteria: differentiation (level of success based on objectives), net assessment (total costs for bilateral relations and credibility), and relativity (utility against other options).\textsuperscript{42} I bound my case analysis to differentiation. Net assessment and relativity are primary issues for policymakers, and the last section of the thesis addresses some of the implications of how the Leahy amendment interacts with the role of human rights in foreign policy objectives.

\textsuperscript{42} Jentleson, Bruce. “Coercive Diplomacy: Scope and Limits in the Contemporary World.”
CHAPTER 5: THE LEAHY AMENDMENT COUNTRY CASE STUDIES

This chapter analytically examines the five selected case studies in chronological order based on the application of the Leahy amendment to each respective country. Within each section, the case study begins with a brief introduction of the background of the coercive episode and a summary chart of the case study findings. It then evaluates the five variables of coercive success against the target country. It concludes by analyzing the actual coercive outcomes based on estimations of impunity, legal reforms, and military reforms.

5.1 The Leahy Amendment in Colombia

The Leahy amendment began in Colombia as a provision to restrict counternarcotics funding to Colombian units who had committed human rights violations. In 2000, the United States initiated Plan Colombia with 1.2 billion dollars in aid, and country specific conditions emerged as the means to augment the Leahy amendment for human rights enforcement. After 2000, most Colombian aid became contingent on semi-annual human rights certifications by the Secretary of State. Presently, Colombia remains under the country specific conditions and Leahy restrictions, and the State Department still conducts certifications prior to the release of aid.

The Colombia coercive episode provides a unique case where strong U.S. influence was present through Plan Colombia. The presence of a large carrot, the urgency of a semi-annual certification, absence of a black knights, and detailed oversight in the vetting process positively contributes to the coercive episode. However, the strong motivation not to restrict aid, the

---

guarantee of certification, and the shifting demands contributed negatively to the coercive pressure. The following chart summarizes the case findings below:

**Table 4 Summary of Colombia Case Study**

<table>
<thead>
<tr>
<th>Country</th>
<th>Motivation</th>
<th>Demands</th>
<th>Time</th>
<th>Carrots/Sticks</th>
<th>Enforcement</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colombia</td>
<td>Weak</td>
<td>Moderate</td>
<td>Weak</td>
<td>Limited</td>
<td>Weak → Strong</td>
<td>Minor → Moderate</td>
</tr>
</tbody>
</table>

5.1.1 *Elements of Coercive Success*

I coded the variable “relative motivation” in the Colombian episode as weak based on the weak/weak parity between the countries. U.S. national interests in drug interdiction and democracy promotion (regional ally) served to weaken the U.S. motivation for restricting aid.

From 1999-2006, National Security Strategy documents consistently mentioned the importance of Colombia and its role in protecting the U.S. from drug infiltration along with promoting Colombia’s defeat of Marxist terrorists. In 2000, President Clinton justified Colombia’s national interest waiver based on the protection of U.S. citizens, hemispheric stability, economic reforms, democracy promotion, and counterdrug efforts. Congressional hearings reaffirmed this foreign policy assessment, and the Bush administration added Colombia’s successful counterinsurgency to the list. With $8 billion in aid since Plan Colombia’s initiation, Colombia

---

http://www.bits.de/NRANEU/others/strategy/nss2006.pdf 15, 28
had a substantial financial incentive to maintain the security relationship, reducing its motivation to resist restrictions.

I coded the variable “clear demands” as moderate, due to the clear, but inconsistent demands throughout the episode. In 1998, the United States restricted aid to Colombia, but the bill did not provide any specific demands. This pattern of restrictions without public demands continued until 2000.\textsuperscript{46} The 2001 Military Construction Act established seven criteria for military assistance which included four human rights provisions: civilian jurisdiction over human rights cases, suspension of military personnel for violations, military cooperation into human rights cases, deployment of a Judge Advocate General Corps to investigate military misconduct.\textsuperscript{47} In a national interest waiver in 2000, President Clinton only certified one requirement and waived the other six demands. The waiver established the pattern for future negotiations by listing each demand, the rationale for certification or non-certification, and the progress in each requirement.\textsuperscript{48} This certification process became the lever for pressure in the coercive episode, although the Leahy amendment’s stipulation of bringing violators to justice was not initially listed as a demand.

Beginning in 2002, the criteria for human rights restrictions were added to the Foreign Appropriations Bills (FOAA). The 2002 FOAA established three criteria for Colombian aid: suspension of security personnel for human rights violations, cooperation with human rights cases, and severing links with paramilitary groups.\textsuperscript{49} In 2003, the United States added two additional demands: the Colombian government should prosecute human rights violators and

Colombian Armed Forces should aim to capture paramilitary leaders. The United States maintained these criteria until 2006 when it added one additional demand: respect for property rights of indigenous communities. In subsequent bills, the FOAA’s maintained the basic demands but consolidated some of the language into more general requirements.

Each year, the certification process reviews the demands presented by Congress and the status of Colombia’s compliance. This certification is a public document, but diplomatic channels are used for more specific demands. For instance, Undersecretary of Public Affairs, Marc Grossman testified that then Secretary of State Colin Powell was withholding certification until “Colombians meet the standards of law, and to meet the standards of law, we have asked for four or five specific things.” Overall, the demands lacked any sense of exit strategy and the yearly certifications become a human rights checkup.

I coded the variable “time urgency” as weak for Colombia, namely because the potential for noncompliance was not present. The presence of a semi-annual requirement for the Secretary of State to certify Colombia prior to the release of funds had real potential to create strong coercive pressure. From 2001-2010, the Secretary of State certified semi-annually or annually that the Colombian government was complying with U.S. conditions based on statutory guidance. This expectation of certification undermined the real strength of the coercive tool, but as unclassified documents, the certification process also provided the venue (and hence limited

---

pressure) for public discourse about the facts of Colombia’s human rights practices. The annual process was fairly predictable with the government outlining areas of compliance, and human rights groups providing credible evidence where security forces or the judicial structure were not in compliance. It is not the scope of this thesis to assess the extensive data provided by both groups, but it is important to note that among the list of conditions, impunity for human rights violations (core of the Leahy law) was a consistent problem.

The core issue of certification remains what constitutes “effective measures” under the Leahy amendment. Human rights groups complain that U.S. embassy officials considered an open investigation a measure of compliance, while government officials cite these investigations as examples of continued progress, albeit slow towards prosecution. As long as certification continues, there is no pressure to end the indefinite process. Progress, not compliance, is what the certification process created pressure to achieve.

I coded the variable “carrots and sticks” as limited based on the offer of a substantial carrot to meet certification stipulations, but not “significant” because the United States did not take away funding during the episode. The Plan Colombia carrot was well over 1 percent of Colombia’s Total Military Expenditures (TME) per year. Prior to the Leahy restrictions, U.S. assistance in the 1990s accounted for an average of 3 percent of total military expenditures for Colombia. Then, from 2000-2009, U.S. assistance accounted for an average of 12 percent of total military expenditures, with a high of 27 percent in 2000 and 19 percent in 2006. This figure does not account for all forms of DOD and other classified assistance, meaning the percentage is likely higher.

55 Laurienti, Jerry M. The U.S. Military and Human Rights Promotion 86-88
57 See Appendix A for percentage chart and data sources.
The Colombian coercive episode was the first Leahy application to employ a Congressional percentage-based system of carrots and sticks for compellence. The 2002 FOAA attached a 60/40 split clause into the release of funds. The United States could release 60 percent of appropriated funds after the initial certification, and then 40 percent of the funds after the subsequent certification. Then, the 2003 FOAA, the Congress allowed the State Department to release 75 percent of the funds prior to any certification with subsequent 12.5 percent releases based on semi-annual certifications. The Committee Reports did not provide a rationale for this shift; though, the House Committee Report recommended that all funds be withheld until certification. This pattern continued until 2007 when Congress made a minor change in the disbursement plan: 70 percent pre-certification with subsequent 15 percent releases.

Despite this system, continual, expected certifications reduced the coercive pressure. The certifications also eliminated the perception of a potential stick. While expected certifications limit the ability to test the coercive effect, it did provide a possible pattern for other Leahy applications. In essence, this dynamic transformed compelling Colombia into a semi-annual human rights checkup rather than a true coercive strategy. If some progress is “enough” for certification, then the coercive episode is at an undefined mean in the relative assessment of the sender-target cost benefit calculus. There is little incentive to coerce or capitulate beyond this undefined mean for the sender and target.

I code the variable “enforcement mechanism” as weak, moving to strong during the episode. Active, not perfect, vetting was present, and no black knights existed. Yet, initially, the

---

58 Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2002, 48
61 For the first example, see Consolidated Appropriations Act of 2008, 494. Future bills reiterated this formula.
United States had to construct new, clean units to accomplish its mission, forming the function of a black knight, and there were some early vetting issues. Now, though judicial prosecutions remain an issue, the two criteria are being reasonably met.

Struggling to find “vettable” units in 1998, the United States began training three new units in 1999 in preparation for a joint offensive into Southern Colombia. These units would eventually work in conjunction with three restricted units (the 12th Brigade, the 24th Brigade, and the 2nd Mobile Brigade). The three restricted units were not allowed to receive U.S. assistance, but they remained in support of the other three “new” Battalions. Diplomatic cables show that the Ambassador was concerned about this fact, and the U.S. government would not provide assistance until the San Miguel human rights incident involving the 24th Brigade was resolved.

The United States was grappling with accomplishing its national interests in the counterdrug war while still attempting to comply with legal guidelines. The diplomatic cables revealed the difficult dynamic of conducting operations with multiple units where some “vetted” or approved units receive support and even conduct tactical operations with units who are not “vetted.”

Despite this early weak enforcement, a 2006 incident tightened the vetting process, and it illustrates the power of a public certification process. The 2005 State Department certification stated that the 17th Brigade would be excluded from U.S. assistance until human violations had been credibly addressed. In 2006, an individual from a subordinate unit of the 17th Brigade attended medical training, and a human rights group caught the discrepancy. The State Department later clarified that its position on the 17th Brigade changed after the individual received training, and the 17th Brigade was placed on a list prohibiting individuals from receiving assistance.

---

64 Information derived from cables 69-70 in Evans, Michael, ed. War in Colombia: Conditioning Security Assistance
any training from that unit. This guidance was later applied worldwide as part of the global vetting policy to restrict any individual training to personnel from units of gross human violations on the premise that it provides assistance to the unit.\textsuperscript{65} Active vetting combined with external elements of civil society provides a higher degree of scrutiny for Colombian units, despite disagreements over the actual results.

These attempts at strict enforcement also highlighted the challenges of what constitutes credible evidence, effective measures, and a unit in a Leahy application. An internal U.S. Embassy Bogota report captured this dynamic noting that the Colombian government’s reliance on reportable, official incidents probably results in underreporting of human rights violations; whereas human rights groups willingness to use citizen reports and media sources probably results in over reporting.\textsuperscript{66} The State Department’s \textit{Guide to the Vetting Process} leaves open many interpretations of “credible,” allowing the evaluator to use good judgment and common sense in evaluating sources beyond evidence that would be admissible in a court of law.\textsuperscript{67} Based on written guidance in the certifications, the U.S. government attempted to follow a more strict statutory policy in its vetting in Colombia based on actual legal indictments, not investigations. However, a 1999 GAO report noted that only the Colombian embassy was vetting every individual in JCET exercises.\textsuperscript{68} Without full independent verification, the United States is partially beholden to the target country to establish the credibility of a human rights violation.

As for black knights, there was not a significant external arms provider, and the United


\textsuperscript{66} Coral, Lillian. “Reducing the Incidence of Massacres in Colombia.” \textit{UCLA School of Public Policy} 29

\textsuperscript{67} Quoted from the State Department Guide to the Vetting Process in Fellowship of Reconciliation. \textit{Military Assistance and Human Rights: Colombia, U.S. Accountability, and Global Implications} 5

States sent equipment to Colombia during the episode with some restrictions on helicopters and other lethal articles. From 1995 to 2009, the United States conducted 64 percent of the total volume of arms transfers for Colombia according the SIPRI arms database.\textsuperscript{69} Russia and Spain made up the bulk of the remaining difference at a little over 10 percent respectively.\textsuperscript{70}

5.1.2 Coercive Outcome

The Colombian coercive episode outcome resulted in minor concessions, moving towards the potential for moderate concessions if Colombia increases its prosecutions under a new judicial framework established in 2009. The record of judicial impunity still remains an issue. A 2010 Fellowship of Reconciliation (FOR) report in detailed, “The State Department’s most recent memoranda justifying human rights certification also illustrate that only 1.5 percent of the reported extrajudicial executions since 2002 reviewed by the State Department have resulted in conviction.”\textsuperscript{71} In the 2009 certification memorandum, the State Department acknowledges that the Extrajudicial Killings Sub-Unit within the Prosecutor General’s Office had been assigned 1,056 cases, of which 1,019 cases remained under investigation, 21 were in the trial phase, and 83 were people convicted in the other 16 cases.\textsuperscript{72} Thus, while both reports would acknowledge the slow nature of the judicial process, the FOR report employs the data to illustrate the poor record of impunity, while the memorandum of certification uses the data as evidence of continuing convictions and ongoing investigations. The 2010 certification further noted an

\textsuperscript{69} Stockholm International Peace Research Institute Arms Transfer Database. \textit{Import Trend Indicator Value Table Colombia} (accessed on April 1, 2011) http://armstrade.sipri.org/armstrade/html/export_values.php
\textsuperscript{70} Stockholm International Peace Research. \textit{Import Trend Indicator Value Table Colombia}
\textsuperscript{71} Fellowship of Reconciliation. \textit{Military Assistance and Human Rights: Colombia 58}
\textsuperscript{72} U.S. Department of State. \textit{Memorandum of Justification Concerning Human Rights Conditions with Respect to Assistance for the Colombian Armed Forces} (September 08, 2009) http://justf.org/files/primarydocs/090908cert.pdf
increase to 48 convictions (which some groups might say is a 200 percent increase over 2009). Yet, the State Department continued to report that no member of the Armed Forces above the rank of major was sentenced for human rights violations again in 2010. Relative impunity is decreasing, while overall impunity remains a problem.

With regards to reforms, the most significant judicial reform over the decade was the movement in 2009 from Law 600 (an older, written system) to Law 900 (an accusatory legal system). The certification memorandums demonstrated a 60 percent increase in cases processed in the first year of the reform. Over the last decade, the military established the military’s first Military Penal Justice Corps (MPJC). It also established a school of Human Rights, International Law, and Penal Justice. It rewrote all of its military curricula to include standards of human rights training and international humanitarian law. In 2008, the Colombian military adopted 15 measures to increase their human rights performance. In 2010, President Juan Manuel Santos signed into law “a reform of the military justice system that includes moving to an accusatorial system and pledges that human rights abuses will be tried only in the civilian system.” These reforms do not solve the issue of killings or impunity but they are measures of progress. Yet, until more judicial reforms are made on the core demand of bringing violators to justice, the concessions remain as minor concessions. Overall, this incomplete episode did activate the elements of coercive success to varying degrees, and it holds the potential to coerce moderate concessions in the future.

---

73 U.S. Department of State. Memorandum of Justification Concerning Human Rights Conditions with Respect to Assistance for the Colombian Armed Forces (September 15, 2010)
www.justf.org/files/primarydocs/100915col_certmemo.pdf 27
74 U.S. Department of State. Memorandum of Justification 2010, 20
75 Laurienti, Jerry M. The U.S. Military and Human Rights Promotion 76
76 Laurienti, Jerry M. The U.S. Military and Human Rights Promotion 76-77
77 U.S. Department of State. Memorandum of Justification 2010, 6
5.2 The Leahy Amendment in Turkey

In 1998, with the Leahy amendment still a new requirement in foreign appropriations, a proposed arms deal to sell 140 vehicles to the Turkish military became contested as State Department officials sought to interpret Leahy’s applicability to the pending arms sale. The short event provided a test scenario for the applicability of the Leahy amendment, becoming a representative of emerging difficulties in its application. In the end, the arms deal went forward with the U.S. government selling 101 vehicles to 39 provinces under Export-Import loan guarantees, while General Dynamics covered the remaining 39 vehicles in the 11 restricted provinces. The following chart summarizes the case findings below:

Table 5 Summary of Turkey Case Study

<table>
<thead>
<tr>
<th>Country</th>
<th>Motivation</th>
<th>Demands</th>
<th>Time</th>
<th>Carrots/Sticks</th>
<th>Enforcement</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turkey</td>
<td>Weak</td>
<td>Strong</td>
<td>Not Pre</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
</tbody>
</table>

5.2.1 Elements of Coercive Success

I code the variable “relative motivation” as weak, bordering on “not present.” The U.S. motivation was strong not to restrict aid. Turkey was an ally, a member of NATO, and a key strategic bridge between Europe and the Middle East. Turkey was also viewed as a potential model of a secular, moderate country for the Muslim world. At the time of the arms deal, Turkey provided basing facilities at Incirlik and airspace rights as part of Operation Northern Watch, enforcing the no fly zone over Iraq. In 1998, the U.S. spent $1.5 million to train 161

81 Department of Defense Authorization for Appropriations for Fiscal Year 2000 and the Future Years Defense Program, Before U.S. Senate Committee on Armed Services, 106th Cong. (HRG-1999-SAS-0020; Date: April 13,
Turkish officers, and another 139 military students had been trained through the arms transfer program. While the Armored Personnel Carrier (APC) contract was a modest $45 million, Turkey was also pursuing an attack helicopter deal for $3.5 billion, and a potential tank deal for $5 billion dollars. Turkey’s motivation was neutral from two competing dynamics. Turkey’s motivation was strong to resist major concessions that signaled a lack of strength during a period of government transition. Yet, Turkey wanted arms to revamp its Army, and the United States was its primary historical arms supplier and most significant bilateral military relationship.

I code the variable “clear demands” as strong, but unachievable in a short timeframe. In 1997, the United States outlined seven human rights conditions for pending U.S. arms sales including: decriminalization of free speech, release political detainees, end torture and police impunity, reopen non-governmental organizations, democratize political participation, lift the state of emergency in southeastern Turkey; and resettle internal refugees. In 1997, Turkey was undergoing a government transition and battling an insurgency in Kurdistan, making it difficult to rapidly achieve these types of reforms. Barkey asserted that the Clinton administration applied multiple requirements as a strategy to appease domestic constituents with progress on at least one demand, while justifying the reciprocity with the arms deal. In the end, the demands were not met, with the exception of one promised concession to support legislation to allow for

---

82 Priest, Dana. “New Human Rights Law Triggers Policy Debate” Washington Post A34
83 Priest, Dana. “New Human Rights Law Triggers Policy Debate” Washington Post A34
the prosecution of police officers.\textsuperscript{87}

I coded the variable “time urgency” as not present because there was not a timeframe attached to the demands, and the pending arms deal and outgoing Clinton administration actually placed a time pressure on the United States. Diplomatic actions during the episode reveal this dynamic. Ambassador Parris cabled about his concerns that the Europeans would get the sale if the United States did not act on the deal, and he articulated that engagement, not restrictions, was the only method of influencing the human rights situation.\textsuperscript{88} Senator Carl Levin (D-MI) and other U.S. delegates also traveled to Turkey to negotiate a deal with the Turkish Defense Minister. These mixed signals in the bilateral process created confusion over its relative importance, reducing the pressure and credibility of the coercive episode.

As for “carrots and sticks,” the Turkey case is difficult to code because of the short timeframe of the episode. The United States did offer a political compromise which included: six months delayed financing, agreements to investigate/prosecute torture cases by police, adoption of U.S. rules of engagement, and anti-torture training.\textsuperscript{89} However, with the emergence of the joint U.S.-General Dynamics deal, the coercive pressure was “none.”

Until 1997, U.S. assistance was 3-5 percent of Turkey’s overall military expenditures, and the United States was Turkey’s most extensive arms exporter.\textsuperscript{90} Evaluating this case, Barkey contends that the United States missed the window for applying pressure to reform.\textsuperscript{91} The APC arms sale could have been leveraged as an initial place of concession. Yet, Stephen Rikard, the Amnesty International Director, praised the Congress and Secretary Madeleine Albright for

\textsuperscript{87} Priest, Dana. “New Human Rights Law Triggers Policy Debate” \textit{Washington Post} A34
\textsuperscript{88} Priest, Dana. “New Human Rights Law Triggers Policy Debate” \textit{Washington Post} A34
\textsuperscript{89} Priest, Dana. “New Human Rights Law Triggers Policy Debate” \textit{Washington Post} A34
\textsuperscript{90} See Appendix A for percentage chart and data sources.
\textsuperscript{91} Barkey, Henri J. “The United States, Turkey, and Human Rights Policy.” 393
restricting the APCs only to clean units in Turkey.\footnote{Country Reports on Human Rights Practices for 1998: Hearings on Human Rights Practices, Before the Committee on International Relations, 106\textsuperscript{th} Cong. (HRG-1999-HIR-0020; Date: February 26, 1999). Text from: ProQuest\textsuperscript{®} Congressional Digital Research Collection (statement of Stephen Rikard, Amnesty International Director) 96} Overall, the United States did not employ its extensive International Military Education Training (IMET) programs or the potential helicopter/tank sales as carrots or sticks in this episode.

I coded the variable “enforcement mechanism” as none because a black knight existed, and there was not a mechanism to enforce proper usage of the APCs after the sale. As Apodaca noted, the United States would not be responsible for where or how the vehicles were used once sold to Turkey.\footnote{Apodaca, Clair. Understanding U.S. Human Rights Policy: A Paradoxical Legacy (New York: Routledge, 2006) 162} Thus, the United States was clean because it restricted the sell of equipment to only units not accused of human rights abuses. Senator Levin opined about the Leahy application stating, “The State Department went well beyond the letter of the law to satisfy human rights groups… the law should be narrowed to prohibit only equipment that is used directly for torture.”\footnote{Priest, Dana. “New Human Rights Law Triggers Policy Debate” Washington Post A34}

In terms of the black knight phenomenon, Ambassador Mark Paris believed that Europe would likely get the contract in the absence of the United States, and Turkey was beginning to develop a weapons relationship with Israel.\footnote{Priest, Dana. “New Human Rights Law Triggers Policy Debate” Washington Post A34} With this knowledge, General Dynamics played the role of black knight by providing outside funding to augment the export-import financing. With an acceptable, alternate solution, the coercive pressure was gone. Overall, despite having clear demands, the United States failed to leverage carrots or sticks, and it did not follow through after Turkey rejected its six-month time component in the deal. The administration ultimately found a safe alternative without technically compromising the human rights objectives.
5.2.2 Coercive Outcome

I coded the coercive outcome as “none” because the Turkey episode did not have any attributable concessions. Director General Necati Bilican promised that the Turkish police would observe U.S. rules of engagement in the vehicles, and he would support pending legislation to allow for the prosecution of police officers.  

Despite the concession, at the time of approval in 1998, the State Department Human Rights report cited about Turkey, "Torture remained widespread . . . the rarity of convictions of police and other security officials for killings and torture fosters a climate of impunity that probably remains the single largest obstacle to reducing human rights abuses." Though some legal and judicial reforms were made in the following decade, these reforms are not attributable to coercive pressure from the Leahy amendment and likely result from initial negotiations to enter the European Union. In 2009, the State Department summarized, “There were reports of a number of human rights problems and abuses in the country. Security forces committed unlawful killings; the number of arrests and prosecutions in these cases was low compared with the number of incidents, and convictions remained rare.” As a result, Barkey rates the whole coercive episode starting in 1997 and including the APC sale as a failure. The Clinton administration discovered a workable compromise by executing the transfer to non-accused human rights units.

---

100 Barkey, Henri J. “The United States, Turkey, and Human Rights Policy.” 393
5.3 The Leahy Amendment in Indonesia

The Leahy application in Indonesia is a unique case because the United States was already active in a coercive human rights episode prior to its implementation. From 1992-1998, the United States incrementally suspended small arms sales, the sale of helicopters, blocked the transfer of fighters, suspended then partially restored Foreign Military Financing (FMF) and International Military Education Training (IMET). During the fall of the Suharto regime in 1998, the Indonesian army violently suppressed student riots, and it later fought an aggressive campaign against the Timorese independence movement in 1999. During these movements, the Indonesian Army and Kopassus, the Indonesia Special Forces, were involved in more incidents of potential human rights violations. These incidents prompted revised legislation restricting FMF and IMET for Indonesia, and the Leahy amendment was applied as a result. The following chart summarizes the case findings below:

<table>
<thead>
<tr>
<th>Country</th>
<th>Motivation</th>
<th>Demands</th>
<th>Time</th>
<th>Carrots/Sticks</th>
<th>Enforcement</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>Strong → Weak</td>
<td>Moderate</td>
<td>Not Present</td>
<td>Limited</td>
<td>Weak</td>
<td>Minor</td>
</tr>
</tbody>
</table>

5.3.1 Elements of Coercive Success

I code the variable “relative motivation” as initially strong, then moving to weak because the U.S. motivation to restrict weakened due to the emphasis on counterterrorism after 9/11 and Indonesia’s democratization. While the Quadrennial Defense Review documents do not mention Indonesia, the National Security Strategy (NSS) documents focus on supporting the democratic

---

transition, counterterrorism support, and Indonesia’s importance as a moderate Muslim country. By 2010, the NSS document lists Indonesia as a future influential nation alongside Brazil and South Africa, and the National Intelligence Council’s Global Trends report projects a rising Indonesia in economic and international stature. In a December 2001 Congressional Hearing, Donald Emmerson correctly framed the post 9/11 question for U.S.-Indonesia relations, “…what extent are we going to back-burner concerns about accountability for human rights violations for the sake of enlisting the Indonesian Government in a global campaign against terror?” Charles Comer observed these same dynamics in 2009, commenting that the State Department is split between pragmatists who support engagement and lifting Leahy and the human rights bureau, who demand a true reckoning of past abuses.

With Indonesia in democratic transition, the aggressive prosecution of military crimes was politically untenable based on the government’s need to maintain its authority. As one author asserts, “for Indonesia to change there must be a convergence of strong domestic and international pressure to bring the military to account along with a President who has the desire, the will and the political skills to impose his authority on the judicial system and the military.” Yet, counteracting this motive for resistance, the Indonesian government desired engagement with the United States as a strategic balance to China’s growing regional influence. The

---

104 Southeast Asia after 9/11: Regional Trends and U.S. Interests, Hearing Before the U.S House of Representatives Committee on International Relations, 107th Cong. (HRG-2001-HIR-0056; Date: December 12, 2001) Text from: ProQuest® Congressional Digital Research Collection (statement of Donald K. Emmerson, Ph.D., Senior Fellow, Asia/Pacific Research Center, Stanford University) 5
resulting parity of strong/strong and later weak/weak motivations reduced the coercive pressure.

I code the variable “clear demands” as moderate because of the reframing of the intent and scope of the restrictions throughout the coercive episode. The 1999-2001 FOAA’s included six demands, of which three related to human rights violations.\textsuperscript{107} In 2002, the United States then added military financial reform and the release of political detainees.\textsuperscript{108} In 2003, in response to perceived judicial shortcomings, the FOAA added: suspension of Armed Forces personnel \textit{regardless of rank}, prosecuting and \textit{punishing} Armed Forces members, public availability of military finance documents, and defined cooperation.\textsuperscript{109} While the 2003 FOAA provided more specificity in the demands, it also raised the domestic costs for the Indonesian Government by demanding public access to military financial documents.

In the 2004 FOAA, the United States continued previous demands, but it shifted strategies and attached a direct carrot to a direct demand. Section 599b authorized IMET funding on one condition: cooperation with the FBI in the Timika incident.\textsuperscript{110} This incident was a 2002 ambush that killed two American teachers and injured seven more Americans in West Papua.\textsuperscript{111} In the 2005 FOAA, Congress clarified that bringing to justice included proportionality in sentencing for the crimes, and it sustained the demand for FBI cooperation for IMET training.\textsuperscript{112} In 2005, Secretary Rice testified that Indonesia had met the necessary Congressional qualifications for IMET, and later waived FMF restrictions under a waiver for

\textsuperscript{108} Foreign Operations, Export Financing, and Related Program Appropriations, 2002, H.R. 2506, 18, 50
\textsuperscript{110} Consolidated Appropriations Act of 2004, H.R. 2673, 108\textsuperscript{th} Congress (2004) 207-208
\textsuperscript{111} Consolidated Appropriations Act of 2004, H.R. 2673, 108\textsuperscript{th} Congress (2004) 207-208
\textsuperscript{112} Consolidated Appropriations Act of 2005, H.R. 4818, 108\textsuperscript{th} Congress (2004) 218-219
national security interests. The 2006 FOAA permitted full IMET access, but it allowed FMF funds for the Indonesian Navy only based on three demands: prosecution and proportional punishment of military human rights violators, military cooperation with civilian and international authorities on human rights cases, reforms to improve civilian control of the military.

For FY2007, there was not a consolidated foreign appropriations act. In Committee reports, the Congress sent a mixed message about concerns over Indonesia. The House Committee expressed satisfaction at the judicial convictions in the case of human rights lawyer Munir Said Thalib from 2004, but it expressed concern about the withholding of information uncovered by the Presidential fact-finding commission in the case. The Senate recommended $10 million in FMF, $3.5 million above the State Department’s request, but it remained concerned about human rights issues in Indonesia. The 2008 FOAA authorized $15.7 million in FMF money, but for the first time, it withheld $2.7 million based on several conditions. The Act maintained some previous conditions, but it added: written plans to provide accountability for past violations, open access to Papua, and a written timeframe for the murder investigation of human rights activist, Munir Said Thalib. The 2009 FOAA sustained the previous conditions, but then it added: revision of the Code of Military Justice and Uniform Criminal Code to permit trying East Timor violators. In the 2011 FOAA, the Congress added language similar to the Colombian certification process, requesting updates on each of the demands over the last twelve

114 Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 74-75
117 Consolidated Appropriations Act of 2008, 515-516
months. Committee reports noted progress on human rights issues, and the need for continued reforms and the lack of prosecutions.119

The total effect was an ever-changing coercive episode. The United States did not demonstrate a clear pattern of demands from the sender to the target. When aspects of the demand were met, it was usually met with a reinterpretation or new demands. As a result, the demands provided a shifting perspective on how to achieve an end to the coercive episode. Ironically, the most specific demand (cooperate with the FBI on the Timika incident) tied to a specific carrot (resumption of IMET) produced a direct concession.

I code the variable “time urgency” as not present because the United States did not establish a timeframe for review or a tangible loss or gain for compliance/noncompliance. Inversely, counterterrorism efforts after 9/11 and the 2004 tsunami created pressure for the United States to restore aid to Indonesia, along with Indonesia’s rising importance in the global environment. The tsunami served to rebuild tense bilateral relations, but it also exposed the weakness of Indonesia’s air and sealift capabilities to conduct the war on terror and police the archipelago.120 With the 2011 FOAA, there is now a small time urgency created by the annual certifications for the remaining $2 million in aid, but it occurred after the resumption of aid and full restoration with Kopassus.121

I code the variable of “carrots and sticks” as limited because United States assistance was not significant monetarily for the Indonesians, and it did not offer a known carrot for compliance. The percentage of U.S. assistance, as a percentage of total military expenditures,
was less than 0.5 percent since 1990, except in 1991 and 2009. In 1991, just prior to the substantial U.S. sanctions and embargoes, the percentage was 1.4 percent, and in 2009, the percentage increased back up to 0.6 percent as a sign of renewed U.S. interest in the military to military relationship.\footnote{See Appendix A for percentage chart and data sources.} These figures do not capture the entire reality of security assistance to Indonesia. After 9/11, the U.S. Department of Defense developed several new ways to engage worldwide in foreign military assistance including 1206 counterterrorism funding, the Regional Defense CounterTerrorism Fellowship Program (CTFP), the Global Peacekeeping Operations Initiative (GPOI), and several other funding sources. For example, from FY2002-2005, Indonesia was only authorized E-IMET for foreign officers, with the resumption of IMET based on human rights conditions.\footnote{E-IMET refers to Expanded International Military Education Training that does not include any lethal combat training, but only focuses on human rights training, civilian control of the military, and military justice.} Yet, the Department of Defense allocated $2.4 million in CTFP funding to train Indonesian foreign officers at American military courses.\footnote{U.S. Department of State. \textit{Foreign Military Training: Joint Report to Congress, Fiscal Years 2003-2004, Vol. I, East Asia and the Pacific} (June 2004) \url{http://www.state.gov/t/pm/rls/rpt/fmtrpt/2004/34222.htm} IV-44} For Indonesia, the carrot of aid resumption was already being offered through alternate programs. Presumably, all of these individuals received the proper human rights vetting, but it still represents an underutilized carrot.

I code the variable “enforcement mechanism” for Indonesia as weak because GAO reports revealed significant vetting mistakes in the early years of the coercive episode, and the United States government provided partial solutions to the loss of aid. In the early 2000’s, there was some institutional confusion over which programs the Leahy amendment covered for human rights vetting such as: International Narcotics Control and Law Enforcement (INCLE) and

\begin{itemize}
\end{itemize}

Nonproliferation, Anti-Terrorism, Demining and Related (NADR). These programs supported Indonesian law enforcement and military training. By comparison, in the 1990s, Indonesia received $80,000 in U.S. assistance under INCLE funding, but from 2000-2005, Indonesia received $14.2 million in INCLE assistance. During the same timeframe, Indonesia also received 24.6 million in NADR funding, primarily for antiterrorism training. This shift occurred as the United States focused training on Detachment 88 and elements of the police force instead of the restricted Kopassus to support antiterrorism operations after 9/11. In 2005, a GAO report found “no evidence” of human rights vetting for an estimated 6,900 law enforcement officials from Thailand, Indonesia, or the Philippines who received training from 2002-2004. This training included over 4,000 Indonesia law enforcement officials, including 32 trainees from Kopassus, a “notorious police unit that was previously prohibited from receiving U.S. training funds.” The report describes a particularly embarrassing example where 32 members of Kopassus were trained under ICITAP police program funds from July 2002 to March 2003. In March 2003, the Deputy Assistant Secretary of State for East Asian and Pacific Affairs testified that no such brigade members participated in the program. These shortcomings in vetting sent Indonesia mixed signals about the resolve of the United States.

Countering these trends, the GAO report does reveal that the DOD was following the guidelines of the Leahy amendment, and the Department of State immediately took action to correct the deficiencies. They developed a classified, central database for human rights data, called ACES. In reviewing the Indonesia case, Charles Comer argues that the ACES database

---

128 United States Government Accountability Office. Southeast Asia: Planning Needed 3-5
was not effective due to issues of overpopulation and unsubstantiated human rights violations sourced from human rights groups.\textsuperscript{129}

As for black knights, owing to years of U.S. sanctions, Indonesia had already diversified its arms purchases prior to the Leahy application. From 2000 to 2010, Indonesia’s top suppliers were the Netherlands, Russia, South Korea, and France.\textsuperscript{130} More importantly, unlike Sri Lanka, there was not one primary black knight but a collective pattern of diverse arms acquisitions. Yet, as the 2004 tsunami evidenced, some critical air and sealift systems were dependent on U.S. parts, resulting in an overall neutral effect of the black knight phenomenon.

5.3.2 Coercive Outcome

I code the coercive outcome as minor concessions for the Indonesian case. Using State Department Human Rights Reports from 1999 to 2009, the government’s assessment of Indonesia provides a picture of incremental steps forward in judicial and military reforms with continuing concerns over impunity. The reports cite short judicial sentences, prosecutions without convictions, and judicial difficulties as symptoms of ongoing challenges in taking “effective measures” or “necessary corrective steps.”\textsuperscript{131} The story of the alleged 1999 East Timor human rights violations is representative of these challenges.

In 2000-2001, the State Department cites the lack of progress on the investigations and trials of personnel accused of human rights violations in East Timor. In 2003, The East Timor Ad Hoc Human Rights Tribunal completed all of its 18 trials, with 6 of 18 defendants receiving convictions. Of the six convictions, three were Army personnel, and only one defendant

\textsuperscript{129} Comer, Charles. “Leahy in Indonesia” \textit{Asian Affairs} 63
\textsuperscript{130} Stockholm International Peace Research Institute Arms Transfer Database. \textit{Import Trend Indicator Value Table Indonesia} accessed on April 1, 2011 http://armstrade.sipri.org/armstrade/html/export_values.php
\textsuperscript{131} U.S. House, Committee on Foreign Affairs. U.S. Senate, Committee on Foreign Relations. \textit{Country Reports on Human Rights Practices for 1999-2009} for Indonesia. This is a general summary of all the reports over that era.
received the legal minimum sentence of 10 years. Through legal reviews by the Jakarta High Court, eventually all the convictions were overturned.\textsuperscript{132} The 2009 State Department reports goes even further and summarizes that of all the cases of human rights violations in East Timor, only two Indonesians of Timorese descent served jail time.\textsuperscript{133} This same report cites this evidence as indicative of continuing impunity for human rights violators.

Other trends continue to present a mixed picture of change. In 2007, President Susilo Bambang Yudhoyono publicly accepted that the Indonesian security forces bore institutional responsibility for East Timor human rights abuses. Thirteen Navy personnel were convicted in a public, military trial in 2007 for opening fire on civilians, but they only received sentences from 18-36 months out of a possible 15 years.\textsuperscript{134} In 2008, the joint Indonesia-East Timor Commission on Truth and Friendship submitted a final report, calling on Indonesia to foster a human rights training program for its military and for giving enhanced authority to human rights institutions within the country. It did not dictate any prescriptions for addressing the issue of past impunity.\textsuperscript{135} Finally, in 2009, the DPR (House of Representatives) appointed an Ad Hoc Human Rights Tribunal to investigate the disappearance of 23 human rights activists in 1998. Despite parliament's recommendation, Yudhoyono failed in 2010 to authorize an ad hoc court to investigate the 1997-1998 enforced disappearances of student activists.\textsuperscript{136}

There were some legal and military reforms, but military cooperation remained a


problem. During the democratic transition in 1999-2000, several new laws emerged. The Bill on Human Rights Courts (no26/2000) established international standards for gross human rights violations as part of the criminal code and acts of omission with command responsibility became illegal.\textsuperscript{137} It also prescribed that military personnel should be tried in civilian courts for offenses related to gross human rights violations. Vehemently contested, the law also included a special provision for retroactive prosecution of past crimes provided the President decreed a special Ad Hoc Tribunal at the request of the DPR (Legislative Assembly). In a parallel development, the government adopted a constitutional amendment as part of its human rights legislation stating, “the right not to be prosecuted on the basis of a retroactive law are human rights that cannot be diminished under any circumstances.”\textsuperscript{138} This amendment later presented legal challenges to retroactive prosecutions, prescribed by the other human rights law 26/2000.\textsuperscript{139} Also in 2000, the Indonesian government initiated a legal provision that soldiers are subject to the authority of the civilian courts for violations of the criminal code, and to military courts for infractions of military criminal law. The People's Consultative Council Decision No. VII of 2000 first stated this principle, and it was later restated under article 65(2) of Law 34 of 2004.\textsuperscript{140}

The military conducted internal reforms mostly in the areas of training and civilian control. In 2004, the Indonesian legislature passed an armed forces law that outlined the TNI’s need to respect democracy, human rights, and civilian control of the military.\textsuperscript{141} Later, a ministerial decree affirmed that all security operations should be conducted in accordance with


\textsuperscript{138} International Crisis Group. *Indonesia: Impunity versus Accountability for Gross Human Rights Violations* 16


\textsuperscript{140} Human Rights Watch. *Letter to US Department of Defense Regarding US Military Assistance to Indonesia*

the Geneva Convention and international laws and norms. In 2006, the Norwegian Centre for Human Rights developed a human rights program for Indonesia. It includes training course in Law of Armed Conflict and Human Rights and overseas courses on international law. Finally, the centre also reviewed and streamlined the human rights curricula for the Army. The International Red Cross along with the United States also hosted human rights training courses for the Indonesian military. These reforms are often cited at congressional testimonies as evidence of human rights progress by the TNI and Kopassus.

5.3.3 Summary

In a 2010 Congressional hearing, Deputy Assistant Secretary Robert Scher quotes Gates as expressing the DOD perspective, “My view is that, particularly if people are making an effort to make progress, that recognizing that effort and working with them further will produce greater gains in human rights for people.” In this same hearing, several other respondents cited their disagreement with Scher citing recent evidence of continuing impunity for TNI abuses in Papua. This congressional hearing reaffirmed that Donald Emmerson’s question about Indonesia was never answered. Which competing dynamic would win? Throughout the coercive episode, the issues of coercive strategy went unresolved. As a result, the relative motivation waned in the aftermath of 9/11 and demands morphed with the corresponding legal

---


143 Norwegian Centre for Human Rights. *Indonesia Programme Activities 2010*

144 *Crimes Against Humanity: When Will Indonesia's Military Be Held Accountable for Deliberate and Systematic Abuses in West Papua? Before U.S House of Representatives Committee on Foreign Affairs. 111th Cong.* (HRG-2010-FOA-0051; Date: September 22, 2010) Text from: ProQuest® Congressional Digital Research Collection (statement of Robert Scher, Deputy Assistant Secretary of Defense for South and Southeast Asia, Asian and Pacific Security Affairs) 22

145 *Crimes Against Humanity: When Will Indonesia's Military Be Held Accountable 111th Cong.* 22-23

146 *Crimes Against Humanity: When Will Indonesia's Military Be Held Accountable 111th Cong.* 80
challenges of the target state. Carrots were not introduced until late in the episode and alternate forms of training, some poorly vetted, sent mixed signals about U.S. resolve. Without a clear articulation of how to rehabilitate an offending unit and with a strong desire to eliminate pressure in the bilateral relationship, the coercive episode officially and diplomatically ended with some conditions still present. The Indonesian case demonstrates that a weak coercive strategy undermines the credibility of threat and predictably ends with minor concessions.

5.4 The Leahy Amendment in Nepal

In the 2005 FOAA, the United States initiated foreign assistance restrictions against Nepal for human rights violations, perpetrated during a Maoist insurgency and civil war since 1996. In February 2005, King Gyanendra suspended the government and assumed absolute power amidst the rising unrest. In 2005, U.S. Ambassador to Nepal James Moriarty commented on the U.S. foreign policy conundrum, "Should we give $2 million of security assistance this year or $500 million to refugee camps scattered throughout India in the not-too-distant future? That's the choice we have to make." Despite this conundrum, Leahy reiterated the imperative to enforce human rights legislation before Congress. In 2006, government officials and Maoists signed the Comprehensive Peace Agreement to end hostilities. Presently, the United States continues to balance providing security assistance for stability and abiding by the legal parameters of that assistance. The following chart summarizes the case findings below:

Table 7 Summary of Nepal Case Study

<table>
<thead>
<tr>
<th>Country</th>
<th>Motivation</th>
<th>Demands</th>
<th>Time</th>
<th>Carrots/Sticks</th>
<th>Enforcement</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nepal</td>
<td>Weak</td>
<td>None</td>
<td>None</td>
<td>Weak</td>
<td>Weak</td>
<td>Minor</td>
</tr>
</tbody>
</table>

5.4.1 Elements of Coercive Success

I code the variable “relative motivation” as weak because the United States did not demonstrate a strong motivation to restrict, primarily for fear of another failed state in South Asia. However, this case is the only instance where human rights had the potential to take priority due to an overall weak strategic interest in Nepal. The 2006 National Security Strategy mentioned Nepal in the context of failed states, and U.S. congressional hearings focused around the regional implications of another failed state and safe haven for terrorists.\(^\text{150}\) The Fiscal Year 2006 State Department Budget justifications remarked that prevented “the emergence of a totalitarian anti-U.S. regime likely to join with terrorists and instability in the Sino-Indian border region would likely result.”\(^\text{151}\) Nepal was also not mentioned in any of the Quadrennial Defense Reviews since 1996.\(^\text{152}\) Since the restrictions were not costly in terms of U.S. strategic interest, the restrictions were easy to maintain. Paradoxically, the lack of relative importance reduces the coercive pressure because there is no associated cost to communicate the strength of U.S. resolve. In addition, Nepal has a weak motivation to resist U.S. demands because U.S. support against a Maoist insurgency is critical both for legitimacy, arms, and training.

I code the variable “clear demands” as weak because the demands changed throughout

\(^{150}\) White House: National Security Strategy 2006, 15; Political Crises in South Asia: Pakistan, Bangladesh, Sri Lanka, and Nepal: Hearing Before the U.S House of Representatives Committee of Foreign Affairs. 110th Cong. (HRG-2007-FOA-0134; Date: August 1, 2007) Text from: ProQuest® Congressional Digital Research Collection (statement by the Honorable Gary L. Ackerman, Chairman, Subcommittee on the Middle East and South Asia) 1


the episode and were ambiguous and non-specific. In 2005, the United States outlined four
country specific conditions for the Nepalese government, with two of these provisions relating to
the Leahy amendment.\textsuperscript{153} Then, the 2006 FOAA changed course, outlining three non-specific
demands: restoration of civil liberties, protection of human rights, and timeline for restoration of
multiparty democracy.\textsuperscript{154} In 2007, in Committee reports, the House and the Senate sent a mixed
message. The House Committee recommended no IMET funding, noting its concerns over the
disproportionate military response to recent democracy protests.\textsuperscript{155} The Senate Committee also
proposed to restrict Foreign Military Financing based off an unresolved human rights case at the
Majharajgunj barracks from 2001-2004.\textsuperscript{156}

In the 2008 FOAA and 2009 FOAA, Nepal was restricted to E-IMET without any
demands.\textsuperscript{157} However, the 2008 Senate Committee report described how this critical time of
transition was not the appropriate time to reduce assistance in the face of “Herculean” tasks.\textsuperscript{158}
Yet, the 2009 report recommended restrictions, while exempting Nepali Armed Forces (NAF)
deployments to peacekeeping from these restrictions.\textsuperscript{159} By 2010, the United States demanded
cooperation with civilian investigations of violations human rights and implementation of
reforms.\textsuperscript{160} These movements from specific to no demands to general demands did not provide a
clear message to Nepal about the terms of the coercion.

I code the variable “time urgency” as not present because the U.S. actually increased
training assistance during the episode, but it did not designate a tangible loss or gain from FMF
funding. In 2006, the U.S. Congress dictated annual certification requirements for FMF funding.

\textsuperscript{153} Consolidated Appropriations Act of 2005, 108
\textsuperscript{154} Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2006, 67
\textsuperscript{157} Consolidated Appropriations Act of 2008, H.R. 2764, 466
\textsuperscript{158} U.S. Senate. Committee on Appropriations, S.R. Rep. No. 110-128, 48-49
\textsuperscript{159} U.S. Senate. Committee on Appropriations, S.R. Rep. No. 111-44, 171-172
\textsuperscript{160} Consolidated Appropriations Act of 2010, 3389-3390
From Fiscal Years 2006-2009, the certification documents were either not done or not publicly available, but Nepal did not receive any FMF funds. By contrast, Nepali military training assistance increased each year, starting at $1.1 million and rising to $1.8 million in 2009. This aid was not attached to specific country conditions. In Fiscal Years 2006-2007, the United States permitted full IMET (including lethal training), but restricted Nepal to E-IMET from 2008-2010 without a corresponding known time pressure for compliance.

I code the variable carrots and sticks as limited. In the 1990s, the U.S. military assistance averaged less than 0.5 percent of Nepal’s total military expenditures until 1998. From 1998-2005, military assistance averaged over 3 percent of the TME, influenced greatly by a 12.2 percent peak in 2002 from military aid in the 2002 U.S. Supplemental Appropriations. After the February 2005 crackdown and emergency law, owing to congressional pressures, the percentage dropped below 1.0 percent for Fiscal Year 2006-2008, but it rose again in Fiscal Year 2009 as the United States provided some additional funding through INCLE aimed at security sector reforms and police promotion. However, the strongest carrot still remaining is the resumption of FMF (Foreign Military Financing). Yet, as mentioned above, the United States did not attach specific conditions to its resumption until 2010, and the “carrot” of resumed aid is unknown. Likewise, other forms of security assistance undermine its potential coercive pressure such as $10 million in Section 1207 Security Assistance Funding from the DOD for police expansion.

164 See Appendix A for percentage chart and data sources.
I code the variable “enforcement mechanism” as weak because of some instances of vetting challenges and the partial solutions mentioned above. Leahy raised concerns before Congress about vetting stating, “I am concerned…that some Nepali military officers who have been credibly implicated in human rights violations have been approved for U.S. training.”166

The case of Colonel Raju Basnet highlights the complexity of applying the Leahy amendment. In December 2009, the United Nations repatriated him from Chad while on a UN Peacekeeping Mission. It discovered that he was under a police arrest warrant due to murder and torture charges levied against him in 2007 by a civilian court. Initially acquitted by a military tribunal in 2005, separate investigations by the UN-OHCHR (Office of the United Nations High Commissioner for Human Rights) and Nepal’s Human Rights Commission held him responsible.167 The military did not release him to the civilian authorities upon his return, and the military reacquitted him in another tribunal in 2010.168

Though all individuals receiving GPOI training must be vetted, the status of Colonel Basnet focuses specific attention on “effective measures.” How the United States chooses to “vet” an individual in this status forces the U.S. government to potentially pick a side in the judicial disagreement. Furthermore, it also shows that as the UN potentially adopts a vetting procedure, our database and assessments might conflict with the UN’s database, producing another point of conflict. The net effect on the coercive episode is to reduce the credibility and potential pressure of the threat when the United States must rely on conflicting internal judicial outcomes along with difficult external evaluations for enforcement.

166 154 Cong. Rec. S93917-S9392 (statement of Sen. Leahy) 9391
As for arms deals, the United States was able to obtain some help from other countries (India, UK) to reduce the black knight phenomenon. According to the SIPRI Arms Transfer database, no black knights emerged after the 2005 FMF restrictions.\textsuperscript{169} This result occurred because Nepal has limited financial capabilities to purchase weapons, and China does not want to alarm the Indian government with an aggressive foreign assistance program in Nepal.

5.4.2 Coercive Outcome

The outcome for the Nepalese coercive episode is minor concessions. As the State Department reports note, the UN-OHCHR did not receive any allegations of torture or other human rights violations from the Nepalese Army from 2006-2009.\textsuperscript{170} The Comprehensive Peace Agreement required the Nepalese Army to remain in the barracks, and later organization under the Nepalese Military Act of 2007 restricted military operations.\textsuperscript{171} These two actions potentially influenced the lack of human rights violations.

Despite these improvements, impunity remains a contested issue over pre-2006 offenses during the Maoist unrest. The 2009 State Department report highlighted the Maharajgunj barracks case as representative of pre-2006 issues that remain unresolved. This particular case is currently sensitive because the second in command of the Nepalese Army had command responsibility over the brigade that controlled the barracks.\textsuperscript{172} From 2010, Human Rights Watch

\textsuperscript{169} Stockholm International Peace Research Institute Arms Transfer Database. \textit{Import Trend Indicator Value Table Nepal} accessed on April 1, 2011 http://armstrade.sipri.org/armstrade/html/export_values.php
\textsuperscript{172} U.S. Department of State. \textit{2009 Human Rights Report: Nepal}
also contends that there are recent evidences of impunity since the conflict.\textsuperscript{173} The Army case is its first accusation since 2006. All of these actions provide a challenge to the stipulations of “effective measures” and “corrective steps” towards bringing members to justice.

As for legal and military reforms, the only attributable concession in the coercive episode resulted in the establishment of a UN Human Rights Office in 2005. The 2007 Interim Constitution prohibits torture, but it does not criminalize torture.\textsuperscript{174} Nepal is still considering this law.\textsuperscript{175} The Ministry of Defense is still trying to form a balance of civil-military participation. Nepal also recently requested to participate in the U.S. Defense Institution Reform Initiative in order to improve its Defense institutions.\textsuperscript{176} Finally, it stood up a Human Rights Directorate at the Army Headquarters, and it has begun incorporating human rights training into its military curricula.\textsuperscript{177}

Ambassador Delisi recently summarized the mixed outcomes in human rights progress. While commending the Army for its improved human rights record, he reminded them of the need for accountability of past abuses to earn the trust of its people. He urged the Nepalese Army to hold all personnel accountable for violations of international law during the conflict, and he urged cooperation with civilian courts and authorities.\textsuperscript{178}

5.5 The Leahy Amendment in Sri Lanka

The Sri Lanka coercive episode began when security forces were accused of human

\textsuperscript{173} Human Rights Watch Report. \textit{Indifference to Duty: Impunity for Crimes Committed in Nepal.} 13-16
\textsuperscript{174} U.S. Department of State. 2009 Human Rights Report: Nepal
\textsuperscript{176} U.S. Department of State. \textit{Speech by U.S. Ambassador to Nepal Scott Delisi before the Nepal Army Staff College} (March 1, 2011) http://nepal.usembassy.gov/sp-03-1-2011.html
\textsuperscript{177} U.S. Department of State. \textit{Speech by U.S. Ambassador to Nepal Scott Delisi}
\textsuperscript{178} U.S. Department of State. \textit{Speech by U.S. Ambassador to Nepal Scott Delisi}
rights violations during the 2007-2009 counterinsurgency campaign against the Liberation Tigers of Tamil Eelam (LTTE). The U.S. government restricted most forms of military assistance under a host of laws including the Leahy amendment. From Sri Lanka’s vantage point, the Leahy amendment is the cornerstone of the coercive pressure, and it prevents the United States from doing anything for Sri Lanka with respect to military training. The following chart summarizes the case findings below:

Table 8 Summary of Sri Lanka Case Study

<table>
<thead>
<tr>
<th>Country</th>
<th>Motivation</th>
<th>Demands</th>
<th>Time</th>
<th>Carrots/Sticks</th>
<th>Enforcement</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sri Lanka</td>
<td>None</td>
<td>Weak</td>
<td>Not Pre</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
</tbody>
</table>

5.5.1 Elements of Coercive Success

I code the variable “relative motivation” as none because the United States has a weak national interest to restrict, while Sri Lanka has a strong incentive to resist. Similar to Nepal, Sri Lanka is not a significant U.S. strategic interest. It is not part of any National Security Strategy documents or the National Intelligence Council’s Global Trends Report 2025. It is also not mentioned in any Quadrennial Defense Reviews except for a passing reference to the deployment of transportation assets during the 2004 tsunami. Like Nepal, the United States expressed concerns about Sri Lanka as a failed state and its implications for counterterrorism.

---

policy. The United States viewed the defeat of the LTTE as a positive development, and the presence of a democratically elected government as a regional positive. The presence of a large Chinese built port in Sri Lanka has raised some national concerns. Sri Lanka’s relationship to China also serves as an enabler for Sri Lanka to resist the United States, and it has a strong motivation and ability not to acquiesce to U.S. demands.

I code the variable “clear demands” as weak because 2010 changes created ambiguity over what Sri Lanka must achieve to meet the demands. In the 2008 FOAA and 2009 FOAA, the United States placed demands on Sri Lanka including: bringing to justice human rights violators, access for humanitarian workers and journalists, and agreeing to a field presence of the UNHCR. These demands applied to FMF funds, defense export licenses, and most military equipment except maritime and air surveillance devices and communications equipment. Interestingly, there were no formal demands placed against IMET or a restriction to E-IMET, except the notification of planned activities for Congress. The 2010 FOAA maintained the Leahy language for human rights violators, but it added several additions including: respect for all international human rights like due process, freedom of press, association and assembly, treating internally displaced persons IAW with humanitarian standards, policies to promote reconciliation and justice including devolution of power IAW with the Sri Lankan Constitution. In both the 2010 and 2011 FOAA, Congress also requested an accounting for the crimes against humanity by the Secretary of State. The comprehensive nature and the

---


185 Consolidated Appropriations Act of 2008, 528-529


187 Consolidated Appropriations Act of 2010, 3405, Section 7089
subsequent revisions in the demands from 2010 lacked the initial specificity and achievable nature of earlier demands. By changing the demands, it complicated Sri Lanka’s ability to comprehend what constitutes compliance, undermining the coercive pressure.

I coded the variable “time urgency” as not present for two reasons. First, there is not a specific earmark of FMF funding awaiting dispersion upon the secretary of state’s approval. Thus, even though the sections under appropriations refer to a certification, the value of that certification is unknown. The United States attempted to address this shortfall in FY2010-2011, requesting $1 million in FMF financing, but at the time of data cut off, it was unknown whether there was any dispersion of funds.\footnote{U.S. Department of State. \textit{Foreign Military Financing Account Summary FY2006-2011} Sri Lanka (June 23, 2010) http://www.state.gov/t/pm/ppa/sat/c14560.htm} Second, the United States does not have any additional measures added to its demands to create coercive pressure.

I code the variable carrots and sticks as none because of the insignificance of U.S aid for Sri Lanka and the lack of a tangible carrot or stick. During the 1990’s, U.S. military assistance averaged 0.1 percent of the total military expenditures of the Sri Lankan government. During the last decade, the average rose to 0.4 percent with a peak of 1 percent in Fiscal Year 2005. However, there were other sources of funds. Section 1206 funded CT projects in Sri Lanka in Fiscal Year 2006-2007, totaling $18 million or four times the amount of IMET and FMF.\footnote{Office of the Inspector General, U.S. Department of Defense and U.S. Department of State. \textit{Interagency Evaluation of the Section 1206 Global Train and Equip Program} (Washington D.C. Report Number IE-2009-007, August 31, 2009) http://www.dodig.mil/inspections/ie/Reports/1206FinalReport.pdf} In Fiscal Year 2008, Sri Lanka became ineligible for Section 1206 funding under the same human rights conditions. The law still allows the U.S. to provide technology or equipment for the limited purposes of maritime and air surveillance and communications.\footnote{Office of the Inspector General, U.S. Department of Defense and U.S. Department of State. \textit{Interagency Evaluation of the Section 1206}, 58} In a CRS report on 1206 funding, one ambassador stated, “Section 1206 funding is my linchpin to ongoing...
negotiations for resolution of human rights issues.”191 This quotation is an example of the potential value, and the potential loss of coercive pressure when the value of resumed aid is unknown.

While the monetary value of the aid is relatively small, the prestige of U.S. military assistance is still valued by the Sri Lankan government. In May 2010, the Sri Lanka Foreign Minister outlined how the restriction of aid was “inimical” to Sri Lankan and U.S. interests, and he spoke earnestly about the need for the U.S.-Sri Lankan relationship not to be one-dimensional.192 Foreign Minister G.L. Peiris also discussed how military assistance would only focus on training, and the Leahy amendment “rigidly, inflexibly” restricts this training.193 Thus, the carrot of resumed aid does not appear readily available, and the ‘stick’ is small.

I code the variable “enforcement mechanism” as none because of the overwhelming nature of the black knight phenomenon in the coercive episode. Since 2005, the Chinese have strategically provided large amounts of aid. In March 2007, the Sri Lankan government agreed to a $1 billion port development package for Hambantota, Sri Lanka.194 After this agreement, China provided arms deals and military support. The Sri Lankan government signed a deal with China for $37.6 million worth of ammunition and ordnance in 2007. China also supplied six free F-7 jets after a LTTE attack destroyed ten military aircraft in 2007.195 When the Leahy amendment is applied broadly to a nation’s security forces, not just to particular individuals or units, it opens the possibility for other rising powers to compete for strategic influence by replacing or offering aid.

---

192 Center for Strategic and International Studies, A Year After the Civil War 12
193 Center for Strategic and International Studies, A Year After the Civil War 12
194 Pant, Harsh V. “End Game in Sri Lanka.” Yale Global Online (February 23, 2009) http://yaleglobal.yale.edu/content/end-game-sri-lanka
With limited training since 2008, human rights vetting for military training must focus on select individuals for E-IMET. In a Senate hearing, DOD personnel acknowledged that human rights vetting had screened two individuals from training. They assured Senator Leahy that vetting was present and active.\textsuperscript{196} Other than this anecdote, this thesis did not have sufficient data to evaluate whether this vetting process was satisfactory or unsatisfactory.

5.5.2 Coercive Outcome

The Sri Lankan coercive episode has resulted in no attributable concessions, but the Sri Lankans did allow field advisors from the UNOHCR.\textsuperscript{197} It is also important to note that this coercive episode is only about three years old which limits the potential response time of the actors involved. Based on comments in 2010, forthcoming concessions are not anticipated:

"We are not in any way resentful of the focus on human rights…but we are making the point that the relationship should not be one dimension. There are many other things that Sri Lanka and the United States can do together."\textsuperscript{198}

As for impunity, the past three State Department Human Rights reports all cataloged that there was no evidence of convictions for security forces in past human rights violations, and the government does not seek to identify those responsible for the offenses.\textsuperscript{199} The Commission of Inquiry (COI) ceased operations without issuing a public report on any of its 17 human rights

\textsuperscript{196}Department of State, Foreign Operations, and Related Programs Appropriations for Fiscal Year 2008. Hearings on H.R. 2764, before U.S. Senate Committee of Appropriations, 111\textsuperscript{th} Cong. (2008) (answer from State Department to Senator Leahy's additional questions) 192-193


\textsuperscript{198}Center for Strategic and International Studies. A Year After the Civil War 10

http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm
cases. Senator Leahy submitted before the U.S. Senate, “The High Commissioner noted that there have not been any prosecutions of political killings, disappearances and other violations committed in recent years. That in itself speaks volumes about the Sri Lankan government’s credibility.” In response to Congressional mandates, the State Department’s Office of War Crimes Issues has produced two documents cataloging the human rights abuses of Sri Lanka, the government’s lack of response, and an evaluation of its ineffectiveness. In a February 2010 interview, the Sri Lankan defense secretary proclaimed that he would not allow “any investigations in this country. Nothing wrong happened.”

As for legal and military reforms, the Sri Lankan government established two commissions in 2010 to address human rights violations: the Group of Eminent Persons and the Commission on Lessons Learnt and Reconciliation (LLRC). In its 2010 report, the State Department assessed the Group of Eminent Persons as ineffective, and it noted potential problems with the LLRC’s mandate and independence in moving forward. The LLRC received a six month extension in November 2010 for its initial report, making an evaluation of this commission impossible at the time of this thesis. As for the Group of Eminent Persons, the State Department reported that it was unaware of any findings, reports, recommendations, or

---

204 U.S. Department of State Office of War Crimes Issues. Report To Congress on Measures Taken by the Government of Sri Lanka

In summary, without adding some tangible carrots for compliance or other elements, the current state of coercive pressure is minimal and is not likely to produce results in the future. With no timeframe for resolution, the restrictions will continue in perpetuity until either the United States’ cost-benefit or Sri Lanka’s cost-benefit calculus changes. It is likely that the United States’ cost-benefit will change first because it will move to check Chinese strategic interests before Sri Lanka actually needs significant military aid from the United States.
CHAPTER 6: THE LEAHY AMENDMENT COERCIVE STRATEGY ASSESSMENT

This chapter compares the results of the case studies across the elements of coercive success and the correlation between predicted success and the coercive outcomes. The first section determines whether the case study results confirmed or denied the tested hypothesis. The second section analyzes observable trends across the cases, and how it informs our present understanding of the Leahy amendment’s applications. The third section discusses how the Leahy amendment informs issues of human rights and foreign policy in the United States. The final section addresses some caveats in my assessments and their impact on the thesis.

6.1 Overall Thesis Assessment

The chart below summarizes the evaluation of each of the elements of a coercive strategy from the case studies and how they interacted with the coercive outcome.

Table 9 Summary of Leahy Case Studies

<table>
<thead>
<tr>
<th>Variables</th>
<th>Colombia</th>
<th>Turkey</th>
<th>Indonesia</th>
<th>Nepal</th>
<th>Sri Lanka</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motivation</td>
<td>Weak</td>
<td>Weak</td>
<td>Strong→Weak</td>
<td>Weak</td>
<td>None</td>
</tr>
<tr>
<td>Demands</td>
<td>Moderate</td>
<td>Strong</td>
<td>Moderate</td>
<td>Weak</td>
<td>Weak</td>
</tr>
<tr>
<td>Time Urgency</td>
<td>Weak</td>
<td>Not Present</td>
<td>Not Present</td>
<td>Not Present</td>
<td>Not Present</td>
</tr>
<tr>
<td>Carrots/Sticks</td>
<td>Limited</td>
<td>None</td>
<td>Limited</td>
<td>Limited</td>
<td>None</td>
</tr>
<tr>
<td>Enforcement</td>
<td>Weak→Strong</td>
<td>None</td>
<td>Weak</td>
<td>Weak</td>
<td>None</td>
</tr>
<tr>
<td>Outcomes</td>
<td>Minor→Moderate</td>
<td>None</td>
<td>Minor</td>
<td>Minor</td>
<td>None</td>
</tr>
</tbody>
</table>
In general, the ratings of the coercive elements of strategy predicted the outcomes in the Leahy application. The weaker elements of coercive success in Sri Lanka and Turkey predicted the resultant coercive outcome of “None” in concessions. Nepal and Indonesia for different reasons generally had more strength in their elements, and it resulted in minor concessions. The Colombian episode leveraged more of the elements of coercive success, and it holds the most potential efficacy to move towards moderate concessions of any of the countries. Since none of the outcomes resulted in an assessment above minor, it is difficult to definitively conclude that the data directly supported the tested hypothesis.

Despite this less than satisfying assessment, at different points in the coercive episodes, I found that the more the Leahy amendments met the coercive criteria, the more potential efficacy existed. The only significant concession in the Indonesian case coincided with the direct demand of FBI cooperation in the Timika case being directly tied to IMET funding. For Colombia, the interplay of a few more elements of coercive success in time urgency, stronger motivation to restrict aid for even a short duration, or the willingness to truly withhold (not just hold up) some aid during certifications could have created the necessary conditions for moderate concessions. Since 3 of the 5 cases are ongoing episodes and Indonesia still has conditions attached to its aid, it is a worthwhile research project to continue to observe if any changes in the coercive elements correspond to changes in the coercive outcomes.

In assessing one of the broader goals of the thesis, based on the initial results, the five variables did provide a good template to assess both current and future Leahy applications, and the variables also provide a useful guide in constructing a potential coercive strategy. The variables also provide a good lens to analyze which levers of coercive pressure are more likely to be effective in achieving policy aims.
6.2 Observable Trends

The first observable trend is the paradox of relative motivation. Friends (more aid given) are generally easier to coerce than lesser friends because it reduces the motivation of the target to resist. By contrast, since the Leahy amendment restricts military assistance that is given as a tool of influence, the more aid given also communicates the importance to U.S. national interest, reducing the motivation of the sender. Thus, the resulting parity produces a weak relative motivation. The majority of Leahy applications will likely fall within this realm, and it is difficult to imagine many cases where the United States will have a strong motivation to restrict aid, and the target will have a weak motivation to resist. Among the cases studied, only Nepal has this possibility, based on the potential for the human rights agenda to take priority as the key bilateral objective. This paradox tempers the expectations of coercive pressure and potential efficacy of Leahy applications.

Each case also reveals how competing strategic and U.S. domestic interests can reduce the credibility of the threat and the cost-benefit calculus in the coercive episode. As a NATO ally, arms consumer, and host to U.S. air assets, Turkey could calculate that the cost of human rights legislation would be higher than the benefits of arms deals and base access for the United States. As a U.S. ally on Venezuela’s border and the primary location of the U.S. counterdrug fight, Colombia could calculate that the cost of human rights pressure would only go so high until the United States decided that domestic progress in the drug fight would take priority. Colombia, who had the least motivation to resist with 8 billion dollars in Plan Colombia aid, still has leverage to reduce the coercive pressure because the United States has a strong domestic and foreign policy motivation to give the aid. After 9/11, the security interests of counterterrorism in
Indonesia and Indonesia’s increasing international presence reduce the coercive pressure of Leahy. Even in Nepal, the need to avoid another failed state in South Asia helps maintain some flows of military assistance. Sri Lanka appears to be the anomaly or outlier as the United States has not made significant strides to reduce its coercive pressure despite China’s strategic engagement and potential competition. In sum, minor with limited potential for moderate concessions may be the normal expectation in a Leahy episode based on this relative motivation and credibility dynamic.

Black knights are coercive deal busters. In the case of Sri Lanka and Turkey, the presence of an alternate actor to provide the solution is the major factor that resulted in a coercive outcome of “None.” For Sri Lanka, the development dollars and military assistance of China made the amount of U.S. engagement insignificant in calculating the cost of resistance. With Sri Lanka, there might be limited progress as a cost of continued engagement with the United States, but the black knight phenomenon changes the cost-benefit calculus. It will likely take more carrots than sticks to compel change in Sri Lanka. For Turkey, the black knight came from within the United States as General Dynamics delivered an alternate solution which enabled Turkey to turn down the political compromise. If it was not General Dynamics, then it would have likely been another European country or arms dealer. By contrast, Colombia, Indonesia, and Nepal did not have a black knight. Thus, when designing a coercive strategy for a Leahy application, estimating the likelihood or presence of a black knight should at least temper expectations and change the calculus for the ratio of carrots and sticks.

The presence of vague and changing demands highlights a weakness of translating a law into a coercive strategy. Recognizing that data limitations in assessing private diplomatic communications, the official documentation reveals a pattern of changing or vague demands
across 4 of the 5 cases. Changing demands resulted from changing assessments of the problem, chasing coercion through the events of the episode, or the tendency to embrace wider objectives or tangential issues beyond meeting a specific demand. This changing nature of demands creates a “what constitutes enough?” scenario for the target state. For example, in Indonesia, the United States added comprehensive military reform of the TNI’s financial structure as part of its country conditions. In Nepal and Sri Lanka, demands morphed from specific, concrete provisions to overall reforms of societal freedoms and rights.

By contrast, compartmentalization was pragmatically and successfully used to get small concessions in Indonesia and Colombia. In Colombia, the demands remained fairly clear with the exception of adding new groups that needed protection or more broad reforms expected by the U.S. government. Here, the detailed certification process assisted in keeping the demands stable by providing a semi-annual checkup of human rights, and it developed a set framework for bilateral interaction and evaluation. Ironically, the most specific, singular demand of the episode (cooperate with the FBI on the Timika incident) tied to a specific carrot (resumption of IMET) produced the only attributable concession in the Indonesian episode. At the onset of a Leahy application, the design of the coercive plan is essential to establish the bounds of the coercive episode, and the Leahy amendment and its current processes do not have a mechanism to perform that function.

The lack of time urgency generally reduced the coercive pressure across the cases. Four of the five cases rated “not present.” The Leahy amendment as a functional law does not create an inherent time component, and it is necessary to apply one to each specific coercive plan. Colombia is the only case where the United States managed to create some time urgency in the semi-annual certification process. Yet, any time urgency gained with the presence of a semi-
annual or annual certification was balanced by the Colombian expectation of certification.

The lack of a time component also creates a sense of perpetuity in the episodes. Nepal and Sri Lanka are likely at places of stalemate unless drastic internal political change resets the power dynamics or the United States’ strategic calculations change. In Colombia, the basic working framework will likely proceed forward on its own inertia until the United States decides to give less aid, changing the calculus of the actors. This reality begs multiple questions about the Leahy applications. What constitutes enough? What is the statue of limitations on past abuses? What constitutes rehabilitation for a country? Is it complete resolution or progress? In Indonesia, all of these questions were at the core of the Leahy application, and the case ended without any true resolution. If the carrot is not significant, the target state can afford to wait until the sender is no longer interested in the issue. Sri Lanka potentially embodies this tactic.

Length of time did allow for more structural judicial and legal reforms, but impunity for past abuses did not seem to diminish with time. In Indonesia, the military curricula were rewritten to include human rights, and the army began a more extensive training program with an outside human rights organization. In contrast, by 2009, all the personnel originally charged in the events that first sparked the implementation of Leahy in 1999 were all acquitted and did not serve jail time. In Nepal, several acts now codify civilian control of the army and a law to criminalize torture is a near-term possibility. Several high profile cases have not been resolved in the civilian courts, and the army did not give up one of its accused officers at the behest of the civilian government. The Sri Lankan government has not acknowledged any human rights violations from the 2009 iteration of the insurgency campaign against the LTTE. Likewise, the State Department still acknowledges issues with impunity in Turkey. In Colombia, there are over a thousand past abuses cases still awaiting adjudication or completing investigations. It did,
however, take over ten years to get a more effective judicial structure to prosecute the cases, and the preliminary results are positive. Past abuses are not easily brought to justice or forgotten.

The United States generally failed to leverage all the carrots and sticks. Different forms of aid became new avenues for security assistance, creating mixed signals in the bilateral process. While the Leahy amendment covers all training and assistance, the coercive tools used in the country restrictions usually only covered FMF funding or IMET funding. The Colombian case achieved the most coercive pressure by leveraging percentages of total allocated aid, specifically Plan Colombia, as carrots for compliance. In Nepal, the focus on FMF funds as a restriction without a true defined carrot for compliance reduced their potential to change Nepal’s cost-benefit calculus. In Nepal, Indonesia, and Sri Lanka, the focus on IMET and FMF in the restrictions failed to mobilize other fund sources like CTFP, NADR, INCLE, and 1206 funding as viable tools of leverage to create a bigger carrot for compliance and a direct stick for noncompliance. In Indonesia, poor vetting practices early on in the decade created an embarrassing situation where military personnel required vetting, but police forces trained without being vetted, giving the appearance of a “work around” to meet U.S. objectives.

However, in moving forward with a coercive strategy, the United States must leverage all available carrots and sticks to create the right mixture to achieve foreign policy goals.

In sum, estimating the coercive potential of the Leahy amendment is difficult because the United States has yet to maximize available coercive elements into a coercive strategy for its application. Yet, even with a more aggressive process in the Leahy application, the complexities of relative motivation, other foreign policy interests, and the presence of other actors may make progress, not full compliance, the most realistic expectation and the only possibility for the target. The next section will discuss this dilemma in further detail.
6.3 Leahy and the Role of Human Rights in Foreign Policy

This paradox of relative motivation highlights a broader foreign policy question about the role of human rights in foreign policy objectives. Each Leahy sanctioned country will point to another regional or international example, accusing the United States of double standards. All countries point to Israel and Egypt, the largest and the second largest recipients of U.S. military assistance, as examples of countries who commit human rights violations with minimal repercussions or justice. Indonesia believes that they are vetted more closely than the Philippines. Colombia points to Bolivia and Mexico, and it questions why those countries do not have semi-annual certifications for their aid. Nepal and Sri Lanka question why they have Leahy sanctions, when Pakistan until November 2010 did not have any restricted units and still receives military assistance that is not directly tied to human rights performance.

The challenge of relative motivation ultimately resides in the reality that human rights is one of several competing factors in foreign policy assessments, and it rarely takes primacy in that competition. From the cases above, the best path to mitigate that challenge is to avoid creating an all-or-nothing aid condition or automatic sanctions prescription. If the United States has proportional aid attached to proportional demands, it might provide the political space to adjust to the changing dynamics of relative motivation and maintain the credibility of the coercive episode. The Leahy amendment derives its strength from existing within a coercive strategy where aid is conditioned upon performance metrics. Compellence does not occur without this interaction of pain and cooperation. Thus, the Leahy amendment in its present form might function to restrict aid to units or individuals, but it is unlikely to have a significant impact on coercing another country to bring violators to justice.
6.4 Assessment Caveats

Several assessment caveats bear some consideration. The context of my assessment is the Leahy amendment’s functionality as a coercive strategy. I recognize that the Leahy amendment also serves as an institutional check on human rights practices in military assistance as a “do no harm” principle. In this line of argument, the value of the Leahy amendment is a matter of principle, not utility. My assessment does not attempt to calculate that value. Furthermore, this assessment of its successes/failures does not seek to elevate or diminish this institutional value. Second, on the issue of comparative utility, I recognize that restricting military assistance is a more feasible policy option than fighting a war to enforce human rights behavior. I, however, worked from the assumption that in placing country specific conditions on aid in the context of the Leahy amendment, the Congress created a coercive event and it should be assessed accordingly. Third, on the issue of net assessment, it is valid to consider the relative value or detriment of the Leahy amendment for bilateral relations. This debate occurred before the Leahy amendment’s inception with respect to human rights, and it will continue to exist in the context of competing foreign policy interests. The only impact my research had on this question is to demonstrate that any disagreements over policy positions must not be allowed to send mixed signals to the target state in the coercive episode.
**CHAPTER 7: SUMMARY AND IMPLICATIONS**

Based on the Leahy coercive strategy assessment, this section focuses on process-oriented and expectations-oriented implications along with a brief summary of the paper’s final conclusions. The application of the Leahy amendment with country specific conditions should trigger an interagency effort to develop a viable coercive strategy for the targeted country. Congressional-driven directives do not provide the venue for the full representation of national interests in the strategy formulation. This joint venture between the executive and legislative branches is necessary to translate the law into a viable strategy. All the carrots and sticks must be available even if they are not employed in the episode. Out of this effort, public demands must be consistent and clear, even if specifics are outlined quietly through diplomatic channels. Proportional demands must be tied to proportional aid, as sustainable, credible threats. The process must be reviewed at least annually as an ongoing negotiation for aid. This review must cover a full performance review of the demands, and it must catalog any changes that warrant adjustments in the coercive strategy. The implementation of a national interest waiver should also trigger this annual review process.

Under expectations, policymakers should generally expect minor concessions. From the observable trends, past abuses of human rights are far more difficult to receive concessions on than judicial/military reforms or even present cases of human rights violations. Thus, the coercive strategy must provide the flexibility to account for the lack of justice for past abuses while still allowing the bilateral relationship to move forward. Just as human rights vetting is not perfect and is always contested, compliance will also not be perfect. The coercive strategy should reflect this expectation: partial progress results in partial aid, and significant progress
results in significant aid. By tying conditions to percentages of aid like the Colombia case, policymakers can expect to leverage some influence over the coercive situation.

Recognizing that aid is influence, the presence of rising global powers and more competition over strategic influence will increase the possibility and power of black knights. The coercive strategy must account for this reality, and this estimation should guide policymakers in deciding whether to proceed forward with comprehensive country specific conditions based on Leahy amendment violations, or to simply continue the process of vetting and restricting units/individuals as discrete cases. Policymakers should also expect that more carrots rather than sticks will be needed to make future coercive episodes effective.

In summary, the research from my thesis supports a refinement of the current application process of the Leahy amendment, employing elements of coercive success to achieve maximum pressure. While the results of research did not conclusively demonstrate that the predicted success of the elements corresponds exactly with the actual outcomes, the case studies did offer some concrete evidence that increased use of these elements resulted in increased coercive pressure. Furthermore, the research also reveals that policymakers, in tempering expectations, should design coercive strategies that embrace the bilateral flexibility to allow for graduated levels of success. The current law, if given a strict reading, does not support this flexibility, and it also does not provide rehabilitation criteria or metrics of progress.

This research could also provide a useful template for evaluating future Leahy applications and provides some caution about entering new coercive episodes without the proper elements of a coercive strategy. This aspect is critical as recent civil unrest and security force responses have prompted calls for Leahy restrictions on Bahrain and other countries in the
Middle East. In commenting on automatic sanctions legislation, Daniel Drezner curtly asserts, “Far from being an example of throwing out the steering wheel, Congressional mandates are about as effective as honking the horn.” With respect to the Leahy amendment, applying a theoretically informed coercive strategy would at minimum put the coercive car back into drive.

---

209 Drezner, Daniel W. The Sanctions Paradox 316
APPENDIX A: PERCENTAGE OF TOTAL MILITARY EXPENDITURES

This appendix outlines the procedures for determining how much of a percentage that United States military assistance accounts for in terms of Total Military Expenditures for the target countries. The chart below reflects the actual percentages derived from the data.

Table 10 Percentage of U.S. Military Assistance to Total Military Expenditures

<table>
<thead>
<tr>
<th>Year</th>
<th>Colombia</th>
<th>Indonesia</th>
<th>Nepal</th>
<th>Sri Lanka</th>
<th>Turkey</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>6.6</td>
<td>.1</td>
<td>.32</td>
<td>.07</td>
<td>5.5</td>
</tr>
<tr>
<td>1991</td>
<td>4.6</td>
<td>1.4</td>
<td>.48</td>
<td>.07</td>
<td>7.4</td>
</tr>
<tr>
<td>1992</td>
<td>4.2</td>
<td>.1</td>
<td>.48</td>
<td>.05</td>
<td>4.8</td>
</tr>
<tr>
<td>1993</td>
<td>2.3</td>
<td>0</td>
<td>.41</td>
<td>.09</td>
<td>4.1</td>
</tr>
<tr>
<td>1994</td>
<td>1.3</td>
<td>.0006</td>
<td>.26</td>
<td>.02</td>
<td>3.5</td>
</tr>
<tr>
<td>1995</td>
<td>1.02</td>
<td>0</td>
<td>.25</td>
<td>.009</td>
<td>2.9</td>
</tr>
<tr>
<td>1996</td>
<td>1.8</td>
<td>.02</td>
<td>.35</td>
<td>.02</td>
<td>3.1</td>
</tr>
<tr>
<td>1997</td>
<td>2.5</td>
<td>.0003</td>
<td>.44</td>
<td>.02</td>
<td>1.2</td>
</tr>
<tr>
<td>1998</td>
<td>3.9</td>
<td>.02</td>
<td>1.9</td>
<td>.02</td>
<td>.04</td>
</tr>
<tr>
<td>1999</td>
<td>10.6</td>
<td>.03</td>
<td>1.2</td>
<td>.65</td>
<td>.09</td>
</tr>
<tr>
<td>2000</td>
<td>26.8</td>
<td>.03</td>
<td>.33</td>
<td>.02</td>
<td>.02</td>
</tr>
<tr>
<td>2001</td>
<td>5.6</td>
<td>.34</td>
<td>.97</td>
<td>.03</td>
<td>.01</td>
</tr>
<tr>
<td>2002</td>
<td>11.1</td>
<td>.49</td>
<td>12.3</td>
<td>.03</td>
<td>.42</td>
</tr>
<tr>
<td>2003</td>
<td>12</td>
<td>.03</td>
<td>2.7</td>
<td>.78</td>
<td>.13</td>
</tr>
<tr>
<td>2004</td>
<td>13.2</td>
<td>.16</td>
<td>2.9</td>
<td>.43</td>
<td>.27</td>
</tr>
<tr>
<td>2005</td>
<td>13.4</td>
<td>.35</td>
<td>2.4</td>
<td>1.09</td>
<td>.26</td>
</tr>
<tr>
<td>2006</td>
<td>18.9</td>
<td>.38</td>
<td>.5</td>
<td>.36</td>
<td>.11</td>
</tr>
<tr>
<td>2007</td>
<td>6.2</td>
<td>.33</td>
<td>1.07</td>
<td>.17</td>
<td>.13</td>
</tr>
<tr>
<td>2008</td>
<td>7.2</td>
<td>.47</td>
<td>.47</td>
<td>.18</td>
<td>.07</td>
</tr>
<tr>
<td>2009</td>
<td>6.1</td>
<td>.63</td>
<td>2.5</td>
<td>.98</td>
<td>.03</td>
</tr>
</tbody>
</table>

Data for Total Military Expenditures is taken from Stockholm Institute Peace Research Institute databank. Data for US security assistance comes from the United States Agency for International Development’s Greenbook. USAID Greenbook data included four categories: 1) Narcotics Control (INCLE) 2) NonProliferation, Antiterrorism, Demining, and Related (NADR)

3) Department of Defense Security Assistance 4) Military Assistance, Total. I chose to include INCLE and NADR because Plan Colombia accounts for a large percentage of military assistance in Colombia, and these areas are covered by the Leahy amendment. The percentages serve as a good approximation of the carrot/stick for each target country. It is only an estimate because some military assistance remains classified, and other DOD programs are available to provide assistance. In order to maintain consistency across the countries, these programs are not included in the percentage above, but the individual statistics are included in the analysis of each case.

BIBLIOGRAPHY


*Crimes Against Humanity: When Will Indonesia’s Military Be Held Accountable for Deliberate and Systematic Abuses in West Papua? Before U.S House of Representatives Committee on Foreign Affairs. 111th Cong.* (HRG-2010-FOA-0051; Date: September 22, 2010). Text from: ProQuest® Congressional Digital Research Collection (statement of Robert Scher, Deputy Assistant Secretary of Defense for South and Southeast Asia, Asian and Pacific Security Affairs)


http://www.bits.de/NRANEU/others/strategy/qdr97.pdf

http://www.bits.de/NRANEU/others/strategy/qdr01.pdf

http://www.bits.de/NRANEU/others/strategy/QDR20060206.pdf

http://www.bits.de/NRANEU/others/strategy/QDR_as_of_26JAN10_0700.pdf


http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB69/part3.html


http://thomas.loc.gov/home/approp/app01.html

http://thomas.loc.gov/home/approp/app06.html


http://www.jus.uio.no/smr/english/about/programmes/indonesia/activities/military/HR%20and%20mil%3A%20Current%20activities

http://www.jus.uio.no/smr/english/about/programmes/indonesia/ accessed


http://thomas.loc.gov/home/approp/app09.html

http://www.timesonline.co.uk/tol/news/world/asia/article6207487.ece

http://yaleglobal.yale.edu/content/end-game-sri-lanka

*Political Crises in South Asia: Pakistan, Bangladesh, Sri Lanka, and Nepal: Hearing Before the U.S House of Representatives Committee of Foreign Affairs.* 110th Cong. (HRG-2007-FOA-0134; Date: August 1, 2007). Text from: ProQuest® Congressional Digital Research Collection (statement by the Honorable Gary L. Ackerman, Chairman, Subcommittee on the Middle East and South Asia)

http://federalregister.gov/a/00-22209


Rudy, John and Ivan Eland. “Special Operations Military Training Abroad and Its Dangers.”  


*Southeast Asia after 9/11: Regional Trends and U.S. Interests, Hearing Before the U.S House of Representatives Committee on International Relations,* 107th Cong. (HRG-2001-HIR-0056; Date: December 12, 2001) Text from: ProQuest® Congressional Digital Research
Collection (statement of Donald K. Emmerson, Ph.D., Senior Fellow, Asia/Pacific Research Center, Stanford University)


Stockholm International Peace Research Institute Arms Transfer Database. *Import Trend Indicator Value Table Colombia* (accessed on April 1, 2011) http://armstrade.sipri.org/armstrade/html/export_values.php

Stockholm International Peace Research Institute Arms Transfer Database. *Import Trend Indicator Value Table Indonesia* accessed on April 1, 2011 http://armstrade.sipri.org/armstrade/html/export_values.php


Stockholm International Peace Research Institute Arms Transfer Database. *Import Trend Indicator Value Table Turkey* accessed on April 1, 2011 http://armstrade.sipri.org/armstrade/html/export_values.php


