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## VIOLENT REPRESSION IN BURMA: HUMAN RIGHTS AND THE GLOBAL RESPONSE

Rudy Guyon†

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† J.D. 1992, UCLA School of Law. The author wishes to dedicate this article to the people of Burma, and to thank Gene Chao and Human Rights Watch for the inspiration to undertake this project.

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## INTRODUCTION

The country of Burma, renamed Myanmar<sup>1</sup> by the present mil-

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1. Under the 1947 constitution, "Burma" is the official name of the country for international usage. After the coup in 1988, the military junta in control changed the name to Myanmar. Myanmar is a contraction of the name "Myanmar naing-ngan," which in the Burmese language means "nation of the swift and strong people," and which is the name the Burmese people call their land. "Myanmar" standing alone is an adjective. U Kyaw Min, *Brutality in Burma*, L.A. TIMES, Feb. 25, 1992, at B6.

While people should be allowed to call their own country whatever name they wish, and though the name "Burma" does have its origins in the country's colonial past, this article chooses to refer to the country as "Burma" and does not adopt the name "Myanmar" out of deference to the viewpoint that to do so lends legitimacy to a military junta whose thuggery and innumerable violations of human rights law continue to bring suffering to all the peoples of Burma. The name "Burma" is used out of solidarity with the forces of democracy and the victims inside Burma.

Some might argue that the government of Burma has the sovereign right to determine its own name. Yet while statehood carries with it certain rights, it should also carry obligations. Gross, innumerable violations of its citizens' human rights are testimony that the government of Burma flaunts its obligations under the U.N. Charter and other sources of international law. See *infra* Section III, Violations of International

itary dictatorship, stands today as one of the world's truly sad cases of systemic human rights violations. In 1988 peaceful demonstrations of up to a million people threatened to bring an end to nearly thirty years of military dictatorship. These nationwide protests were met with a series of massacres by security forces that left thousands dead and many thousands more imprisoned and tortured. The State Law and Order Restoration Council (SLORC), a military junta, emerged from the tumultuous events and, in an effort to gain some measure of legitimacy, promised a transfer of power to a civilian government through eventual elections.

An overwhelming eighty percent of the electorate voted for the opposition National League for Democracy (NLD) despite martial law restrictions on campaigning and organizing, harassment of opposition candidates, and the refusal to allow key opposition political leaders to run for office. SLORC refused to abide by these election results and has attempted to crush all opposition to its rule. The continued imprisonment of Nobel Peace Prize winner Aung San Suu Kyi and other political activists and continuing reports of egregious human rights violations<sup>2</sup> have brought about widespread international condemnation, particularly from the West. Yet, through the complicity of some nations which remain blind to the situation inside Burma, the regime retains power and has even profited on the desires of other countries to extract Burma's rich mineral resources and to sell arms.

Against that background, this article proceeds in four parts. Section I recounts the recent history of the democracy movement in Burma and the dictatorship's attempts to crush the movement with brutal tactics. Section II presents a brief record of human rights abuses by the government to communicate to the reader the severity of repression in Burma. Section III examines Burma's international legal commitments and determines that the regime is in direct violation of the U. N. Charter, several other treaties, many non-derogable principles of international law, and the right to self-determination under customary international law. Section IV examines the global response by nations and international organizations and notes that while many countries condemn SLORC's conduct and have levied sanctions, other nations continue to provide aid or trade opportunities, in particular China and Thailand. The international response has failed to live up to the spirit of the U.N. Charter, which requires that nations act together to promote human rights.

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Law. This article will refer to Burma rather than Myanmar as a principled decision to avoid legitimizing the SLORC government.

2. Violations include the mass displacement of over 200,000 Muslim refugees, the forced relocation of 500,000 Burmese, torture, gang rape, forced labor, and mass murder. See *infra* notes 79-116 and accompanying text.

## I. SLORC AND THE REPRESSION OF THE DEMOCRACY MOVEMENT

### A. Burma: A Troubled History

With a population of forty million people, Burma shed its colonial status and gained independence from Great Britain in 1947. Originally a parliamentary democracy, Burma's multi-ethnic state<sup>3</sup> faced severe problems from the very beginning. The ethnic Burman majority and several ethnic minority states could not agree on boundaries within Burma. Dissatisfied over inequalities in the new constitution, ethnic groups armed themselves to defend against the Burman majority, while the Communist Party of Burma prepared for revolution. The assassination of Prime Minister-elect Aung San on the eve of his taking office denied Burma the one leader who held the trust of all its ethnic groups.<sup>4</sup>

Fewer than three months after independence, Burma was torn by civil war between its various ethnic states. General Ne Win took command of the Burmese army and reorganized it so that ethnic Burmans dominated all units. Within a very short time, Ne Win's army regained control over central Burma and most of the occupied minority areas, earning in the process "a reputation for brutality and lawlessness."<sup>5</sup>

The next several years brought some economic and political progress, as amnesty programs offered by the struggling democratic government helped to ease tensions between ethnic groups. In 1958, however, the ruling government party split, threatening a return of civil war. Prime Minister U Nu was forced to resign in favor of a caretaker government led by Ne Win and the army. Hopes that the interim government would ensure political stability in Burma were not borne out.

Democratic elections were held in 1960 and U Nu, elected again as Prime Minister, organized a "federal seminar" to bring all hostile ethnic and political factions together to find a lasting solution. These efforts were rendered moot when General Ne Win engineered a coup d'etat on March 2, 1962 and replaced the democratically elected government with a revolutionary council under his personal rule.<sup>6</sup> Ne Win since that time has held power,

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3. Burma is home to many distinct ethnic minorities. The British adopted a federal structure of ethnic states during the colonial period, where minority peoples such as the Arakanese, Chin, Kachin, Shan, Kaya, and Karen all had their own states within greater Burma. The largest number of states within Burma are dominated by ethnic Burmans. Ne Win, Aung San, and Aung San Suu Kyi are all Burman.

4. Josef Silverstein, *Civil War and Rebellion in Burma*, 21 J. OF SOUTHEAST ASIAN STUD. 114-16 (1990).

5. *Id.* at 117.

6. *Id.* at 117-18.

ruling by dictatorial decree.<sup>7</sup>

Rule under Ne Win has reduced Burma to abject poverty. One of the richest countries in Asia and a net exporter of oil and rice at the time of the 1962 coup,<sup>8</sup> by 1987 Burma was forced to seek status with the U.N. as a Least Developed Country (LDC) in order to receive badly needed debt-relief.<sup>9</sup> By 1988, Ne Win was forced to admit that twenty-six years of his economic program, the "Burmese Way to Socialism," had ruined the country's economy.

The government has allowed almost no political freedom; a one-party state<sup>10</sup> was established, making the Burma Socialist Program Party (BSPP) the sole legal party from 1962 through the events of 1988. With Ne Win at its apex, the military-dominated BSPP espoused an antforeign and vaguely socialist program. The BSPP formally held power over all national and local decision-making inside Burma. Hierarchically structured, the party was unable to respond to Burma's needs, yet unwilling to cede any of its power through 1988.<sup>11</sup>

The BSPP fared no better in attempts to unify the country. Ethnic relations between the many peoples inside Burma remain fragmented and violent. Ne Win and the military have neither been able to defeat the rebellious ethnic armies nor to peacably unify the diverse peoples of Burma. Having fought for 40 years against perceived domination by the Burman ethnic majority and its army,<sup>12</sup> ethnic minority insurgents still control some of the jungles and undeveloped areas of Burma. The Kachins, Shans, Karens, Naga,

7. BERTIL LINTNER, *OUTRAGE* 172 (1990). Ne Win himself may not make all decisions inside Burma, but he has handpicked all military and political leaders since his coup in 1962. These persons must ask themselves before making a decision whether or not Ne Win will approve of their actions. In this way, Ne Win exercises a powerful unifying force over the military. Ne Win's very existence was instrumental in holding the military together during September 1988. *Id.*

In describing the totality of Ne Win's control over his subordinates, former U.S. Ambassador to Burma Burton Levin has remarked: "These people . . . were selected by Ne Win because they represented absolutely no threat to him. They were and are his lapdogs." See Erskine McCullough, *Terror and Torture Continues Under Secret Rule of Ne Win*, Agence France Presse, Sept. 17, 1991, available in LEXIS, Asiapc Library, Allasi File.

8. Jonathan Friedland & Bertil Lintner, *A Policy of Pillage*, FAR E. ECON. REV., Aug. 8, 1991, at 56.

9. LINTNER, *supra* note 7, at 66.

10. DAVID STEINBERG, *THE FUTURE OF BURMA: CRISIS AND CHOICE IN MYANMAR* 11-31 (1990).

11. *Id.* Illegal opposition parties sprang up during the events of 1988. Other political parties were not legalized until after SLORC's coup. The BSPP changed its name to the National Unity Party in 1988. *Id.*

12. Two-thirds of the population of the country is ethnic Burman, the rest divided among many ethnic groups. The government has not enjoyed the trust of these groups since the time of Aung San. Bertil Lintner, *Return to the Delta*, FAR E. ECON. REV., Nov. 14, 1991, at 26.

Arakanese, Wa, Mon, and several other ethnic groups have small armies numbering from the hundreds to the several thousands, which operate in outlying rugged areas in south, east and north Burma.<sup>13</sup> The continued insurgencies are fueled by soldiers' abuse of the ethnic populations and the lack of government services provided to the outlying areas of the country.

In short, since independence, Burma has ruined its own economy, suppressed all political dissent, and remained embroiled in civil unrest. It has centralized authority and almost totally isolated itself from the outside world. Until 1987, Ne Win exercised firm control, broken only by uprisings in 1962 and 1974.<sup>14</sup> By 1987-1988, corrupt rule and mismanagement had caught up with the military government and driven the Burmese people to the breaking point.

### B. The Pro-Democracy Rebellion and the Coup to Restore Military Control

Antigovernment protests erupted in September 1987 over the government's demonetization of the three highest denominations of the *kyat*, Burma's currency. The decision to demonetize came on the heels of an earlier government decision to allow free trade in agricultural products, a policy which had encouraged people to withdraw their funds from state banks and hold their savings in currency. Sparing only those savings held in banks, demonetization thus wiped out most of the population's wealth: sixty to eighty percent of Burma's money in circulation became worthless overnight. This ludicrous economic policy gave rise to the first demonstrations against the government since 1976.<sup>15</sup> SLORC responded to the student-led protests by closing schools and universities for one month.

Tensions simmered until March 1988, when a seemingly minor incident sparked a direct confrontation between the government and student groups protesting military rule.<sup>16</sup> During a fight over

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13. For an account of some rebel armies and their struggles against the Burmese army, see BERTIL LINTNER, *LAND OF JADE: A JOURNEY THROUGH INSURGENT BURMA*, (1990) [hereinafter LINTNER, *LAND OF JADE*]. Until 1989, there was a communist movement in the Golden Triangle in eastern Burma, but the party disintegrated and ethnic insurgency replaced ideological struggle.

14. MARTIN SMITH, *BURMA: INSURGENCY AND THE POLITICS OF ETHNICITY 4* (1992).

15. LINTNER, *supra* note 7, at 67-68. This policy had a particularly traumatic impact upon students, who suddenly found themselves during final examinations with no way to pay for food or rent. Bertil Lintner, Speech at the Burma Forum (Mar. 7, 1992).

16. For depictions of the events of 1988, see generally LINTNER, *supra* note 7; STEINBERG, *supra* note 10; Silverstein, *supra* note 4; Bertil Lintner, *Aung San Suu Kyi and Burma's Unfinished Renaissance* (Monash University Working Paper No. 64, 1990) [hereinafter *Renaissance*]; Maureen Aung-Thwin, *Burmese Days*, FOREIGN AFF. 143, Spring 1989, available in LEXIS, Asiatic Library, Allasi File.

music in a teashop, the son of a minor government official stabbed a Rangoon (*Yangon*)<sup>17</sup> student.<sup>18</sup> The military tried to cover up the killing, but the infuriated students, already fed up with years of oppressive rule and economic malaise, took to the streets in protest. In a swift and brutal display of force, the government dispatched special units of riot police who ambushed the demonstrators, killing hundreds and arresting thousands.<sup>19</sup>

Despite these attempts by the government to quash dissent, the movement continued to grow, expanding far beyond its student base. Five months after the March massacre, Ne Win officially "resigned" his state and party positions. The party's Central Executive Committee then threw down a direct challenge to the students by arranging for General Sein Lwin to serve as President and party chairman. Lwin, known among the students as the "Butcher of Rangoon" for his leadership of the Army during the March killings, declared martial law on August 3. Protesters called for a nationwide general strike on August 8; that week brought massive peaceful demonstrations across Burma, met in turn by an unprecedented show of force. Troops sprayed indiscriminate machine gun fire, killing people in their homes. Soldiers attacked the staff at General Hospital, where many of the wounded were brought for treatment.<sup>20</sup> The number of dead and wounded reached well into the thousands, yet the protests continued and, after only eighteen days, Sein Lwin was forced to resign.

Ne Win next tried to halt the protests by installing a civilian, Dr. Maung Maung, as head of the government. Maung Maung lifted martial law and the troops withdrew from Rangoon, but the demonstrations and strikes continued. Social order in Burma began to deteriorate. Military leaders aided the descent toward anarchy in order to justify re-establishing law and order, using government agents to engage in a campaign of sabotage against the opposition.<sup>21</sup> Anger at government agents led to public lynchings and behead-

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17. Rangoon is the anglicized pronunciation of the Burmese *Yangon*, the capital of Burma.

18. *Renaissance*, *supra* note 16, at 17.

19. These elite riot units, known as the *Lon Htein*, came mostly from Burma's lower socioeconomic strata, and thus tended to be highly resentful of the students, whom they viewed as unfairly privileged. Not surprisingly, the *Lon Htein* were particularly brutal in dispensing riot control; students were indiscriminately beaten, raped and killed. In one instance, 41 students were left to suffocate in a police van, an incident that came to light only months later, after repeated government attempts at cover-up. See STEINBERG, *supra* note 10, at 26-27; Silverstein, *supra* note 4, at 123.

20. Silverstein, *supra* note 4, at 125. Estimates as to the number of dead vary—one expert places the figure at some 3,000 over a period of five days. See STEINBERG, *supra* note 10, at 29.

21. See LINTNER, *supra* note 7, at 120-24.



ings. Both the public and the military looted and pillaged in Rangoon.

Daily demonstrations of hundreds of thousands of people trooped through Rangoon.<sup>22</sup> Speaker platforms were set up before the American embassy. Private journalism came to life after thirty years of state control. On September 15, crowds almost overran the headquarters of the Ministry of Defense, and troops threatened to fire on the crowds. One leader of the democratic movement, ex-Brigadier General Aung Gyi, persuaded the crowd to trust the army and refrain from open revolt.<sup>23</sup> Over the next few days, the small Burmese navy and air force threw their support to the demonstrators. Finally, even army units began to slip away, posing a direct threat to the continued dictatorship of Ne Win and his cohorts.<sup>24</sup>

On September 18, 1988, state-controlled radio announced that a military junta, the State Law and Order Restoration Council (SLORC), had seized governmental control of Burma and abrogated the constitution.<sup>25</sup> This coup was a facade; Ne Win maintained control of government and press from behind the scenes.<sup>26</sup> That night, the troops were sent back into Rangoon. Over the next two days, heavily armed soldiers in Rangoon and other cities fired on crowds, executing any person in sight, yet again massacring unarmed civilians by the thousands.<sup>27</sup> Most of the dead were school children, monks and other unarmed demonstrators.<sup>28</sup> Government atrocities reportedly included the cremation of demonstrators who had been shot but were still alive, their screams heard coming from

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22. Burton Levin, Speech at the Burma Forum (Mar. 7, 1992). Levin served as U.S. Ambassador to Burma from 1987 to 1990.

23. Aung Gyi receives considerable blame inside Burma for his role in this missed opportunity. STEINBERG, *supra* note 10, at 31.

24. Levin, *supra* note 22.

25. STEINBERG, *supra* note 10, at 31-34. SLORC was composed of 19 senior military men, all loyal to Ne Win. *Id.*

26. Ne Win reappeared at a prominent public function in Spring 1989, confirming for most people that he was still the controlling personality behind SLORC. See LINTNER, *supra* note 7, at 172. Burma watchers speculate that members of SLORC are waiting for Ne Win to die; Ne Win is 82, and recently suffered a severe stroke. Clare Hollingworth, *Whispering as Rangoon Buys Arms*, INT'L. HERALD TRIB., Dec. 6, 1991, available in LEXIS, Asiapc Library, Allasi File [hereinafter Hollingworth, *Whispering*]; Clare Hollingworth, *Drugs Finance Arms Build-Up by Burmese*, DAILY TELEGRAPH, Dec. 1, 1991, at 17 [hereinafter Hollingworth, *Drugs*]. A power struggle will likely begin at his death. One likely successor to Ne Win is Major General Khin Nyunt, the head of military intelligence who presides over the terror apparatus in Burma. David Brunnstrom, *Burma Generals Said to Plan Long Rule*, Feb. 10, 1992, Reuters, available in LEXIS, Asiapc Library, Allasi File.

27. *Statement by Amnesty International*, U.N. ESCOR, Subcommission on Prevention of Discrimination and Protection of Minorities, 40th Sess., 21st mtg. at 12, U.N. Doc. E/CN.4/Sub. 2/1988/SR.21 (1988) (Kircher) [hereinafter *Statement by Amnesty*].

28. LINTNER, *supra* note 7, at 137.

the crematorium.<sup>29</sup> Moreover, the government's withdrawal of troops in August effectively fooled many leading antigovernment activists into believing real change was imminent. These activists then surfaced, enabling troops to hunt them down.<sup>30</sup> In this manner, the democracy movement was forcibly halted.<sup>31</sup>

The dead in Rangoon for 1988 easily surpassed the number killed at Tiananmen Square in China in June of the next year. The world-wide lack of attention towards Rangoon in 1988 contrasts sharply with the media interest that followed Tiananmen.

### C. Post-Coup Elections and Political Repression

Having decisively reestablished military control over the rebellious population, SLORC surprised observers by agreeing to hold democratic, multiparty elections, as had been promised by Maung Maung's short-lived government. SLORC initially encouraged the people to develop political parties, with the apparent hope of dividing the democracy movement into dozens of small, ineffectual parties.<sup>32</sup> Here SLORC miscalculated; several prominent leaders emerged, in particular Aung San Suu Kyi.

Aung San Suu Kyi had joined the struggle shortly after the resignation of General Sein Lwin in August 1988. Her first speech, given to 500,000 pro-democracy demonstrators, displayed many of the characteristics that had made her father, Aung San, revered by all of Burma's ethnic groups as the father of independence.<sup>33</sup> Within an incredibly short period Suu Kyi emerged as the leading voice for the democracy movement. She advocated a message of nonviolence, unity, and discipline. The democracy movement unified behind her party, the National League for Democracy (NLD), which grew to two million members.

SLORC soon banned public gatherings of five or more people,<sup>34</sup> but Aung San Suu Kyi and others continued to campaign for democracy before large crowds. SLORC intensified harassment of Suu Kyi's campaign; in April she was almost shot.<sup>35</sup> All non-gov-

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29. *Id.* at 134.

30. *See id.* at 138-41.

31. *Renaissance*, *supra* note 16, at 20.

32. Levin, *supra* note 22.

33. "To many Burmese, [Aung San Suu Kyi] appears as a reincarnation of her father [who] is destined to carry out his unfinished work of leading Burma into the modern world." Josef Silverstein, *Aung San Suu Kyi — Is She Burma's Woman of Destiny?*, 30 *ASIAN SURVEY* 1007, 1018 (1990).

34. *Renaissance*, *supra* note 16, at 3.

35. In towns where Suu Kyi spoke the military warned people to stay inside, and erected barbed wire fences to prevent rallies. In April, soldiers aimed their rifles at her as she led a group of marchers. She directed the followers to the sides of the streets and continued forward. A major overruled a captain and prevented a shooting (the captain was reportedly later promoted). *Id.* at 21-22.

ernmental publications were banned that same month. Suu Kyi in response escalated her criticism of Ne Win, blaming him for Burma's economic and political demise, and asserting that no change was possible until Ne Win died. She planned a July march to commemorate her father's assassination. In response, SLORC decreed that only an officially sponsored government ceremony would be allowed and any marchers not part of the official commemoration would be imprisoned or executed. The government then reinforced the already heavy military presence in Rangoon with ten thousand additional troops, forcing Aung San Suu Kyi to call off the march to avoid certain bloodshed.

In July 1989, SLORC arrested Aung San Suu Kyi for "up to one year," along with NLD chairman Tin U and thousands of other NLD and other opposition party activists. As a precursor to the elections, SLORC mounted a propaganda campaign to smear the NLD as a communist pawn manipulated by foreigners. In February 1990, the government denied Aung San Suu Kyi and two other top NLD leaders permission to run in the upcoming elections on the pretext that they had contacted dissident groups fighting the government.<sup>36</sup>

The elections were held as promised on May 27, 1990. SLORC's National Unity Party garnered only three percent of the vote, while a massive turnout of voters gave the NLD eighty percent of the seats in the new parliament,<sup>37</sup> 392 seats of the 485 up for election in the 492 seat assembly. The elections themselves were open and fair, suggesting that SLORC wrongly believed it had intimidated and discredited the NLD.

Stung by the NLD victory, SLORC ignored the results, arrested most of the newly elected legislators and forced those left free to disavow Aung San Suu Kyi's leadership.<sup>38</sup> Thousands of pro-democracy activists were forced to flee Burma, to languish in malarial jungle camps along the Burmese-Thai Border.<sup>39</sup> Others sought refuge in Bangkok slums to avoid extradition. To control future mass demonstrations, SLORC built footbridges throughout Rangoon for use as strategic perches from which soldiers could fire

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36. Silverstein, *supra* note 33, at 1015.

37. Observers generally assume that Aung San Suu Kyi would have won had she been allowed to run. *Id.*

38. Takashi Oka, *Crusader for Democracy*, CHRISTIAN SCI. MONITOR, Dec. 10, 1991, at 13.

39. *Burma: Time for Sanctions*, NEWS FROM ASIA WATCH (Asia Watch, Wash., D.C.), Feb. 15, 1991, at 4. Dr. Sein Win, chairman of the opposition National Party for Democracy (an NLD affiliate), escaped with other NLD-elected representatives to insurgent-controlled areas at the Burmese-Thai border and formed a government in exile. The emergence of this opposition link to insurgents has been the pretext for yet more arrests of dissidents in Burma. Barbara Crossette, *Burmese Opposition Leader Warns of Arms Buildup by Dictatorship*, N.Y. TIMES, Nov. 19, 1991, at A10.

down upon crowds.<sup>40</sup>

SLORC has attempted to deflect international criticism of its reign of terror by promising to turn the government over to the elected leaders upon drafting of a new constitution.<sup>41</sup> Ominously, a SLORC member recently told his audience, "We cannot say for how long we will be in charge of the state administration. It might be five years or ten."<sup>42</sup>

#### D. Legalizing Repression

SLORC has promulgated multiple laws designed to keep the democracy movement from resurfacing.<sup>43</sup> SLORC tries to justify human rights abuses by citing the need to uphold these laws.<sup>44</sup> A law against "moral turpitude" provides a catch-all for SLORC to snare dissidents for almost any activity.<sup>45</sup> SLORC established military tribunals with jurisdiction over political offenses and martial-law regulations.<sup>46</sup> The 1975 State Protection Law was amended to allow a prisoner to be held without trial for up to five years, effectively extending the legal time for holding Aung San Suu Kyi and others like her.<sup>47</sup>

SLORC heavily regulates speech. Fifteen thousand public servants have been fired or disciplined for crimes of thought and word against SLORC.<sup>48</sup> Antigovernment or antimilitary comments result in fines or imprisonment.<sup>49</sup> Assemblies and speeches are only

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40. *Burma (Myanmar): Worsening Repression*, NEWS FROM ASIA WATCH (Asia Watch, Wash., D.C.), Mar. 11, 1990, at 4 [hereinafter *Worsening Repression*].

41. Bertil Lintner, *Bans and Bribes*, FAR E. ECON. REV., Feb. 21, 1991, at 13.

42. Richard Ehrlich, *Burma: No End of SLORC Nor Signs of Overt Opposition*, Inter Press Service, Nov. 7, 1991, available in LEXIS, Asiapc Library, Allasi File. One report suggests that SLORC is attempting to increase civilian involvement in the military government. SLORC may be trying to end its international isolation by overtly creating a new government with weak NLD civilians, who will bear the facade of democracy while fulfilling SLORC's dictated policies. See Yuli Ismartono, *Burma: New Cabinet Means Junta Intends to Hold on to Power*, Inter Press Service, Jan. 31, 1992, available in LEXIS, Asiapc Library, Allasi File.

43. See HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 1990, 259-61 (1991) [hereinafter *WORLD REPORT 1990*]. For example, citizens of Burma may not associate in public in groups greater than four and must report overnight travel beyond their own townships to military authorities. *Id.*

44. *Renaissance*, *supra* note 16, at 26.

45. The law's vague, sweeping provisions allow arrest and imprisonment for merely advocating the peaceful transfer of power. Many have been detained for activities such as putting up pictures of national heroes, flying the NLD flag at the same height as the official flag of Burma, and using minority languages in school exams. *Myanmar: Hundreds More Arrested in Campaign to Destroy Opposition*, Inter Press Service, Dec. 10, 1991, available in LEXIS, Asiapc Library, Allasi File [hereinafter *Hundreds More Arrested*].

46. *WORLD REPORT 1990*, *supra* note 43, at 260.

47. *Hundreds More Arrested*, *supra* note 45.

48. *Worsening Repression*, *supra* note 40, at 3.

49. *Id.*

allowed with government permission and political parties are banned from freely publishing and distributing documents.<sup>50</sup> Many political parties have recently been banned.<sup>51</sup>

SLORC continues to target and persecute leaders of the democratic opposition. Aung San Suu Kyi has been under house arrest since July 1989, without any contact with the outside world. Her husband, a British academic, and her two children have not seen her for over two years.<sup>52</sup> Her children have been stripped of their Burmese citizenship. She has been publicly slandered and vilified by SLORC.<sup>53</sup> In 1991, Suu Kyi received the 1991 Nobel Peace Prize for her nonviolent leadership of the democracy movement in Burma and for courage displayed over nearly three years of confinement; SLORC refused to allow her to travel to Norway to collect her prize unless she agreed to permanent exile<sup>54</sup> and forbid her to comment publicly on the award.<sup>55</sup> SLORC has made it a crime to speak publicly about her achievements.<sup>56</sup> Under SLORC pressure, Aung San Suu Kyi's political party labeled her a communist and expelled her.<sup>57</sup>

SLORC's actions have failed to squelch her popularity. SLORC was unable to jam foreign radio broadcasts,<sup>58</sup> and the news of her Nobel Peace Prize has given a major psychological boost to the Burmese people.<sup>59</sup> Despite the virtual certainty of arrest, in November 1991 defiant protesters marched to express their pride in Aung San Suu Kyi's award. Forty to fifty people were arrested. One month later, nine hundred persons were arrested in anti-SLORC protests marking the December 1991 Nobel award cere-

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50. Aung San Suu Kyi noted the irony that while political parties were legal in Burma, the laws effectively prohibited them from doing anything political. Silverstein, *supra* note 33, at 1013.

51. Lintner, *supra* note 41. See also *SLORC Abolishes Nine More Political Parties*, BBC, Mar. 13, 1992, available in LEXIS, Asiapc Library, Allasi File.

52. Josh Getlin, *Prisoners of Politics*, L.A. TIMES, Dec. 5, 1991, at E1.

53. *Id.* Among the slurs, SLORC has accused Aung San Suu Kyi of "diluting the purity of ethnic Burman blood by marrying a foreigner, and engaging in unnatural sex acts." *Id.*

54. Her oldest son accepted his mother's prize in the name of all the people of Burma. Andrew Quinn, *Detentions, Bloodshed Stain Asia's 1991 Human Rights Record*, Reuters, Dec. 11, 1991, available in LEXIS, Asiapc Library, Allasi File.

55. *Son Gets Peace prize for Detained Suu Kyi*, L.A. TIMES, Dec. 11, 1991, at A4. The Nobel committee postponed the traditional Peace Lecture until she is able to give the speech in person. *Id.*

56. Getlin, *supra* note 52.

57. David Sanger, *Burmese Dissidents Say 900 Were Arrested in Crackdown*, N.Y. TIMES, Dec. 19, 1991, at A5.

58. The Burmese also learned that Suu Kyi chose to stay under arrest and continue to fight for democracy, rather than flee into permanent exile. Hollingworth, *Whispering*, *supra* note 26.

59. *Burmese Demonstrate to Support Nobel Peace Prize Winner*, UPI, Dec. 10, 1991, available in LEXIS, Asiapc Library, Allasi File.

mony.<sup>60</sup> Universities which had just been reopened were again closed indefinitely as a result of these demonstrations, the first major protests by the opposition in Burma since Aung San Suu Kyi's arrest.<sup>61</sup>

### E. A Country Rife with Poverty, Drugs, and War

Already impoverished, Burma has seen its economy plummet even further since SLORC's coup. The absolute size of the economy is in decline.<sup>62</sup> Burma is now the ninth poorest country in the world.<sup>63</sup> Burma depends on foreign aid to finance imports and its external debt, high and rising, needs to be rescheduled. In the hope of gaining the foreign hard currency necessary to stave off bankruptcy, SLORC announced in 1990 a number of economic policy changes to encourage both foreign investment and private sector activity. These policy changes have not improved the economy and have been criticized as nothing more than empty slogans.<sup>64</sup> Real salaries of Burmese citizens have decreased. Inflation in the first five months of 1991 was 60%. The currency, the *kyat*, is greatly overvalued.<sup>65</sup> Manufacturing is almost nonexistent. The economy remains predominantly agricultural with a poor infrastructure, extensive black market activity, and heavy public sector control. The military consumes up to half of all government spending.<sup>66</sup> Capital investment is confined to the extraction of natural resources. The government suffers from a shortage of bureaucratic talent.<sup>67</sup>

With Burma's economy in these straits, SLORC has come to rely upon sales of natural resources<sup>68</sup> and the drug trade to generate income. SLORC's involvement<sup>69</sup> with the multibillion dollar her-

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60. Sanger, *supra* note 57.

61. *Burmese Junta Closes Universities After Demonstration*, Agence France Presse, Dec. 11, 1991, available in LEXIS, Asiapc Library, Allasi File.

62. See *Burma Commercial Activities Report '90*, NATIONAL TRADE DATA BANK MARKET REPORTS, June 11, 1991, available in LEXIS, Asiapc Library, Allasi File [hereinafter *Activities Report*].

63. Roger Matthews, *Cash-starved Regime Courts an Ecological Disaster*, FINANCIAL TIMES, available in LEXIS, Asiapc Library, Allasi File.

64. Hollingworth, *Drugs*, *supra* note 26.

65. See *Activities Report*, *supra* note 62.

66. See Crossette, *supra* note 39.

67. SLORC cannot attract skilled workers, has had to arrest many of them, and has no ability to educate new ones due to the necessity of keeping the universities idle to prevent another democratic uprising. Lintner, *supra* note 8.

68. See *infra* notes 113-16 and accompanying text; Matthews, *supra* note 63.

69. The U.S. State Department claims to have no hard evidence of SLORC's involvement in the heroin trade. Eric Sandberg, Statement at The Burma Forum, March 7, 1992. Sandberg currently serves as Country Officer in Thailand for the U.S. State Department. However, journalist Bertil Lintner has uncovered much circumstantial evidence that indicates SLORC is deeply involved, which he presented at a conference in Huntington Beach, California on March 7, 1992: According to Lintner, heroin traffic on the Burma road must and does pass through the gates between Burma and Kokhang,

oin trade<sup>70</sup> stemming from the Golden Triangle<sup>71</sup> enables SLORC to strengthen its grip on power in several ways. First, the army obtains sizable profits,<sup>72</sup> which enable SLORC to purchase massive quantities of arms from China and other countries.<sup>73</sup> Second, by agreement, the private armies that control the drug trade promised to use their weapons only against ethnic insurgent groups that are engaging SLORC in civil war, and not to sell arms to these groups.<sup>74</sup> In exchange, SLORC allows traffickers to openly trans-

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China, and only the Northeast Commander of the Burmese Army can sign to allow passage through these gates. Additionally, Lintner claims that the Burmese Army has escorted drug shipments directly to the military intelligence unit in Mandalay.

Photographs were presented by Lintner which showed SLORC member and head of military intelligence Khin Nyunt together with Lo Sing Han, the most powerful drug trafficker in the Golden Triangle. Another official Burmese government photo showed Drug Enforcement Agency (DEA) agent Bruce Hunt together with Lo Sing Han. Several photographs showed Burmese army officers together with drug traffickers.

Lintner has concluded that four Major Generals, including Khin Nyunt's right-hand man Major General Myo Than, are in charge of drug involvement and antidrug propaganda; Major General Chit Swein, who also works for Khin Nyunt, is in charge of collecting logging and drug concession fees for the Northeast sector of Burma. Lintner, *supra* note 15.

Recently, propaganda efforts have been stepped up to convince the U.S. DEA and others that SLORC is not involved and sincerely wants to stop the trade. SLORC recently burned a sizable quantity of heroin before U.S. DEA agents. Chit Tun, *Burmese Trumpet Anti-Narcotics Operations*, UPI, Feb. 4, 1992, available in LEXIS, Asiapc Library, Allasi File.

Lintner charged that in fact SLORC had purchased from farmers the opium that was burned. On other occasions, U.N. observers were taken to see the destruction of poppy fields, which were useless for any purpose other than propaganda, since the plants had been grown at low altitudes and were incapable of producing high-quality opium. Lintner, *supra* note 15.

70. Lintner, *supra* note 15 (describing the heroin trade as one of the biggest and most important industries in the world, comparable in size to GM, IBM or Toyota).

71. The Golden Triangle received its name because gold bars were bartered in exchange for heroin in a small town located precisely where the three countries of Burma, Thailand and Laos meet. *Id.*

72. *Id.* Until recently, SLORC laundered its drug profits through BCCI, the only foreign bank in Southern China, which borders the Golden Triangle. BCCI maintained an office in Kunming, the top city for drug activity in this region. Deposits of drug profits would then be sent to BCCI Singapore. Lintner discovered that SLORC made a payment last year to the Bank of China for US \$400 million through BCCI Singapore. At the time of the payment, SLORC had only US \$320 million on deposit; after the payment, SLORC still had US \$320 million on deposit. In a country as poor as Burma, the only possible source of the US \$400 million could be heroin profits. *Id.*

73. See Bertil Lintner, *The New Dealer*, FAR E. ECON. REV., June 28, 1990, at 22. Recent arms purchases from China total US\$ 1.4 billion worth of primarily heavy weaponry, including tanks, planes, and artillery. *Id.*

74. Lintner, *supra* note 15. The Golden Triangle was formerly under control of the Communist Party of Burma (CPB). With Chinese aid, the CPB amassed 20 warehouses full of weaponry, enough to conduct a guerrilla war for 10 to 20 years. The CPB split in 1987, leaving four ethnic-based armies in control of these weapons. The government of Ne Win sent representatives to these groups to make a deal: the groups promised not to share these weapons with other ethnic insurgents and would not fight against the Army of Burma; in exchange, Ne Win ceded control of the Golden Triangle area to these

port shipments of opium and heroin. Third, SLORC allows heroin to be sold to students in Rangoon and other cities, effectively disabling a large number of potential activists.<sup>75</sup> The number of addicts in Burma has surged to 200,000-300,000.

SLORC has escalated attacks against ethnic minority strongholds throughout the country in an attempt to solidify its control over all Burmese territory.<sup>76</sup> SLORC has increased the size of its army from 200,000 to 300,000.<sup>77</sup> With its new weapons and expanded army, SLORC has achieved considerable success in its attempts to extinguish the numerous insurgencies and regain control of territory, particularly in Karen areas in the South and Kachin areas in the Northeast. SLORC's military offensive seeks not only the obvious gain of defeating the enemies of the regime; SLORC also hopes to build domestic support by identifying these enemies rather than itself as the true source of Burma's problems. SLORC tactics against ethnic insurgents duplicate those used against its own predominantly Burman democratic opposition: murder, dislocation, torture, and rape.<sup>78</sup>

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Over the last forty years, poverty and political oppression have grown to numbing levels under Ne Win's military rule. The country and its peoples are fragmented, dispirited, war-torn, and brutalized into submission. It is now over two years since the elections, and very little has changed, save that the jails and the morgues have grown more crowded. In the absence of concerted international economic and diplomatic sanctions, there seems little cause for hope that the government will halt its repression or allow the demo-

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groups and promised not to interfere with their drug activities. SLORC member Khin Nyunt was instrumental in completing this deal. Since 1989 drug traffickers have had uninterrupted access to more efficient government transportation routes. *Id.*

75. *Id.* Lintner related the details of a student's essay smuggled out of Burma, entitled "Rangoon-City of Heroin." The author explained that while anyone handing out political leaflets at Rangoon University is arrested within five minutes, heroin can be purchased in every tea shop. Lintner argues that this would be impossible unless the government sought to make heroin available to "poison" the students. The students of Rangoon have nicknamed heroin "Freedom from Fear," the title of a long essay written by Aung San Suu Kyi. Her essay, available in American bookstores, sought to convey hope to the people of Burma to sustain the struggle against the military dictatorship. Today in Burma many students apparently find a stoned heroin stupor to be their only refuge from despair. *Id.*

76. *See, e.g.,* Anis Ahmed, *Burma Refugees See Little Chance of Going Home*, Reuters, Mar. 1, 1992, available in LEXIS, Asiapc Library, Allasi File; Victor Mallet, *Asia Greets Burma Human Rights Abuses with Deafening Silence*, FINANCIAL TIMES, Feb. 25, 1992, available in LEXIS, Asiapc Library, Allasi File; *Burmese Recount Tales of Terror at Hands of Troops*, WASH. POST, Feb. 16, 1992, available in LEXIS, Asiapc Library, Allasi File [hereinafter *Burmese Recount Tales of Terror*].

77. Brunnstrom, *supra* note 26.

78. *See infra* Section II.



cratically elected civilian government to succeed it.<sup>79</sup>

## II. HUMAN RIGHTS VIOLATIONS IN BURMA

Violations of the most fundamental international human rights are daily threats to Burmese citizens. The following description of human rights abuses comprises only a brief overview of the reports obtained by journalists, non-governmental human rights organizations, state human rights bodies, and United Nations representatives.

### A. Murder and Summary Execution

—During 1988 the military repeatedly used automatic weapons against protesters. Soldiers killed scores by firing into crowds on March 18, 1988, a day which is now remembered as “Bloody Friday.”<sup>80</sup> During riots on May 9 soldiers killed three students and arrested hundreds of others. Seventy people were killed in Pegu during demonstrations on June 23. From August 8 to 12 the military killed over 3,000 people throughout the country.<sup>81</sup> During the week of September 19, thousands of demonstrators were massacred in the streets or summarily executed after arrest; in Rangoon the government killed up to 3,000 demonstrators in one day.<sup>82</sup>

—On August 8, 1991, on the anniversary of the 1988 uprising, security forces fired on protesters in Mandalay, killing at least four.<sup>83</sup>

—In 1989, two hundred prisoners died on a veritable death march after torture and abuse by soldiers who used the prisoners as porters and minesweepers. Three hundred other prisoners later died of forced labor at a ruby mine.<sup>84</sup>

—The army has executed large numbers of unarmed civilians in the ethnic Karen area and in the Shan state.<sup>85</sup> In January and

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79. Commentator Martin Smith summed up the dilemma: “The terrible irony is that while the world is waking up to what is happening in Burma, the ability of the democratic movement to take advantage of the situation is very much reduced.” Brunnstrom, *supra* note 26.

80. LINTNER, *supra* note 7, at 193.

81. STEINBERG, *supra* note 10, at 29.

82. *Statement by Amnesty, supra* note 27.

83. WORLD REPORT 1990, *supra* note 43, at 260.

84. The army took 500 political prisoners and brought them to Northeast Burma, where they were reduced to almost no clothing and were made to carry arms and ammunition for the troops. The prisoners died from exhaustion, heat, and starvation, and the bodies were dumped in a river. Survivors of the death march were taken to a government-owned ruby mine for forced labor. Several sources indicate that all had died by the end of 1990. *Burma: Time for Sanctions, supra* note 39, at 4.

85. *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories, Summary or Arbitrary Executions, Report by the Special Rapporteur,*

February 1992, the military repeatedly bombed the city of Maelata, populated by the Karen minority. At least ten thousand civilians, mostly women and children, have fled into Thailand to escape the continuing fighting.<sup>86</sup>

### B. Systematic Racial Discrimination

—In Burma's forty year war against ethnic insurgents, the army has killed, tortured, or raped a great many minority civilians. Villages are regularly burned or looted in areas where rebel armies are active.<sup>87</sup>

—SLORC tactics in predominantly Muslim Arakan state are decidedly anti-Muslim.<sup>88</sup> Beatings, executions, rape and psychological torture are part of a campaign to rally Burman nationalism. The Rohingya ethnic group is a special target. It is estimated that between 200,000 and 300,000 have fled,<sup>89</sup> at a stream of 5,000 to 7,000 persons per day.<sup>90</sup> While the military crackdown has also been directed at other ethnic groups—indeed, its aim is to “annihilate all insurgent movements”<sup>91</sup>—the plight of the Rohingyas is especially tragic since they must flee to Bangladesh, which is too poor to support them. Nor is this the first time refugees from Burma have burdened Bangladesh; a previous crackdown in 1978 compelled 300,000 Rohingyas to flee there.

—The army has a long-standing practice of impressing ethnic minority villagers for use as porters.<sup>92</sup> Those who resist or fall sick have been shot, beaten, left to die, or sometimes beheaded. In 1989 rebel Karen guerrillas discovered a mass grave of villagers who had apparently been used as porters. A Swiss photographer discovered another such grave containing six bodies, and learned from villagers

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U.N. ESCOR, 45th Sess., Agenda item 12, at 9-10, U.N. Doc. E/CN.4/1989/25 (1989) (S. Amos Wako).

86. Teresa Poole, *Troops Close on Burmese Rebel HQ*, THE INDEPENDENT, Feb. 10, 1992, available in LEXIS, Asiapc Library, Allasi File.

87. See WORLD REPORT 1990, *supra* note 43, at 261. See also *Burmese Recount Tales of Terror*, *supra* note 76.

88. Mark Fineman, *Muslims Flee Brutal Effort to 'Burmanize' Myanmar*, L.A. TIMES, Feb. 15, 1992, at A1.

89. See Michael Richardson, *ASEAN Weighs Moves Against Abuses in Burma*, Reuters, Mar. 30, 1992, available in LEXIS, Asiapc Library, Allasi File; Anis Ahmed, *U.N. Envoy in Dhaka to Visit Burmese Refugees*, Reuters, Mar. 30, 1992, available in LEXIS, Asiapc Library, Allasi File; *Thai Foreign Minister Chides Burma*, Reuters, Mar. 12, 1992, available in LEXIS, Asiapc Library, Allasi File.

90. Sheila Tefft, *Region Protests Burma Crackdown*, CHRISTIAN SCI. MONITOR, Mar. 17, 1992, available in LEXIS, Asiapc Library, Allasi File. For further information on the Rohingya refugees, see also *Dhaka to set up Fund for Burmese Refugees*, Agence France Presse, Feb. 25, 1992, available in LEXIS, Asiapc Library, Allasi File; Mallet, *supra* note 76.

91. Fineman, *supra* note 88, at A9.

92. *Worsening Repression*, *supra* note 40, at 6. The U.S. State Department has confirmed the pervasiveness of this practice. *Id.*

that such practice is widespread. Urban Burmans, especially dissidents, have also been forced into portering.

—The state-run press regularly mocks Aung San Suu Kyi for diluting pure Burmese blood by marrying a foreigner. Media outlets urge people to eat, dress, and think like pure Burmans.<sup>93</sup>

—Minorities are underrepresented in government and largely excluded from military leadership. Government sponsored economic development does not reach minority areas.<sup>94</sup>

### C. Forced Dislocations

—SLORC has forcibly evicted *more than half a million* city dwellers from their homes, without notice or compensation, in retaliation for supporting the democratic opposition. These people were moved to old rice paddies and fields, which flood during the rainy season and become infested with malaria.<sup>95</sup> The result is that many in Burma are ill and facing starvation.<sup>96</sup>

—One account states that ninety percent of the 200,000 to 300,000 Rohingyas who fled from Arakan state were forcibly evicted and robbed of everything they had because they lacked valid proof of their identities.<sup>97</sup>

### D. Prolonged Arbitrary Detention

—Thousands of protesters were arrested and jailed throughout 1988. Experts conservatively put the number of prisoners still being held for peaceful opposition to SLORC at 3,000, but suggest that 30,000 is a high-end possibility. A new detention camp to house political prisoners has been built near the Tibetan border.<sup>98</sup>

—Amnesty International has identified 200 persons arrested in the first seven months of 1991 for opposition political activities.<sup>99</sup> Amnesty International also charged that forty persons have each been sentenced to twenty-five years imprisonment after blatantly unfair trials for high treason.<sup>100</sup> More than 100 National League for Democracy (NLD) members elected to parliament in May 1990

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93. Bertil Lintner, *Diversionary Tactics*, FAR E. ECON. REV., Aug. 29, 1991, at 26.

94. See U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1990, 823-32 (1991) [hereinafter DEP'T OF STATE REPORT 1990].

95. See *Burma Criticized for Human Rights Abuses*, Reuters, Dec. 10, 1991, available in LEXIS, Asiapc Library, Allasi File.

96. See *Zaw Oo, Coercing the SLORC*, FAR E. ECON. REV., Sept. 12, 1991, at 23.

97. See *Moslem Refugees from Burma Want Democracy Before Going Home*, Reuters, Nov. 29, 1991, available in LEXIS, Asiapc Library, Allasi File.

98. See *WORLD REPORT 1990*, supra note 43, at 260.

99. See Alexander Nicoll, *Burma Steps up Restrictions on Freedom*, FINANCIAL TIMES, Dec. 10, 1991, at 4.

100. *Hundreds More Arrested*, supra note 45.

have been detained, are in exile, or have disappeared.<sup>101</sup> Amnesty International has specifically identified 1,500 political prisoners jailed since 1988.<sup>102</sup>

—NLD politicians and members and dissident Buddhist monks are the primary targets of arrests.<sup>103</sup> Roughly 500 NLD party officials are believed to be detained.<sup>104</sup>

### E. Torture of Prisoners

—Torture of political prisoners is routine. Methods employed include beatings, electric shock, immersion in water, sleep deprivation, peeling skin off prisoners' shins with bamboo, and rubbing salt or curry powder into knife wounds. Shortly after their release in 1990, two political prisoners died from torture-inflicted injuries. It is believed that a senior NLD official, U Maung Ko, was beaten to death—his body bore clear marks of torture.<sup>105</sup>

—Some of the 900 students arrested in Rangoon for protesting against SLORC after the awarding of Aung San Suu Kyi's Nobel prize have been tortured; at least one has died.<sup>106</sup>

—Torture is widely employed by the military in its operations in ethnic minority areas and is one of the many abuses that impressed porters regularly suffer.

### F. Rape

—Jailers allegedly raped female students arrested for having taken part in pro-democracy demonstrations in Rangoon.<sup>107</sup>

—An Amnesty International report charged the army with widespread rape of women in ethnic minority areas.<sup>108</sup> In Shwegyin township, a large group of Burmese soldiers gang-raped the women of the village after publicly executing a man. The soldiers found the women and children hiding in a nearby trench. They ordered the women out of the trench, then back in one at a time. Not one was spared gang-rape.<sup>109</sup>

—Karen refugees have related horrifying accounts of women forced into portering by the Burmese army. An ethnic Burman woman reported that she was impressed into portering, forced to carry four 81mm mortar rounds and repeatedly raped, as were the other

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101. Nicoll, *supra* note 99, at 4; *Hundreds More Arrested*, *supra* note 45.

102. Nicoll, *supra* note 99.

103. See WORLD REPORT 1990, *supra* note 43, at 260.

104. *Burma: Time for Sanctions*, *supra* note 39, at 3.

105. WORLD REPORT 1990, *supra* note 43, at 260.

106. Sanger, *supra* note 57, at A5.

107. LINTNER, *supra* note 7, at 193.

108. *Id.* at 194.

109. *Burmese Recount Tales of Terror*, *supra* note 76.

female porters. A Karen girl explained that "any young woman who has been a porter for long will surely end up pregnant. It makes me very afraid to think about this, but I think [this is] right."<sup>110</sup>

### G. Portering

—The army regularly abducts civilians, particularly ethnic minorities, to carry ammunition and supplies. Those porters who try to escape are often executed. One captured soldier told of five porters who had been executed or left to die. Porters are forced to walk ahead of soldiers to clear mines; those with "bad luck" die.<sup>111</sup> Porters have been dressed as soldiers and used as decoys to provoke rebel attacks.<sup>112</sup>

—The army so frequently impresses porters that farmers often have insufficient time to tend their fields.<sup>113</sup> Indeed, one farmer was impressed several times for a total of six months out of the last year. One village had shrunk in size from 300 families to 100—there was no longer enough food grown to support the larger population.

### H. Environmental Devastation

—Deforestation is proceeding at an alarming rate.<sup>114</sup> Eighty to one hundred lumber trucks cross into China "unofficially" each night, representing a far greater haulage than the officially acknowledged timber trade with Thailand. Deforestation is part of a military strategy against rebels in the northeast.<sup>115</sup> The denuded land is then often planted with opium poppies.<sup>116</sup> In all, the evidence concerning government mismanagement of resources ominously suggests that Burma will be ecologically and economically devastated if SLORC's policies continue.<sup>117</sup>

## III. VIOLATIONS OF INTERNATIONAL LAW

The government of Burma, like all internationally recognized governments, must respect the human rights of persons under its jurisdiction. Human rights law is established by 1) international agreements, 2) customary international law, and 3) general princi-

110. *Id.*

111. ASIA WATCH, HUMAN RIGHTS IN BURMA(MYANMAR) 45-65 (1990) [hereinafter HUMAN RIGHTS IN BURMA].

112. *Id.* at 34-35; Silverstein, *supra* note 4, at 119.

113. HUMAN RIGHTS IN BURMA, *supra* note 111, at 34-35.

114. Burma contains more than 70% of the world's teak reserves and these will be exhausted in 15 years at the present rate of cutting. Matthews, *supra* note 63.

115. Lintner, *supra* note 8, at 56.

116. Lintner, *supra* note 15.

117. *Burma Criticized for Human Rights Abuses*, *supra* note 95; see LINTNER, *supra* note 7, at 179.

ples of law common to major legal systems of the world.<sup>118</sup>

Burma has ratified and is therefore legally bound to uphold the U.N. Charter and five other human rights treaties.<sup>119</sup> The country has signed two other treaties, and thus has pledged to follow them, though not legally bound to do so.<sup>120</sup> Burma is also subject to the customary international law of human rights and the just conduct of war. Yet Burma flagrantly violates many of these international legal obligations.

## A. International Agreements of Burma

### 1. The U.N. Charter

Article 4 requires a member to accept the obligations contained in the Charter, and to declare formally that it does so. Among the

118. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 701 (1987) [hereinafter RESTATEMENT].

General principles common to all major legal systems are binding international law. *Id.* § 102 rn. 7 (1987). For this reason the rule against torture is international law, since so much law against torture now exists internationally. *See id.* §§ 702d. 701 rn. 1. Another example is the requirement of procedural due process in imposing and executing legal punishments, which seems to be binding in virtually all cultures, though profound differences exist as to the specific meaning of this requirement. Cross-cultural consensuses embrace human rights to life, social order, the family, protection from arbitrary rule, prohibition against humiliating treatment, guarantees of belonging to the community and access to means of subsistence. JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 112-13 (1989). Once a principle is common to all major legal systems, it becomes international law and also supports the creation of customary international law.

This paper will not investigate rules arising as general principles common to all major legal systems because of their complexity and because the other sources provide sufficient rules to condemn the human rights violations by SLORC.

119. U.N. CHARTER. Burma signed and became a member of the U.N. on April 19, 1948. MULTILATERAL TREATIES DEPOSITED WITH THE SECURITY COUNCIL, U.N. 3 (1990) [hereinafter MULTILATERAL TREATIES].

ILO Convention (No.29) Concerning Forced Labour, May 1, 1932, 39 U.N.T.S. 55 [hereinafter ILO Convention (No.29)].

ILO Convention (No.11) Concerning the Rights of Association and Combination of Agricultural Workers, May 11, 1923, 38 U.N.T.S. 153 [hereinafter ILO Convention (No.11)].

ILO Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organize, July 4, 1950, 68 U.N.T.S. 17 [hereinafter ILO Convention (No. 87)].

Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 30, 1949, 78 U.N.T.S. 277 [hereinafter Convention on Genocide].

Protocol Amending the Slavery Convention, Mar. 14, 1956, 182 U.N.T.S. 51 [hereinafter Slavery Protocol].

120. Convention on the Political Rights of Women, July 7, 1954, 193 U.N.T.S. 135 [hereinafter Convention on Women]. Burma signed but did not ratify this convention. MULTILATERAL TREATIES, *supra* note 119, at 613.

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Mar. 14, 1956, 96 U.N.T.S. 271 [hereinafter Convention on Prostitution]. Burma signed but did not ratify this convention. MULTILATERAL TREATIES, *supra* note 119, at 297.

obligations under the U.N. Charter, Burma agreed to "achieve international cooperation . . . promoting and encouraging respect for human rights and fundamental freedoms for all . . . ." (Art. 1), to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion" (Art. 55), and to "take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55" (Art. 56).

The protections for human rights are very broad, so broad as to allow some level of dispute over just what a state is bound to uphold. The U.N. took its most important single step to define the scope of human rights protected under Article 56 when the General Assembly passed the Universal Declaration of Human Rights.

The General Assembly proclaimed that the Universal Declaration was a common standard of achievement for all peoples.<sup>121</sup> That standard, however, does not impose legal obligations in the way a treaty would. On the other hand, later General Assembly resolutions take the view that the Universal Declaration defines human rights and fundamental freedoms, which members of the U.N. are legally bound to respect under the U.N. Charter.<sup>122</sup>

The U.N. has made a wide range of decisions in line with its goal of promoting respect for different human rights.<sup>123</sup> The General Assembly, for example, regards the declaration as an authoritative guide to interpreting the Charter.<sup>124</sup> The General Assembly has made it clear that Article 56 imposes a definite obligation on member states to follow or refrain from certain courses of action for the promotion of respect for human rights. This obligation has been applied to states, such as South Africa, to ensure that their governmental policies are not inconsistent with Article 56.<sup>125</sup>

Virtually all states adhere to the U.N. Charter, and even the few remaining non-member states have acquiesced to charter principles.<sup>126</sup> Burma did not participate in the original vote and has signed neither the Universal Declaration nor the subsequent two covenants that more explicitly delineate human rights. However, SLORC has repeatedly affirmed its obligations under the Charter, as well as under the Universal Declaration.<sup>127</sup>

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121. U.N. Doc. E/800, June 28, 1948.

122. *See, e.g.*, GA Res. 1663 (XVI), Nov. 28, 1961 (apartheid totally inconsistent and in violation of U.N. Charter).

123. LELAND M. GOODRICH, ET AL., CHARTER OF THE UNITED NATIONS 380 (3d ed. 1969).

124. IAN BROWNLIE, BASIC DOCUMENTS ON HUMAN RIGHTS 134 (1981).

125. GOODRICH ET AL., *supra* note 123, at 381-82.

126. RESTATEMENT § 102 cmt. h, *supra* note 118.

127. *See, e.g.*, *Human Rights Being Promoted "Openly and Sincerely,"* BBC, Nov. 11, 1991 (Translation of Broadcast over Burmese Television), available in LEXIS, Asiapc Library, Allasi File; U.N. ESCOR, Hum. Rts. Comm., 45th Sess., 47th mtg. at

If the Universal Declaration is the definitive interpretation of member states' human rights obligations, then it is no exaggeration to argue that SLORC has violated every single obligation. But even if a more cautious interpretation of the U.N. Charter is adopted and Burma is not legally bound by all the rights of the Universal Declaration, SLORC has violated the Charter by its violations of non-derogable principles of international law, as will be discussed below.<sup>128</sup>

## 2. Genocide Treaty<sup>129</sup>

SLORC is bound by the genocide treaty, which prohibits state policies carried out with intent to destroy, in whole or in part, national, ethnic, racial, or religious groups, whether in time of peace or war. The treaty prohibits killing, causing serious bodily or mental harm, and inflicting on a group conditions of life calculated to bring about destruction of the group. SLORC's summary executions of marchers and political opponents, its forced relocations leading to starvation, its general abuse of porters, especially their use as human shields and mine sweepers, all violate the genocide treaty, particularly when directed at the ethnic minorities in Burma.

The Burmese government under Ne Win has not fulfilled its obligation to enact domestic legislation to prevent genocide under Article V. Indeed, Burma gutted the genocide treaty of its international enforcement provisions by refusing to accept international tribunals under Article VI, and by refusing to allow the U.N. to take action under the Charter of the United Nations to prevent genocide in Burma.<sup>130</sup>

## 3. U.N. Slavery Convention<sup>131</sup>

The U.N. Slavery Convention defines slavery as exercising rights of ownership over a person. The slave trade is the economic bartering of these persons. This treaty attacks slavery by prohibiting the economic transactions that sustain slavery. While the economic trade of human beings evidently does not occur in Burma, perhaps it can be said that SLORC violates the spirit of this treaty,

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2, U.N. Doc. E/CN.4/1989/SR.47 at 14 (1989) (Statement of U Aung Thant, Observer for Burma) [hereinafter Statement of U Aung Thant]; U.N. GAOR 3d Comm., 45th Sess., 53d mtg. at 2, U.N. Doc. A/C.3/45/SR.53 (1990) (Reported Statement by U Pe Thein Tin of Myanmar) [hereinafter Statement of U Pe Thein Tin].

128. For a discussion of non-derogable principles or *jus cogens* rules, see *infra* notes 142-47 and accompanying text.

129. Convention on Genocide, *supra* note 119.

130. UNITED NATIONS, HUMAN RIGHTS—STATUS OF INTERNATIONAL INSTRUMENTS 180 (1987).

131. Slavery Protocol, *supra* note 119.



in that the army forces political opponents to do slave labor in mines, and Burmans and ethnic minorities to labor as porters.

#### 4. Labor Convention No. 29<sup>132</sup>

SLORC is in "flagrant violation" of International Labor Organization Convention No. 29.<sup>133</sup> This treaty obliges signatories to "suppress the use of forced or compulsory labor in all its forms within the shortest possible period." "Forced or compulsory labor" is "all work or service which is exacted from any person under the menace of any penalty and . . . [which is not] voluntary." Porterage is specifically outlawed in Article 18 of the Convention. Yet over sixty years after ratifying the treaty, Burma has not complied with its international obligation to abolish forced porterage.

The ill treatment of porters also violates the Convention. Under the Convention, in the interim period before the final abolition of forced labor, ratifying governments are obligated to make sure that workers are physically fit, to set standards defining which persons are able to commandeer forced labor, and to define maximum loads, distances of travel and periods of labor. None of these requirements have been met in Burma. Further, only men aged eighteen to forty-five can be used as forced labor, and then only if no other paid voluntary labor is available. The laborer must be paid and may be forced to work only normal hours. The government of Burma violates this treaty in all these respects.<sup>134</sup>

Porterage has occurred in Burma since British colonial times. Presently, no domestic laws regulate this practice. Army commanders demand that villages meet a porterage quota and threaten or force civilians and children into service. Conscripting this labor prevents villages from farming. The army herds porters as if they were animals, steals from them, tortures or executes those who try to escape, abandons wounded porters on battlefields, and uses porters as minesweepers and decoys.<sup>135</sup> Clearly, Burma violates its obligations under Labor Convention No. 29.

#### 5. Suppression of Prostitution Treaty<sup>136</sup>

Burma signed but did not ratify this treaty. Though not legally bound, Burma does not uphold its pledge to suppress the trade in prostitution. Reports charge SLORC complicity in allowing girls to be sold into prostitution in Thailand.<sup>137</sup>

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132. ILO Convention (No. 29), *supra* note 119.

133. HUMAN RIGHTS IN BURMA, *supra* note 111, at 29-31.

134. *Id.*

135. *Id.* at 41-61.

136. Convention on Prostitution, *supra* note 120.

137. *Burma Troops Disperse Thousands after Nobel Protest*, Reuters, Dec. 10, 1991,

## 6. UN Human Rights Covenants<sup>138</sup>

The government of Burma has signed neither the International Covenant on Economic, Social, and Cultural Rights nor the International Covenant on Civil and Political Rights. Both covenants were adopted by the U.N. General Assembly in December 1966.<sup>139</sup> The covenants were intended to set legal standards and replace the non-binding Universal Declaration of Human Rights.<sup>140</sup>

SLORC has no legal obligation under these covenants except insofar as these treaties are accurate expressions of customary international law.<sup>141</sup> For reasons of time and space it is beyond the scope of this article to determine which provisions of these covenants are binding international legal principles. However, it is safe to say that SLORC's treatment of opposition political parties and political prisoners, and its refusal to recognize the results of the elections which it itself held and supervised, are all entirely incompatible with Article 1 of each covenant. Article 1 guarantees peoples the right to self-determination as to their political status and the right to freely pursue their economic, social and cultural development. It will be argued below that one important principle of customary international law accepted by SLORC is the law expressed in Article 1. The other provisions of these covenants to which SLORC pays no heed are too numerous to address.

### B. Customary International Law of Human Rights

SLORC is in violation of many provisions of customary international law. Customary international law embodies those general and consistent state practices which states follow from a sense of

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*available in* LEXIS, Asiapc Library, Allasi File [hereinafter *Troops Disperse Thousands*].

138. International Covenant on Economic, Social, and Cultural Rights, Jan. 3, 1976, 993 U.N.T.S. 3; International Covenant on Civil and Political Rights, March 23, 1976, 989 U.N.T.S. 176.

139. BROWNIE, *supra* note 124, at 118, 128.

140. *Id.* at 117.

141. Of course, the covenants themselves are evidence of what practices are customary international law. The General Assembly of the United Nations passed these covenants, and they have each been signed by close to 100 countries. While many Asian countries have ratified both covenants, China, Thailand, Laos, Cambodia, Burma, and Bangladesh have ratified neither. The United States and Brazil have ratified neither, nor have several countries in Africa. In the Middle East, Turkey, Saudi Arabia, and the Gulf states including Kuwait have ratified neither. Given this state of affairs, and the lack of a comprehensive Asian regional human rights treaty such as exists for Africa, Europe and the Americas, neither covenant can definitively be said to be customary international law. This is not to say that some provisions of these covenants have not achieved this status, nor that some provisions do not reflect legal principles common to all major legal systems. Indeed, it is argued below that Burma accepts as customary international law the substance within Article 1 of each covenant, the right to self-determination. See *infra* Section II. B.

legal obligation.<sup>142</sup> Some customary international law attains the status of *jus cogens*.<sup>143</sup> This is an important status, as all international entities are bound by *jus cogens* rules.<sup>144</sup> Even when confined to the most conservative standpoint, that of *jus cogens* rules alone, the number and severity of SLORC violations is quite disturbing.

Not all human rights norms are *jus cogens*; however, no state may carry out state policies leading to the practice, encouragement, or condoning of:

genocide;  
 slavery or slave trade;  
 murder or causing the disappearance of individuals;  
 torture or other cruel, inhuman, or degrading treatment or punishment;  
 prolonged arbitrary detention;  
 systematic racial discrimination; or  
 a consistent pattern of gross violations of internationally recognized human rights.<sup>145</sup>

Additionally, the conduct of the army in Burma is governed by Common Article 3 of the Geneva Conventions, the provisions of which the International Committee of the Red Cross has held to be *jus cogens*.<sup>146</sup> This Article requires States to treat all non-combatants humanely, and to this end prohibits violence and torture, hostage-taking, humiliating and degrading treatment, sentencing and summary execution without judgment from a regularly constituted court, and failure to care for the sick and wounded.

Burma is also bound to follow rules of humanitarian law established by the International Court of Justice in its decision of June 27, 1986.<sup>147</sup> Moreover, norms that create "international crimes" and obligate all states to proceed against violations are sometimes considered to be *jus cogens*.<sup>148</sup>

142. RESTATEMENT § 102 (2), *supra* note 118.

143. *Id.* § 102 cmt. k. *Jus Cogens* are peremptory norms of international law. No derogation is permitted from such principles. These prevail in any conflict of international law or agreements. U.N. Charter provisions preventing aggressive use of force against another state are accepted to be such principles.

144. Burma's Representative to the U.N., in a statement to the U.N. Human Rights Commission, expressed the view that Burma recognized some principles of law to be "non-derogable," or *jus cogens*. See U.N. GAOR 3d Comm., 45th Sess., 53d mtg. at 2, U.N. Doc. A/C.3/44/SR.58 (1989) (Reported Statement of U Kyaw Min of Myanmar) [hereinafter Statement of U Kyaw Min].

145. RESTATEMENT § 702 cmt. n, *supra* note 118.

146. HUMAN RIGHTS IN BURMA, *supra* note 111, at 29 (citations omitted).

147. U.N. ESCOR Hum. Rts. Comm., Sub-Commission on Prevention of Discrimination and Protection of Minorities, 42d Sess., 21st mtg. at 6, U.N. Doc. E/CN.4/Sub.2/1990/SR.21 (1990) (Statement of Mrs. Parker of International Educational Development) [hereinafter Statement of Parker].

148. RESTATEMENT § 102 rn. 6, *supra* note 118. Such norms might include rules prohibiting genocide, the slave trade, apartheid, other gross violations of human rights, and attacks on diplomats. *Id.*

Extending beyond the *jus cogens* norms, a consistent pattern of gross violations of internationally recognized human rights is an established violation of customary international law.<sup>149</sup> All the human rights in the Universal Declaration and in the principal covenants are internationally recognized. Violations of fundamental rights are gross by definition. States which consistently abridge any human right as a matter of government policy violate customary international law.

The consistent pattern of gross violations by the SLORC military government violates Burma's international obligations established by customary international law. Arbitrary detention of political prisoners such as Aung San Suu Kyi, routinely practiced torture, commonplace murders and disappearances, forced relocations of populations and disruptions to farming caused by forced portering (both of which could lead to massive starvation and thus verge on genocide), systematic racial discrimination practiced by the government against the Rohingyas and other minorities, and the treatment of civilians and porters in the insurgent wars all brand SLORC as a rogue violator of customary international law.

Statements by representatives of SLORC suggest that many other provisions of customary international law should be binding upon SLORC.<sup>150</sup> According to the Restatement:

In determining whether a rule has become international law, substantial weight is accorded to pronouncements by states that undertake to state a rule of international law, when such pronouncements are not seriously challenged by other states.<sup>151</sup>

This is because such a statement shows *opinio juris*, the intent to be bound by international law.

The arbitrary detention and continued house arrest of Aung San Suu Kyi and SLORC's refusal to transfer power to victorious NLD candidates are violations of customary international law in respect to the right to self-determination as expressed in Article 1 of the two principle human rights covenants. Statements by SLORC concerning adherence to human rights laws in general, and the right to self-determination of its people in particular, would lead the observer to think that the right to self-determination as expressed in the covenants had been accepted by SLORC as a rule of customary international law:

1. SLORC has affirmed its "genuine respect" for human rights as expressed by the U.N. Charter and the Universal Declaration, and for the work of the U.N. Human Rights Commission

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149. *Id.* § 702.

150. See *infra* notes 151-57 and accompanying text.

151. RESTATEMENT § 103(2)(d), *supra* note 118.

Representatives.<sup>152</sup>

2. SLORC has assured the world that torture and arbitrary extra-judicial executions never occur because of the country's fully developed judiciary system and appeals procedures.<sup>153</sup>
3. SLORC has repeatedly promised to hold orderly, free, and fair general elections.<sup>154</sup>
4. SLORC has affirmed its adherence to non-derogable human rights principles, at the same time defending the arrest of Aung San Suu Kyi and U Tin U, reasoning that these leaders were undemocratic and a threat to democracy.<sup>155</sup>
5. SLORC has issued reports of progress towards democracy to hold off criticism of its abuses of the political system.<sup>156</sup>
6. SLORC has stated it would develop a democracy and a market economy in accord with Burmese traditions.<sup>157</sup>

152. Burma has been protecting human rights by adhering to and working in accordance with the aims and fundamental principles of the U.N. Charter and within the guidelines of the Universal Declaration of Human Rights. It has accepted the visit and permitted inquiries by the independent experts appointed by the U.N. Human Rights Commission.

*Human rights Being Promoted "Openly and Sincerely", supra note 127.*

[Burma has] no quarrel with the principle of genuine respect for human rights, within the general guidelines set by the Charter of the United Nations and the Universal Declaration of Human Rights. However, when the Commission interpreted the provisions of those documents to suit its own needs and applied them selectively and unfairly, it risked damaging the prestige and effectiveness of the Organization [the United Nations], whose noble purposes and objectives it claimed to support and serve.

U Aung Thant, U.N. Doc. E/CN.4/1989/SR.47 *supra* note 127 at 14.

153. Statement of U Kyaw Min, *supra* note 144.

154. See, e.g., Statement of U Aung Thant, *supra* note 127, at 12; U.N. ESCOR Hum. Rts. Comm., 46th Sess., 42d mtg. at 2, U.N. Doc. E/CN.4/1990/SR.42 at 1 (Statement of Mr. Win, observer for Myanmar, promising to hold democratic elections on 27 May 1990) [hereinafter Statement of Win].

155. Democracy could flourish only where law and order prevailed, and Myanmar is sparing no effort to make sure that it did. . . . [F]reedom without discipline was merely licence and undisciplined democracy meant anarchy. [Therefore] restrictions had been placed on [Tin U and Aung San Suu Kyi,] for violating the law by inciting people to commit acts of violence and to defy State authority.

These restrictions were the very mildest ones provided under the law, and together with the continuation of the curfew and martial law in certain areas of the country, were temporary measures and did not derogate from any non-derogable principles. [All] political parties . . . were free to participate in the election and to campaign within the law, and restrictions on political campaigning would be further relaxed as the election date drew near.

U Kyaw Min, U.N. Doc. A/C.3/44/SR.58, *supra* note 144.

156. [S]ubstantial progress has been made toward replacing a single party system with a multi-party system. The country's highest lawmaking body decided to hold elections. Conduct and oversight by an independent commission will be conducted to ensure free and fair elections. Foreign missions and news media would be allowed to observe the elections to assure themselves that Myanmar was fully capable of undertaking its national responsibility to keep it free and fair.

*Id.*

157. SLORC has claimed it would continue to defend public order until a new con-

7. SLORC has repeatedly averred that it will turn over power to the democratically elected government once a constitution is drafted.<sup>158</sup>

Thus, SLORC's stated positions show the *opinio juris* quality for a broad range of principles, such as those in the Universal Declaration. These positions indicate that Burma accepts the content of Article 1 of the principal Covenants as customary international law.<sup>159</sup>

The way to reconcile the unceasing stream of eyewitness reports from Burma with SLORC's official statements is to condemn the statements as duplicitous propaganda for international consumption. In this respect, Burma's capacity for self-serving dishonesty rivals that even of China.<sup>160</sup> Nations should easily recognize and condemn Burma's flagrant abuse of human rights in violation of treaty and customary international legal obligations.

### C. SLORC Counter-Arguments

Simply expressed, SLORC counters charges of violations of international law and criticisms of its human rights travesties by variously denying them, rationalizing them, claiming they are purely internal affairs, and arguing that the Western conception of human rights does not apply in an Asian country.

#### 1. Denial of Violations

SLORC has often baldly denied that human rights violations ever occurred.<sup>161</sup> Such denials should be seen as disinformation.

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stitution could be created. The representatives elected would be convened for this purpose. Democratic progress is continuing steadily and systematically. Burma would construct a democratic society and a market economy, "guided by their history, culture, and national circumstances." Burma would "reject any attempt to impose upon them a particular constitutional or political approach." U.N. ESCOR, Hum. Rts. Comm., Sub-Commission on Prevention of Discrimination and Protection of Minorities, 42d Sess., 17th mtg. at 5, U.N. Doc. E/CN.4/Sub.2/1990/SR.17 at 5. (Statement of U Aung Thant, Observer for Burma) [hereinafter 1990 Statement of U Aung Thant].

158. "The representative reaffirmed once again the assurance given on several occasions by [SLORC] that it would transfer power in due course to a stable government formed in accordance with a new constitution and the rule of law." Statement of U Pe Thein Tin, *supra* note 127.

159. Burma's counter-arguments are considered below. See *infra* notes 160-76 and accompanying text.

160. For an example of actions to this effect in China, see generally Robin Munro, *The Beijing Trials: Secret Judicial Procedures and the Exclusion of Foreign Observers*, 10 UCLA PAC. BASIN L. J. 136 (1991). This article exposes the falsity of the Chinese government's claims that political trials follow official, openly published regulations which conform to international standards. In actuality, when trying political dissidents, the authorities employ a separate set of secret regulations which violate international law. *Id.*

161. SLORC told the U.N. that rumors about imprisonment of returning students were false, that no records existed to establish summary or arbitrary executions in eth-

Although Burma has traditionally been one of the most isolated and secretive countries in the world, the sheer number of abuses makes these crimes impossible to deny. The European Community, United States, Australia, Canada, Sweden, the world press, Japan, refugees in Thailand, journalists who have entered Burma, Amnesty International, Asia Watch, the International Commission of Jurists, the U.N. Commission on Human Rights, the U.N. Subcommission, and many others have all catalogued or condemned the broad range of state-sponsored human rights outrages committed by SLORC. The abuses inflicted upon Aung San Suu Kyi and others in the democratic opposition are irrefutable.

## 2. War and Political Unrest as Justifications for Violations

SLORC has stated that the actions of its troops were within those laws<sup>162</sup> necessitated by the various insurgent wars throughout the country<sup>163</sup> and by the need to quell violence and vandalism in Rangoon and elsewhere.<sup>164</sup> SLORC claimed it had

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nic areas, and that casualty reports concerning the incidents in Rangoon and elsewhere had been exaggerated. *Question of the Violation of Human Rights and Fundamental Freedoms . . . Report of the Special Rapporteur*, U.N. ESCOR, Hum. Rts. Comm., 45th Sess., Agenda Item 12 at 9, U.N. Doc. E/CN.4/1989/25 (1989) [hereinafter *Question of the Violation of Human Rights*].

In a letter, SLORC assured the U.N. that religious minorities receive full respect under the law. *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Report by the Special Rapporteur*, U.N. ESCOR Hum. Rts. Comm., 46th Sess., Provisional Agenda Item 24 at 47, U.N. Doc. E/CN.4/1990/46 (1990).

SLORC's observer claimed that ". . . the malicious and unjustified external pressures derived from arrogant self-righteousness, . . . were oblivious of the real situation and based solely on suspicions and fictitious allegations . . ." 1990 Statement of U Aung Thant, *supra* note 157.

In response to charges of abuses against students, the observer claimed that "returning students from Thailand have been received happily and welcomed." Statement of U Aung Thant, *supra* note 127.

Mr. Win (another observer for Burma) said that some of the statements made by NGOs and Western countries about the situation in Burma were a complete travesty of the truth, and that torture and cruel treatment of prisoners were unknown. Statement of Win, *supra* note 154, at 1.

162. See *Question of the Human Rights of All Persons Subjected to any Form of Detention or Imprisonment, Report by the Special Rapporteur*, U.N. ESCOR, Hum. Rts. Comm., 45th Sess., Provisional Agenda Item 10(a) at 6, U.N. Doc. E/CN.4/1989/15 (1989).

163. The government claims that its soldiers "had acted with utmost restraint," and that the actions were necessary "to prevent vandalism and looting, and to quell general violence." *Question of the Violation of Human Rights, supra* note 161.

164. "Myanmar had the legitimate duty and the right to suppress insurgents as long as they continued to attack the people, Government and State of Myanmar." 1990 Statement of U Aung Thant, *supra* note 157, at 5.

Allegations of abuses are "purely" insurgent rebel sponsored allegations. Statement of Win, *supra* note 154, at 1. See also *Human rights Being Promoted "Openly and Sincerely," supra* note 127.

tried conciliatory gestures, but that unscrupulous elements infiltrated and exploited the situation in [Rangoon]. The Government had been compelled to act to save the country from anarchy; troops used utmost restraint and minimum necessary force to curb and control calculated machinations of the unscrupulous elements.<sup>165</sup>

SLORC's lawmaking power is constrained by whim alone, as there exists no constitution or independent branch of government. The U.S. State Department discounts SLORC's claim of military necessity, as does journalist Bertil Lintner, who traveled through much insurgent territory.<sup>166</sup> According to the State Department, in the last few years there has been no real threat to government control of the heartland of the country; SLORC claims about necessity are thus groundless.<sup>167</sup> SLORC plainly exaggerates the threat posed by the poorly armed rebel insurgencies to justify its recent purchase of US \$1.4 billion worth of heavy weaponry from China.<sup>168</sup>

SLORC no doubt accurately appraised the need to use brutal and illegal force to maintain power in the face of massive opposition by pro-democracy forces that challenged the military government in 1988. But this sort of *realpolitik* cannot make SLORC's tactics legal or justifiable.

### 3. Human Rights as a Purely Internal Affair

Echoing China, SLORC claims that other countries have no business prying into what are wholly internal affairs of the Burmese sovereign state. SLORC states that the U.N. Secretary General has recognized that states have purely domestic interests, and that the U.N. Charter prohibits such interference.<sup>169</sup> Under this logic Burma would consult with the U.N. and other countries, but would

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165. Statement of U Aung Thant, *supra* note 127, at 13.

166. DEP'T OF STATE REPORT 1990, *supra* note 94, at 822; see generally LINTNER, LAND OF JADE, *supra* note 13.

167. DEP'T OF STATE REPORT 1990, *supra* note 94, at 822; see also DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1989, 780 (1990).

168. The army of Burma is incomparably better armed than the rebel groups. Recent arms purchases from China include tanks, planes, and artillery. The army, at 300,000 soldiers, is much larger than all the rebel forces combined. It is an efficient and disciplined fighting force, as it showed in the streets of Rangoon in 1988. Lintner, *supra* note 15; Silverstein, Speech at the Burma Forum (Mar. 7, 1992).

169. "The UN Secretary General said in his 1990-91 report that care must be taken to ensure that the question of human rights does not undermine the sovereign right of a nation or encroach upon its right to administer domestically, or chaos will result. He said no nation accepts attempt to interfere with its internal affairs." "*Human rights Being Promoted "Openly and Sincerely," supra* note 127.

"It could even be misunderstood as interference in the internal affairs of a Member State, which was specifically and unequivocally prohibited under Art. 2 (paragraph 7) of the [U.N.] Charter." Statement of U Aung Thant, *supra* note 127, at 14.



not accept foreign interference under the pretext of human rights.<sup>170</sup>

Yet SLORC's argument that the U.N. recognizes sovereign interests does not exclude human rights as a matter of U.N. and international concern. The U.N. Charter obliges states to uphold human rights. The history behind the creation of the United Nations points to a central purpose: the organization should intervene in the relations between sovereign and citizen to protect a baseline of human rights. In the aftermath of the Holocaust carried out by Nazi Germany, the limitations of the traditional notions of national sovereignty over internal affairs seemed drastically overbroad and dangerous. Germany practiced genocide on its own citizens, completely outside the proscriptions of international law and shielded by the doctrine of internal sovereign power. The creation of the United Nations and the central importance of human rights in the U.N. Charter irreversibly deny the validity of this doctrine, ensuring that states may no longer legitimately claim the sovereign right to trample on the human rights of their own populations.

While the precise scope of human rights is open to debate, nations such as Burma no longer have a sustainable argument when they eschew international concern over state deprivations of human rights. The centrality of human rights to the U.N. and to the many U.N. commissions, committees, resolutions, and the like stands as a testament to the limits of the internal affairs argument. Standards of treatment now comprise an openly appropriate subject of international concern.

Some nations charge hypocrisy when nations with less than perfect human rights records condemn other nations. However, the shortcomings of other states should not rule out protests against another nation's human rights offenses. Refusing to criticize and sanction another government's abuses is surely worse than justifiable criticism from an imperfect standpoint. Most importantly, human rights exist as a common standard of achievement, and criticisms of human rights violations reinforce the centrality and impor-

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170. United Nations Human Rights bodies must strictly respect the principle of non-interference in the internal affairs of Member States and therefore refrain from adopting a position on matters falling within the domestic jurisdiction of a State. Nevertheless, his delegation found it understandable that the Sub-Commission should be interested in [the government response to the democracy movement] in Myanmar.

1990 Statement of U Aung Thant, *supra* note 157.

[Burma is] sorry that some representatives had given credence to unfounded allegations of human rights abuses made by dubious elements while ignoring the real situation in [the] country as reflected in official statements and documents . . . [Burma] reject[s] any interference in matters falling solely within its domestic jurisdiction but would always cooperate and accept constructive advice in promoting human rights, to which it was fully committed.

Statement of U Kyaw Min, *supra* note 144.

tance of these standards. Those states which criticize other states will find their own conduct measured by the same standards upon which they have insisted. Their criticisms of other states will be the lever to enforce their own compliance with human rights norms.

#### 4. Cultural Relativity of Human Rights

SLORC contends that the Asian concept of human rights is different from its Western counterpart<sup>171</sup> and it is therefore unfair to impose the Western hierarchy of individual over community. The argument goes as follows: Human rights manifest themselves differently in different societies and this must be respected. Asian notions of human rights grant equal importance to collective and individual rights, so Asian societies justifiably take measures to preserve their collective rights. This includes the right to protect the stability of both state and culture for the benefit of the people. Unavoidably the rights of the community at times must take precedence over the rights of the individual.<sup>172</sup> Since East and West are completely different, Western human rights ideology should not be forced upon Burma.<sup>173</sup>

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171. "If we were to make an in-depth study, it could be seen that the human rights some Western nations are promoting are only for the privileged and the elite of society and the ruling class. Burma ensures human rights in accordance with our traditions, culture and religion." *Human Rights Being Promoted "Openly and Sincerely, supra* note 127.

172. Collective human rights were equal in importance to individual rights, and it had been in order to defend collective rights and avoid the disintegration of the Union of Myanmar and of national solidarity that the Council had taken over the reins of state power two years earlier.

Restraints placed upon certain individuals were taken in accordance with Myanmar Law section 10b of the 1975 law to safeguard the state against the dangers of subversion. Certain individuals had been restricted to their residences, not because of their political views, but because despite repeated appeals, they had deliberately chosen the path of confrontation with the government and incited the people to violence. Admittedly, restraints had also been placed on a former Prime Minister, but it should be noted that in August 1988 he had attempted to form a parallel government and had refused to dismantle it despite repeated warnings given to him for more than a year.

Legal action against certain members of the executive committee of a political party had been taken under the 1923 Official Secrets Act, for passing on to three western embassies copies of an extremely confidential letter. In all cases the most lenient punishments under the laws have been adopted. In any event, the laws applied equally to all, and respect for human rights must be reconciled with the maintenance of public order. Individual rights must be in conformity with collective rights.

Statement of U Pe Thein Tin, *supra* note 127.

173. Returning to the distinction between individual human rights, which included civil and political rights, and collective human rights, such as economic, social and cultural rights, the right of peoples to self-determination and the right to development, he noted that, as the interpretation of such rights might differ from one country to another, the best way to serve the cause of human rights was to respect others' opinions, to seek common ground and not to exploit human rights issues and electoral

This argument of cultural relativity requires a thorough re-interpretation of the U.N. Charter and other treaties protecting human rights, and calls into question the development of rules of customary international law and the presence of universal rules of human rights in all major legal systems. Clearly, this argument carries far-reaching implications. Although Western notions of human rights are well-established in customary international law, and states can opt out only during the process of its creation and not after,<sup>174</sup> SLORC's argument must be considered, for it calls into question the legitimacy of the entire international human rights scheme.

Burma is not alone in making this argument. Many Asian countries complain that they are prodded to conform to what they contend are essentially Western values and interests.<sup>175</sup> Asian nations exhibiting impressive economic success (e.g. Japan, South Korea, Taiwan, Malaysia, Singapore, and Indonesia) tend to have political systems organized around a dominant party or coalition. Many Asians worry that democratization leads to instability and feel that human rights must bend to this reality.

While cultures should have some leeway in interpreting human rights, the cultural relativism argument is flawed when it attacks the

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processes as a means of interfering in the internal affairs of States. The General Assembly had reaffirmed those principles the previous year in its resolution 44/147. Amid the general climate of change which had brought independence to the peoples of Asia, Africa and elsewhere by freeing them from colonial bondage, SLORC had taken measures which had considerably advanced the transition to the new system: the one party political system had been abolished; the centrally planned economy had been replaced by a market economy; free and fair elections had been held. The government was preparing the groundwork for a constitution acceptable to the entire people and the majority of the 135 national groups. At such a crucial juncture, it could not accept external interference or pressure designed to influence its future, which it placed solely in the hand of the people of Myanmar.

*Id.*

Culture tradition and characteristics in the east are different from those in the west. In fact, they are completely different. East is east and west is west. We cannot force ourselves to find an equation between the two hemispheres when their basic traits as well as cultures and religions are different. This is something those people and major countries who clamour about human rights should understand . . . .

*Human rights Being Promoted "Openly and Sincerely," supra note 127.*

174. RESTATEMENT § 102 cmt. b, *supra* note 118. Customary international law is not binding if a state declares its opposition during the law's creation. Also, if some important states opt out, only those states which participate in the creation of the practice might be bound by "particular customary international law." *Id.*

175. Michael Richardson, *As West Pushes for Democracy, Asia Leans Toward Japan*, INT'L HERALD TRIB., Nov. 9, 1991, available in LEXIS, Asiapc Library, Allasi File. Former President Lee Kwan Yew of Singapore, for example, has stated that within Asian society communitarian values take precedence over those of the individual, and that this suits Asians better than American individualism. *Id.*

legitimacy of human rights in their entirety. The supremacy of Asian communitarian values makes belonging to a culture the sole legitimate value. If one does not belong, one does not have any protection against government malfeasance. But this does not describe Asian cultural values accurately, nor those of other non-Western cultures. Cultures that perceive individual and community as an intersubjective relationship (in contrast to the strong individual/community distinction in the West) do not deny the value of human dignity. All cultures accord some respect to individual human rights, especially when those values are expressed in general terms.<sup>176</sup>

The U.S. Secretary of State put it well:

[The] view that concern for human rights is uniquely a Western preoccupation is a disparagement of Asian cultures that share universal concerns for human dignity, individual welfare, and freedom of thought and expression. Our outrage against the . . . political repression in Burma . . . can be no less than our revulsion at the genocide of the Nazis or totalitarian repression by European or Latin dictators. I will never accept the view that the hopes and aspirations of an individual in Asia should count less than a person elsewhere.<sup>177</sup>

SLORC's argument must be judged in context, and here it fails decidedly. Can we say that it is permissible within Burmese culture for a soldier to force a farmer to clear mine fields, or to force him to carry ammunition until his death? Is it acceptable to jail a politician indefinitely without trial and prevent her from all contact with the outside world? May a government be allowed to hold elections and then refuse to turn over power to the victors, simply because it is in Asia? May it shoot unarmed Asian civilians in the streets for daring to protest such treatment? Are Asian people justifiably prohibited from assembling in groups of over four? May a government legally evict 500,000 of its citizens from their homes and neighbor-

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176. See DONNELLY, *supra* note 118 at ch. 4. Donnelly offers the following as examples of moral aspirations common to nearly all cultures: life, social order, the family, protection from arbitrary rule, prohibition of inhuman and degrading treatment, the guarantee of a place in the life of the community, and access to an equitable share of the means of subsistence. *Id.* at 113.

Although human rights are criticized as a Western invention, the West was the first region to face the problems of the modern nation state and the greatly increased ability to intrude on the individual due to improved technology. While of Western origin and perhaps not the only way to defend the individual against the modern state, the concept of human rights is the positive law which the world has assented to in the U.N. charter for the purpose of protecting human dignity. This concept has brought down governments and been a rallying cry of oppressed peoples the world over, not just in the West. *Id.*

177. *The U.S. and Japan: Global Partners in a Pacific Community*, U.S. Dep't of State, Nov. 18, 1991 (statement of U.S. Secretary of State James Baker III on Nov. 11, 1991 to the Japan Institute for International Affairs), available in LEXIS, Asiapc Library, Allasi File.

hoods and forcibly relocate them to swamps? Taken in its actual context, SLORC's argument is outrageous.

There are degrees of what constitutes human rights in a given society, but even if human rights are deemed different or less developed in Asian cultures, it does not follow that human rights law is altogether invalid. Agreed upon international human rights standards encompass more than just Western values. Therefore, no government ought to be allowed to deny its people those rights established under consent and custom.

#### IV. THE INTERNATIONAL RESPONSE

The international response to SLORC's atrocities has at best been mixed. Many nations have strongly condemned SLORC human rights violations. Rhetoric alone, however, has failed to alleviate the misery in Burma. Sanctions are needed for an effective response; yet many nations continue to do business as usual and have even expanded their economic ties with SLORC. China in particular has steadfastly supported SLORC, and Thailand, Japan, Singapore, ASEAN and other nations have all bolstered SLORC through continued trade. The severity of human rights abuses demands that these nations alter their policies and employ sanctions to coerce SLORC to comply with international law.

##### A. International Measures Taken Against SLORC

The overall level of international outrage directed at SLORC has been high and continues to grow. The U.N. and its agencies regularly publicize Burma's human rights abuses. Many nations have cut ties with Burma in an effort to enforce the government's compliance with international law. Despite these actions, the separate agendas of nations and other actors have frustrated the creation of an effective international response.

##### 1. The Response of the U.N. and the World Bank

In a move both curious and troubling, the United Nations Development Program (UNDP) has announced a new multi-year aid program to Burma amounting to nearly US \$90 million.<sup>178</sup> More-

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178. *Burma: Rights Group Calls for Stronger World Response*, Inter Press Service, Feb. 9, 1992, available in LEXIS, Asiapc Library, Allasi File.

Originally, US \$93 million in aid was proposed over five years; this has been reduced to US \$50 million over three years. However, a US \$37 million carry-over from the previous development plan means that the U.N. is still distributing US \$87 million to SLORC. Through this aid, SLORC is able to spend less of its money on necessary humanitarian aid projects within Burma. Moreover, this aid does not benefit many of the truly needy inside Burma; in determining what areas are to benefit from aid projects, SLORC purposely neglects minority regions of the country.

Finally, while U.N. aid ostensibly improves conditions inside Burma through

over, UNDP representatives in Burma have failed to effect any change in SLORC's abuse of human rights,<sup>179</sup> while U.N. "experts" in the Northeast have legitimized SLORC's bogus anti-heroin campaign through their gullibility.<sup>180</sup> In many other areas, however, the U.N. and its commissions have made positive contributions by steadily increasing pressure on SLORC.

Throughout 1990 and 1991, then U.N. Secretary General Perez de Cuellar repeatedly called on SLORC to free Aung San Suu Kyi, a request SLORC refused unless the Nobel laureate agreed to permanent exile.<sup>181</sup> In November 1991, the General Assembly's Social Committee adopted a resolution expressing concern at "information on the grave human rights situation in Burma and stressing the need for rapid improvement." It called on SLORC to "allow all citizens to participate freely in the political process in accordance with the principles of the Universal Declaration of Human Rights." Although this was a fairly mild resolution, it specifically mentioned Aung San Suu Kyi, and was the first one adopted to deal with Burma.<sup>182</sup> The resolution has gone to the General Assembly for endorsement.

The U.N. Commission on Human Rights has also made recommendations to Burma concerning the promotion of human rights. In its report, the Commission encouraged SLORC to assure fundamental freedoms, including freedom of expression, assembly, and association, to enhance prospects for democracy, and urged the regime to implement free and fair democratic elections as early as possible.<sup>183</sup> Commission findings were based on reports by independent experts sent in 1990 and 1991 to investigate human

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projects such as immunization and irrigation, these U.N. millions allow SLORC to spend even more money on weapons. Should a government presiding over a Least Developed Country with no external military threat from any neighboring nation be spending billions of dollars on weaponry? The U.N. should thus discontinue developmental aid until the military dictatorship steps down. See Silverstein, *supra* note 166.

179. U.N.D.P. representatives have a sinecure in Burma, are well-treated by SLORC and have no incentive to question U.N. aid to Burma. Silverstein, *supra* note 168.

180. U.N. experts investigating drug trafficking in Northeast Burma have legitimized SLORC propaganda by ignoring government involvement with drug traffickers. Lintner, *supra* note 15. Lintner presented pictures from Burma's state newspaper, the Working People's Daily. In the pictures, Lintner identified U.N. experts standing together with known drug traffickers at a government-sponsored public relations event where supposedly seized drugs were destroyed. *Id.* See also *supra* note 69.

181. Ehrlich, *supra* note 42.

182. *U.N. Body Expresses Concern at Human Rights Situation in Burma*, Reuters, Nov. 29, 1991, available in LEXIS, Asiapc Library, Allasi File [hereinafter *U.N. Body Expresses Concern*]. Burma's U.N. Representative Kyaw Min said it was inappropriate to pass the resolution while an independent investigator's report was still pending, and was an unacceptable interference in domestic affairs. *Id.*

183. *Report on the 45th Session*, U.N. ESCOR, Hum. Rts. Comm., 45th Sess., at 178, U.N. Doc. E/CN.4/1989/86 (1989).

rights in Burma.<sup>184</sup>

The United Nations High Commissioner for Refugees (UNHCR) has released US \$3 million in emergency relief funds. The UNHCR also appealed for international donors to provide almost US \$30 million to Bangladesh for emergency assistance to Rohingya refugees.<sup>185</sup>

The World Bank official in charge of Asia has castigated SLORC for its human rights record, its excessive military expenditures, and its disregard for the environment.<sup>186</sup> Since SLORC took power, Burma has received no World Bank or International Monetary Fund assistance.

## 2. Protests and Sanctions by U.N. Member States

The countries of Scandinavia, the European Community, the United States, Australia, Canada, and India have ceased all foreign aid to Burma until SLORC transfers power to the elected government. Japan has issued repeated public statements urging the transfer of power and has halted new shipments of aid.

The European Parliament awarded Aung San Suu Kyi their annual Human Rights Prize this January.<sup>187</sup> The Scandinavian nations sponsored the U.N. resolution on Burma, although they had withdrawn the resolution last year because of objections by Singapore, China, Cuba, and Mexico.<sup>188</sup>

Norway gave tacit recognition to Burma's provisional government-in-exile to bolster democratic hopes in Burma and the cause of Aung San Suu Kyi, yet continues to recognize SLORC so long as it controls Burma.<sup>189</sup> Norway has repeatedly condemned SLORC for detaining Aung San Suu Kyi and for its human rights abuses. India has opposed SLORC and the increasing flow of Chinese arms into Burma.<sup>190</sup>

The Canadian government emphasized its deep disturbance over reports of SLORC's systematic human rights violations.<sup>191</sup>

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184. *Independent UNCHR Expert Visits Myanmar Central Jail*, Xinhua General Overseas News Service, Oct. 28, 1991, available in LEXIS, Asiapc Library, Allasi File. The experts were Prof. Yogo Yokota and Prof. Sadako Ogada, both of Japan. *Id.*

185. *U.N. Calls for Emergency Aid to Myanmar Refugees*, Xinhua General Overseas News Service, March 10, 1992, available in LEXIS, Asiapc Library, Allasi File.

186. *Abel Caned*, FAR E. ECON. REV., Oct. 31, 1991, at 9.

187. *Myanmar Urges Detained Opposition Leader to go into Exile*, Kyodo News Service, May 14, 1991, available in LEXIS, Asiapc Library, Allasi File.

188. *Scandinavian Nations Sponsor U.N. Resolution on Myanmar*, Kyodo News Service, Nov. 27, 1991, available in LEXIS, Asiapc Library, Allasi File.

189. *Norway Grants Unprecedented Recognition to Burmese Opposition*, Reuters, Dec. 11 1991, available in LEXIS, Asiapc Library, Allasi File.

190. Andrew Quinn, *Chinese Premier Leaves for India on First Visit in 31 Years*, Reuters, Dec. 11, 1991, available in LEXIS, Asiapc Library, Allasi File.

191. The Canadian government noted that torture and arbitrary arrest had not

Canada also stated that building democratic institutions depended on the protection of human rights and implored SLORC to demonstrate its oft-stated interest in building democratic institutions and human rights protections.

In announcing the release of its annual report, the U.S. State Department termed Burma "one of the real sad cases" in terms of human rights.<sup>192</sup> Though the United States has done much to pressure SLORC, it could do significantly more.<sup>193</sup>

### 3. Non-Governmental Organizations

Non-Governmental Organizations (NGOs) have been important in highlighting Burma's abuses of international human rights law. Amnesty International, The International Fellowship of Reconciliation, the World Conference on Religion and Peace, International Educational Development, and other NGOs have appeared before U.N. commissions and subcommissions to attest to human rights violations in Burma and to urge the transfer of power to the NLD.<sup>194</sup> Nine recipients of the Nobel Peace Prize came together to announce their solidarity with Aung San Suu Kyi and urged sanc-

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abated in the past year, that the detention and arrest of opposition party leaders and actions taken against Buddhist organizations were in blatant disregard of the Universal Declaration of Human Rights, and that SLORC's actions were in defiance of a clear expression of public will. U.N. GAOR 3d Comm. on Social, Humanitarian and Cultural Questions, 45th Sess., 53d mtg., at 7, U.N. Doc. A/C.3/45/SR. 53 (1990) (Statement by Canadian Representative Fortier).

192. Shiro Yoneyama, *Asia Gets Mixed U.S. Reviews on Human rights Records*, Kyodo News Service, Feb 2, 1991, available in LEXIS, Asiapc Library, Allasi File.

193. President George Bush failed to even once discuss human rights concerns in Asia over a Christmas visit to several Asian nations in 1991-92. Bush has refused personal comment on the jailing of Aung San Suu Kyi and other NLD members. Mary McGrory, *Human Rights Not On Bush's Agenda in Asia*, NEWSDAY, Jan. 8, 1992, available in LEXIS, Asiapc Library, Allasi File. The U.S. Government has not barred trade or investment by American companies. It provided 28 helicopters to be used by SLORC against the narcotics trade, but some of these have in fact been used in military campaigns against ethnic minorities. William Brannigan, *Thais Plan to Intern Burmese Students; 1,100 Refugees to Be Held Near Border*, WASH. POST, Feb. 22, 1992, available in LEXIS, Asiapc Library, Allasi File. A U.S. Senate subcommittee recently moved one step closer to diplomatic recognition of SLORC and the sending of an ambassador, which would make the United States the only major country besides Japan and China with ambassadors in Burma. See David Steinberg, *Letters to the Editor, A U.S. Ambassador to Burma*, WASH. POST, Feb. 29, 1992, available in LEXIS, Asiapc Library, Allasi File.

194. See, e.g., U.N. ESCOR Hum. Rts. Comm., Sub-Commission on Prevention of Discrimination and Protection of Minorities, 42d Sess., 21st mtg. at 6, U.N. Doc. E/CN.4/1990/NGO/54 (1990) (Written statement by Amnesty International). The report details political history, SLORC broken promises, martial law, military tribunals, summary execution, extrajudicial execution, forced portering, widespread torture, prolonged arbitrary detention, and calls upon the international community to monitor the situation, in light of last year's expression of concern by the commission; U.N. ESCOR Hum. Rts. Comm., Sub-Commission on Prevention of Discrimination and Protection of Minorities, 42d Sess., 21st mtg. at 6, U.N. Doc., E/CN.4/Sub.2/1990/SR.37 at 3,



tions.<sup>195</sup> Asia Watch has called for sanctions on the timber and resource trade, cancellation of foreign aid, and for the United States and other countries to step up pressure on Thailand and China to halt their support of SLORC. Asia Watch recommended that particularly intense pressure be applied to China to end its arms trade with Burma and that the international community halt transfer of all military hardware and materials, particularly those used in the manufacture of chemical weapons.<sup>196</sup> Finally, the International Commission of Jurists and the Inter-Parliamentary Union, both Geneva-based organizations, decried SLORC's refusal to transfer power to elected parliamentarians.<sup>197</sup> This "Who's Who" of human rights organizations has done much to marshal and crystallize world opinion against SLORC.

However, cutoffs in aid, diplomatic pressure, and international vilification have fallen short of their intended effect in Burma. The Japanese Foreign Ministry suggested that SLORC's failure to allow Aung San Suu Kyi to receive her Nobel Prize shows that the junta has not understood world opinion.<sup>198</sup> This is not as surprising as it may first seem, considering diplomatic and business ties between SLORC and many nations, particularly those nations in Asia.

## B. Foreign Backing of SLORC

Given the present depressed state of Burma's economy, universal trade halts and aid cut-offs would likely push SLORC into compliance with international law.<sup>199</sup> Yet many nations and business

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(1990)(Statement of Mr. Arnold of the World Conference on Religion and Peace); statement of Parker, *supra* note 147, at 6.

195. *Troops Disperse Thousands*, *supra* note 137. The nine also accused SLORC of torture, selling children into prostitution, and involvement in the drug trade. *Id.* The laureates called for economic sanctions and a ban on arm sales. *Nobel Peace Prize Winners Call for Economic Sanctions on Burma*. Reuters, Dec. 9, 1991, available in LEXIS, Asiapc Library, Allasi File. For the complete text of the statement, see *Nobelists Plea for End to Burmese Suffering*, L.A. TIMES, Dec. 10, 1991 at B7.

196. *Burma: Time for Sanctions*, *supra* note 39, at 5.

197. *Burma Criticized for Human Rights Abuses*, *supra* note 95.

198. *Ministry 'Doubts' Myanmar Understands World Opinion*, Kyodo News Service, Dec. 10, 1991, available in LEXIS, Asiapc Library, Allasi File [hereinafter *Ministry 'Doubts' Myanmar*].

199. For example, by 1989 Burma's foreign exchange reserves declined to only US \$8 million. However, SLORC was able to sell off fish and teak concessions and complete deals with many companies. This shored up the economy and provided SLORC with the necessary cash to pay debts and purchase weapons. Economic pressure jointly applied (e.g., nations and national corporations divesting from Burma) might have forced SLORC to step down. AMOCO, UNOCAL, PEPSICO DEAL WITH THE BURMESE MILITARY, (International Burma Campaign, Washington D.C.) 1992.

Without hard foreign currency obtained through aid and trade, SLORC would be unable to pay its international debts. Creditor nations would isolate SLORC as a bad debtor. SLORC would have to rejoin the international economy to purchase necessary consumer goods and weapons on international markets. Unable to make such

entities by their actions condone, accept, and even encourage violations of international law.

## 1. China

The People's Republic of China has found a close comrade in SLORC, one of the few governments in the world with a worse human rights record than its own. After SLORC took control in 1988, Burma and China signed a treaty to open their common border. Since then, Burma has been flooded with inexpensive Chinese goods, an effect of dubious merit for Burma, since the influx has contributed to the collapse of the country's manufacturing sector.<sup>200</sup> China has emerged as Burma's biggest trading partner, with annual trade of U.S. \$1.5 billion, not including the trade in narcotics from the Burmese sector of the Golden Triangle.<sup>201</sup>

The most troubling deal between China and SLORC involves U.S. \$1.4 billion in arms purchases.<sup>202</sup> SLORC purchased Chinese patrol boats, F-7 fighter aircraft, T-63 light tanks, anti-aircraft guns, armored personnel carriers, artillery and small arms. It financed these massive purchases with the sale of drugs, timber, and shrimp.<sup>203</sup>

The Chinese Embassy in Rangoon regularly meets with SLORC officials to provide expertise on diplomacy and propaganda.<sup>204</sup> The Tiananmen massacre and the hostile Western response that followed have provided the Chinese with ample experience to draw from in advising Burma's regime. Vastly increased trade between the two countries has led to Chinese hegemony over the northeastern part of the country.<sup>205</sup> Moreover, the lack of criticism of SLORC by other Asian states has no doubt made it easier for China to develop its relationship with and increase its influence over Burma. The ironic downside for China in its relationship with Burma is the increase in its own drug problem, which has become nation-wide; China may eventually require SLORC's cooperation to halt the drug trade.<sup>206</sup>

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purchases, public disaffection with the regime would increase. Conceivably, SLORC's ability to crush protests would be threatened. For these and other reasons, aid and trade cut-offs should be imposed to push SLORC toward fulfilling its promises to yield to democracy.

200. Bertil Lintner, *Browned Off*, FAR E. ECON. REV., Apr. 11, 1991, at 44, 45.

201. Bertil Lintner, *SLORC Salvation*, FAR E. ECON. REV., Oct. 3, 1991, at 24 [hereinafter *SLORC Salvation*].

202. *Id.* at 25. See also Crossette, *supra* note 39.

203. Hollingworth, *Whispering*, *supra* note 26.

204. *SLORC Salvation*, *supra* note 201.

205. As the health of the North-Eastern economy becomes dependent on the Chinese, Burma loses its ability to make policy independent of Chinese demands.

206. *Political News: Aftermath of Floods, USSR/Foreign Affairs*, COUNTRY REP., Sept. 24, 1991, available in LEXIS, Asiapc Library, Allasi File.

## 2. Thailand

Recent actions by Thailand have also bolstered SLORC rule. The Thai military enjoys close ties with SLORC, relations which have improved following the February 1991 coup in Thailand.<sup>207</sup> The strong position of the military in Thailand probably played a role in Thai General Chaovalit's meeting with SLORC in 1988; shortly afterward, Thailand became the first country to break the international diplomatic boycott of Burma's military junta.<sup>208</sup> The Thai government has allowed Burmese troops to cross into Thailand for attacks on border rebels.<sup>209</sup>

Thailand has become a prime beneficiary of the extraction of the forest and mineral riches of Burma. After the ban on all cutting of Thai timber, following mudslides and the near-disappearance of the Thai forest,<sup>210</sup> the Thai lumber industry purchased rights from SLORC to cut timber in Burma. Currently about thirty Thai logging companies (many owned by Thai military personnel) deal with SLORC, supplying hard currency which in turn enables the regime to buy modern weapons.<sup>211</sup> In 1990, Thailand's Agricultural Minister held talks with SLORC to extend logging contracts and to work on a joint fishing venture. The two governments also agreed to cooperate in joint hydro-electric power projects along their common border, with Thailand possibly footing the entire bill.<sup>212</sup> Next to China, Thailand is the prime beneficiary of the smuggling and consumer trade with Burma.

Between 1988 and February 1991, Thailand forcibly repatriated 5,200 refugees from Burma, most of them students.<sup>213</sup> Another report stated that on five or more occasions, the Thais repatriated at least 2,000 refugees.<sup>214</sup> It is believed that many or all of these people were used either as porters or minesweepers by Burma's security forces during army operations. Prime Minister Anand, installed in the wake of the February 1991 military coup, partially acknowledged that Thailand has deported these refugees.

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207. Crossette, *supra* note 39.

208. HUMAN RIGHTS IN BURMA, *supra* note 111, at 75.

209. *Id.* at 76.

210. Joseph De Rienzo, *Thai Logging Ban Lauded as Giant Environmental Boost*, Reuters, Jan. 11, 1989, available in LEXIS, Asiapc Library, Allasi File.

211. *Thai Minister Leaves for Burma*, Agence France Presse, Nov. 28, 1991, available in LEXIS, Asiapc Library, Allasi File.

212. *International Relationships*, Political Risk Services, Dec. 1 1990, available in LEXIS, Asiapc Library, Allasi File.

213. *The 144A Market Struggles to Mature*, Country Monitoring Service, Feb. 1, 1991, available in LEXIS, Asiapc Library, Allasi File [hereinafter *144A Market*].

214. WORLD REPORT 1990, *supra* note 43, at 261; *News from Burma: Repatriated Burmese Students Face Imprisonment, Torture, Execution; Thai Authorities Believed Responsible for Forced Repatriation*, NEWS FROM ASIA WATCH (Asia Watch, Wash., D.C.), Jan. 20, 1989, at 1-2.

The Thai interior ministry has threatened to expel U.N. staff and other refugee officials who assist Burmese dissidents living in Thailand. There are currently 50,000 Burmese refugees in Thailand.<sup>215</sup>

Thailand lukewarmly termed the imprisonment of Aung San Suu Kyi as "regrettable." Indeed, Prime Minister Anand questioned the wisdom of pressuring the Burma's junta as a strategy to win Aung San Suu Kyi's release,<sup>216</sup> as Thailand is more concerned with close relations with SLORC and the potential problem of terrorist violence by Burmese dissidents.<sup>217</sup>

On the more hopeful side, Aung San Suu Kyi's Nobel Peace Prize has undeniably influenced Thai public opinion. Both *The Nation* and *The Bangkok Post* have carried strongly worded editorials calling on the Thai government and ASEAN to reconsider their present policies toward Burma.<sup>218</sup> Even Prime Minister Anand recently admitted, "I don't like what's happening in Burma."<sup>219</sup> Thai and Burmese troops clashed in March 1992 after Burmese incursions against Karen rebels near the Thai border had grown more successful and perhaps threatening to Thailand.<sup>220</sup>

While recent hostilities may signal a policy shift, the Thai military continues to profit from trade, and the official policy is still one of constructive engagement.<sup>221</sup> Furthermore, the Thais are forcing registration of Burmese student refugees by May, 1992.<sup>222</sup> Those who do not register will be repatriated; those who do will be placed in border camps near Burma.<sup>223</sup>

215. *144A Market*, *supra* note 213.

216. *Anand Calls Amnesty's Criticism 'Partial Truth'*, Kyodo News Service, Dec. 11, 1991, available in LEXIS, Asiapc Library, Allasi File.

217. *144A Market*, *supra* note 213.

218. Bertil Lintner, *Reward for Resistance*, FAR E. ECON REV., Oct. 24, 1991, at 11.

219. Mallet, *supra* note 76.

220. See, e.g., *Burmese Troops Pushed Back Across Thai Border*, Agence France Presse, March 17, 1992, available in LEXIS, Asiapc Library, Allasi File; *Thailand Accuses Burmese Troops of Fresh Intrusions*, Agence France Presse, March 17, 1992, available in LEXIS, Asiapc Library, Allasi File [hereinafter *Thailand Accuses Burmese*]. The Burmese army has made a concerted effort to defeat Karen rebels in 1992; the rebels have lost nine of twelve military bases. In particular, the army has attempted to capture the Karen capital of Manerplaw, which has been under Karen control since three months after Burma's independence from Britain. Manerplaw is protected from attack by mountains, except by approach from the Thai side of the border; hence the Burmese incursions through Thailand. SLORC troops, using their superior numbers and weaponry, have made great gains against the Karen rebels. In the past, the Karen zone has acted as a buffer between the two countries. Now that Burma is building a 300,000 man army, Thailand may no longer wish to make it easy for the Burmese to attack the Karen. This reasoning may underlie the recent border clashes.

221. *Thailand Accuses Burmese*, *supra* note 220.

222. Brannigan, *supra* note 193.

223. *Id.* Students fear their names will be taken and given to SLORC, and reprisals will then be met upon their families. *Id.*

### 3. Singapore

Prime Minister Goh Chok Tong characterizes Singapore's trade with SLORC as a series of bilateral contacts within a relationship of non-interference.<sup>224</sup> Economic relations between the two countries have grown closer.<sup>225</sup> Singapore trades with SLORC for gems, teak, and fish,<sup>226</sup> and has funneled arms into Burma.<sup>227</sup> Immediately following the coup of September 1988, SLORC obtained from Singapore seventy-five truckloads of rifles, mortars, rockets, and other weapons.<sup>228</sup> Singapore denied the arms sales.<sup>229</sup>

Though Singapore and China have tremendously stiff penalties for crimes involving drugs destined for their own domestic markets, China hardly notices flow-through drugs from Burma, and Singapore is known to be a major transshipment point for drugs destined for other parts of the world.<sup>230</sup> Burma encompasses the largest portion of the Golden Triangle and is the world's number one source of heroin. Mounting evidence confirms that SLORC increasingly benefits from the drug trade.<sup>231</sup>

### 4. ASEAN Nations

The Association of South East Asian Nations (ASEAN)—comprised of Brunei, Indonesia, Malaysia, Philippines, Singapore, and Thailand, has refused to halt trade with SLORC and has instead chosen a policy of constructive engagement. This is not surprising, considering the individual actions of member states Thailand and Singapore. ASEAN has denied requests by the European Community, the United States, Canada, and Australia to join a boycott against Burma over the junta's refusal to honor election outcomes. ASEAN is also highly critical of the new European Community policy to link foreign aid to country human rights records and to protecting tropical forests.<sup>232</sup> But ASEAN's toothless criticisms of SLORC provide no viable alternative. When Raul Manglapus, Philippines Foreign Secretary, went to Burma as ASEAN representative to discuss Aung San Suu Kyi's detainment,

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224. See Mallet, *supra* note 76.

225. Summary, COUNTRY REP., June 20, 1991, available in LEXIS, Asiapc Library, Allasi File.

226. Mallet, *supra* note 76.

227. *Burmese Demonstrate to Support Nobel Peace Prize Winner*, *supra* note 59.

228. LINTNER, *supra* note 7, at 140.

229. Brannigan, *supra* note 193.

230. Bertil Lintner, *Roads from Mandalay*, FAR E. ECON. REV., June 28, 1990, at 27.

231. Thai drug officials are convinced that SLORC is heavily involved in the drug trade. Bertil Lintner, *A Fix in the Making*, FAR E. ECON. REV., June 28, 1990, at 21.

232. Richardson, *supra* note 175.

SLORC refused to see him in that capacity.<sup>233</sup> Nor was he allowed to meet Aung San Suu Kyi.<sup>234</sup>

Although the organization is worried about increasing China-Burma links and massive arms purchases that threaten to destabilize Southeast Asia,<sup>235</sup> only the Philippines had spoken out against SLORC prior to the persecution of the Rohingyas.<sup>236</sup> Extensive human rights violations within their own countries make ASEAN nations reluctant to criticize Burma.<sup>237</sup> Persecution of Muslim Rohingyas in northern Burma may finally influence ASEAN member states, particularly Islamic Malaysia and Indonesia, to end constructive engagement in favor of supporting economic sanctions.<sup>238</sup>

## 5. Japan

Japan's policy toward Burma has been ambivalent. On the one hand, Japan has repeatedly criticized SLORC, and has refused to grant new foreign aid until power is transferred to the victors of the May 1990 elections. On the other hand, Japan was the main source of aid to Burma from the mid-1950s,<sup>239</sup> and continues to be SLORC's largest current donor of foreign aid.<sup>240</sup> Despite an initial freeze on aid to SLORC following the September 1988 coup and massacres, Japan has resumed distributing previously promised loans and grants valued at roughly US \$700 million.<sup>241</sup> In 1991

233. *Myanmar's Return to Democracy Uncertain*, Kyodo News Service, Dec. 6, 1991, available in LEXIS, Asiapc Library, Allasi File.

234. *Burma Says Aung San Suu Kyi Bakes Cakes While Under Detention*, UPI, Dec. 6, 1991, available in LEXIS, Asiapc Library, Allasi File.

235. Hollingworth, *Drugs*, *supra* note 26; see also Muthiah Alagappa, *Confronting the SLORC*, FAR E. ECON. REV., Nov. 28, 1991, at 28.

236. Brannigan, *supra* note 193.

237. For example, the Indonesian government has killed over 200,000 inhabitants of East Timor in order to obtain political control over this former Portuguese colony. See, e.g., ASIA WATCH, INJUSTICE, PERSECUTION, EVICTION: A HUMAN RIGHTS UPDATE ON INDONESIA & EAST TIMOR (1990); ASIA WATCH, PRISON CONDITIONS IN INDONESIA (1990). Malaysia and Singapore both severely restrict political opposition. See, e.g., ASIA WATCH, SILENCING ALL CRITICS: HUMAN RIGHTS VIOLATIONS IN SINGAPORE (1989); Kathleen Callo, *Human Rights Seen On Decline in ASEAN*, Reuters, Dec. 14, 1987, available in LEXIS, Asiapc Library, Allasi File; U.S. *Accused of Ignoring Rights Abuses in Singapore, Malaysia*, Reuters, July 7, 1988, available in LEXIS, Asiapc Library, Allasi File. Human rights abuses in the Philippines continue in the post-Marcos era. See, e.g., ASIA WATCH, THE PHILIPPINES: VIOLATIONS OF THE LAWS OF WAR BY BOTH SIDES (1990).

238. See, e.g., *Malaysia's Opposition Leader Presses for Sanctions Against Burma*, Agence France Press, Mar. 13, 1992, available in LEXIS, Asiapc Library, Allasi File; *ASEAN Rumbles Uneasily about Burma's Alleged Atrocities*, Agence France Press, Mar. 11, 1992, available in LEXIS, Asiapc Library, Allasi File.

239. Bertil Lintner, *The Odd Couple*, FAR E. ECON. REV., July 11, 1991 at 39, 40.

240. Burma is the fifth largest recipient of Japanese official development aid. Ehrlich, *supra* note 42.

241. Lintner, *supra* note 239.

alone, Japan provided US \$124 million to fund existing development projects in Burma.<sup>242</sup> Ignoring U.S. pressure to withhold assistance,<sup>243</sup> Tokyo ruled out suspending aid as it was "basically humanitarian,"<sup>244</sup> and gave SLORC a huge diplomatic boost when it became the first industrialized state to recognize the Burmese regime.<sup>245</sup>

The size of Burma's debt clearly influences Japan's reluctance to cut aid, for without assistance Burma would be unable to meet its payments to Japan.<sup>246</sup> Japanese debt relief has amounted to more than US \$73 million since 1988. Currently, about sixty-five percent of Burma's US \$4 billion foreign debt is owed to Japan.<sup>247</sup>

Past Japanese aggression in Southeast Asia and present strong business ties in Burma also deter a tough Japanese stance against SLORC.<sup>248</sup> Over fifty percent of Burma's imports come from Japan.<sup>249</sup> Eleven Japanese trading companies still operate in Burma.<sup>250</sup> Finally, Japan's ties to Burma are also based on emotion; Burma was a World War II Japanese ally and Ne Win, Aung San, and other Burmese leaders were trained by the Japanese.

Yet pressure in Japan for stronger government action against SLORC continues to increase. Japanese monks have urged the government to reverse its aid policy toward SLORC.<sup>251</sup> Japanese legislators have asked the government to take measures to protect the

242. Brannigan, *supra* note 193.

243. The U.S. State Department noted that it had stopped aid, causing a minor impact on Burma, but that the major donor was Japan. Senator Daniel Moynihan asked Japan not to resume its aid to Burma. *Asian News-Burma, U.S. Says Aid to Burma Depends on Free Elections*, Kyodo News Service, Mar. 3, 1989, available in LEXIS, Asiapc Library, Allasi File.

244. *Japan Conveys Concern to Burma Over Aung San Suu Kyi*, BBC, Dec. 5, 1991, available in LEXIS, Asiapc Library, Allasi File.

245. *Asia News-Burma, Japan Recognizes Burmese Government*, Kyodo News Service, Feb 17, 1989, available in LEXIS, Asiapc Library, Allasi File; *Uno Urges Burma to Conduct Multiparty General Election*, Kyodo News Service, Feb. 26, 1989, available in LEXIS, Asiapc Library, Allasi File.

246. Lintner, *supra* note 200. In July 1990, Japan granted Burma US \$25 million in debt relief so that the government could make its first payment on a loan; effectively, Burma made this initial payment with Japan's own money. *Id.*

247. *Burmese Multi-party Democracy General Elections Commission Meets Foreign Ambassadors*, Xinhua General Overseas News Service, Oct. 14, 1988, available in LEXIS, Asiapc Library, Allasi File.

248. Surendrini Kakuchi, *Japan: Tokyo Should Use Aid Leverage With Burma, Activists Say*, Inter Press Service, Nov. 8, 1991, available in LEXIS, Asiapc Library, Allasi File.

249. U.S. DEP'T OF COMMERCE, INT'L TRADE ADMIN., BURMA—COMMERCIAL ACTIVITIES REPORT '89, available in 1991 National Trade Data Bank, available in LEXIS, Asiapc Library, Allasi File.

250. Lintner, *supra* note 8, at 56-57.

251. *Asian News: Japanese Buddhists Appeal for Democracy in Myanmar*, Kyodo News Service, Dec. 28, 1990, available in LEXIS, Asiapc Library, Allasi File.

human rights of Aung San Suu Kyi<sup>252</sup> and some have organized to support human rights, although it has been suggested that these are purely image moves.<sup>253</sup> The Japanese press has charged that Toyota, Isuzu, and Nissan are selling trucks to SLORC which are then used for military purposes.<sup>254</sup> Burmese living in Japan have organized a drive to put pressure on SLORC to relinquish power.<sup>255</sup>

Japan may be able to claim some success in using its aid policy to influence SLORC. In March 1988, Japan informed Burma that its future aid hinged on economic reforms. Japanese pressure is believed by some to be the main influence behind SLORC's decision to move toward market economic policies.

Japan continues to prefer constructive engagement to the harsher Western style of pressure, arguing that its approach will be more effective in bringing economic and political change. Although Japan argues that the Western response will not yield results,<sup>256</sup> a "constructively engaged" Japan has failed to achieve any better. Japanese monetary aid may in fact have given SLORC the ability to defy Japan's instructions. While Japan has insisted that SLORC honor the election results and release Aung San Suu Kyi,<sup>257</sup> these have yet to occur, and time has shown that SLORC has no intention of surrendering power. Ultimately, Japan's actions tend to belie the sincerity of its support for democracy in Burma.<sup>258</sup>

## 6. Pakistan and Bangladesh

Pakistan and Bangladesh, out of fear of their larger and more powerful neighbor, India, began to supply SLORC with weapons.<sup>259</sup> Pakistani and SLORC contacts have increased, leading to speculation that Pakistan will play a large role in developing Burma's arms

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252. *Legislators Call For Aid Suspension to Myanmar*, Nov. 11, 1991, Kyodo News Service, available in LEXIS, Asiapc Library, Allasi File.

253. *Japanese Lawmakers Form Group to Support Amnesty Int'l.*, Asahi News Service, July 10, 1990, available in LEXIS, Asiapc Library, Allasi File.

254. *Japan Unaware of Reported Military Exports to Myanmar*, Kyodo News Service, Nov. 14, 1991, available in LEXIS, Asiapc Library, Allasi File.

255. *Signature Drive in Japan for Myanmar's Aung San Suu Kyi*, Kyodo News Service, Dec. 5, 1991, available in LEXIS, Asiapc Library, Allasi File.

256. *Ministry 'Doubts' Myanmar*, *supra* note 198.

257. *See Japan to Increase Pressure on Myanmar*, Kyodo News Service, Dec. 9, 1991, available in LEXIS, Asiapc Library, Allasi File.

258. Despite Japan's stated support for Aung San Suu Kyi, the Deputy Foreign Minister scheduled a three day meeting with SLORC in Rangoon, just one week after she was denied permission to receive the Nobel Prize. That same week, 900 student demonstrators were arrested and some tortured. Sanger, *supra* note 57. In December 1991, Japan still planned to hold high level meetings with Thailand, leaving Burmese human rights off the agenda. *Myanmar Issue May Not be Aired in Japan-Thai Summit Talks*, Kyodo News Service, Dec. 3, 1991, available in LEXIS, Asiapc Library, Allasi File.

259. Crossette, *supra* note 39.



industry.<sup>260</sup> Recently, Bangladesh has altered its policy and mobilized 100,000 soldiers along the Burmese border in reaction to Burma's persecution of Muslim Rohingya refugees and an earlier border skirmish. In response, Burma rushed tens of thousands of troops to the border, though tensions eased somewhat by March 1992.<sup>261</sup>

## 7. Hong Kong and Korea

Hong Kong firms trade manufactured products for gemstones, jade, and wood products from Burma. Hong Kong's total trade with Burma has leaped 67% between 1989 and 1990.<sup>262</sup>

Korean corporation Daewoo Electronics has established an electronics venture in Burma.<sup>263</sup> Korea has been anxious to start an aid program to SLORC but has been restrained by the United States and Japan.<sup>264</sup> Korean companies have followed the lead of the Thais in establishing business contacts with SLORC.<sup>265</sup>

## 8. Poland, Czechoslovakia, and Yugoslavia

Poland and Czechoslovakia have acted as conduits for arms into Burma.<sup>266</sup> Poland and Yugoslavia have sold helicopters, trainer jets, and patrol boats to the military junta.<sup>267</sup>

## 9. Oil Companies and Other Multinationals

Though the Western democracies have registered high-profile protests to human rights violations in Burma, generally they have stopped short of instituting economic sanctions and have allowed national corporations to continue business as usual with SLORC. Despite the world wide campaign against SLORC abuses, foreign private money continues to pour into Burma.<sup>268</sup> Moral considerations aside, such inflows are unwise given Burma's incredibly risky business climate, by some accounts the riskiest in the world.<sup>269</sup>

Oil companies constitute the lion's share of foreign investment in Burma—two-thirds of the US\$ 660 million invested in Burma

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260. *Friends in Waiting*, FAR. E. ECON. REV., Nov. 28, 1991 at 8.

261. Fineman, *supra* note 88, at A9.

262. *Hong Kong, Singapore Investors Eye Indochina*, BUSINESS INTERNATIONAL, BUSINESS ASIA, Aug. 26, 1991, available in LEXIS, Asiapc Library, Allasi File.

263. Lintner, *supra* note 8, at 56-57.

264. *Id.* at 56.

265. LINTNER, *supra* note 7, at 168.

266. *Burmese Demonstrate to Support Nobel Peace Prize Winner*, *supra* note 59.

267. Hollingworth, *Whispering*, *supra* note 26.

268. *Foreign Investment Pours into Burma Despite World-Wide Censure of Regime*, ASIAN WALL ST. J., May 7, 1990 at 18.

269. *What's Ahead*, NIHON KEIZAI SHINBUN, Mar. 10, 1990, available in LEXIS, Asiapc Library, Allasi File.

over the past three years is from ten oil companies from Europe, Japan, South Korea, and the United States.<sup>270</sup> The U.S. oil companies involved are AMOCO and UNOCAL.<sup>271</sup>

Bell Aircraft, the American helicopter manufacturer, reportedly plans to open a helicopter repair facility inside Burma.<sup>272</sup> Of course, this would enable the regime to make greater use of helicopters in military campaigns against ethnic and political insurgents. Fritz Werner, the German weapons manufacturer, has been closely linked to Burmese weapons industry; however, international pressure may force it to cease activities.<sup>273</sup>

Dean Hardwoods Inc. of North Carolina is the main importer of Burmese teak to the U.S.<sup>274</sup> American fastfood corporation Pepsico completed a joint venture deal in November 1991 (about the time Aung San Suu Kyi won her Nobel Peace Prize), to produce 70,000 bottles of soda per day in Burma.<sup>275</sup>

### C. Sanctions

International law allows nations to apply sanctions unilaterally if the chosen remedy is not out of proportion and is necessary.<sup>276</sup> Furthermore, China, Singapore, Thailand, Japan, and the other countries, as members of the United Nations, have the obligation under Article 56 of the Charter to take action for the promotion of human rights. Even though the interpretation of this provision is not so clear as to mandate sanctions against SLORC, the extent of human rights violations in Burma demands that nations recognize that the law of the U.N. Charter, of many human rights treaties, of *jus cogens* norms, of many principles of customary international law, and of the general principles that guide nations, are all grossly ignored and even mocked by SLORC. The time is overdue for nations to "take joint and separate action" to achieve "universal respect for, and observance of, human rights" in Burma.<sup>277</sup> Nations

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270. Lintner, *supra* note 8. The rest has primarily gone into extraction of resources, particularly forestry and fisheries. *Id.*

271. AMOCO, UNOCAL, PEPSICO DEAL WITH THE BURMESE MILITARY, *supra* note 199; Jonathan Friedland and Bertil Lintner, *Licensed to Drill*, FAR. E. ECON. REV., Aug. 8, 1991, at 59-60. The other oil companies are Petro-Canada; Yukong (South Korea); Kirkland Resources, Premier Oil and a joint venture between Croft Exploration and Clyde Petroleum (Great Britain); BHP Petroleum (Australia); Royal Dutch/Shell Group (a British-Dutch joint venture); and Idemitsu Oil (Japan). As of August 1991, total oil exploration investment was estimated at US \$415 million. *Id.* at 59.

272. Silverstein, *supra* note 168.

273. *Friends in Waiting*, *supra* note 260.

274. BURMA FOREST ALERT (Project Maje, Cranford, N. J.) 1992.

275. AMOCO, UNOCAL, PEPSICO DEAL WITH THE BURMESE MILITARY, *supra* note 199.

276. RESTATEMENT § 905, *supra* note 118.

277. U.N. CHARTER, art. 57.

must exercise the necessary and reasonable response of sanctions and an international boycott.<sup>278</sup> Foreign and U.N. aid should be halted. Multinational corporations should be ordered out of Burma by their national governments. The world body of nations should learn from its costly delay in confronting South Africa, to note one prime example, and should confront SLORC now.

As to *realpolitik* considerations opposing such a move, the likelihood of China joining a boycott, is, of course, virtually nonexistent. Unfortunately, China's refusal alone could greatly harm the chances for successful application of international sanctions. Sanctions might create the undesirable result of pushing Burma further into China's arms. Moreover, Japan and Thailand may be unwilling to weather the economic losses, and multinationals may bring pressure to bear on governments to thwart a withdrawal.

Yet the moral victory of freeing Burma from military dictatorship through cooperative international action would be a blow to China and to repressive governments everywhere. A victory for democracy in Burma might contribute to the improvement of China's human rights climate. And the effect of a free Burma would likely promote democracy in neighboring Thailand.

The potential economic benefits of democracy in Burma are also great. Without political change, the business climate of Burma will most likely continue to deteriorate, just as it did under the regimes of Marcos, Somoza, the Shah of Iran, or as it does any time a brutal government oppresses a frustrated and impoverished population.

Of great long term value to the world would be the continued development of the international legal order, where member states assent to achieve enforcement of international legal and moral principles. A concerted international response which includes strong economic sanctions could greatly mitigate the likelihood of outside involvement in a Burmese civil war.<sup>279</sup>

## CONCLUSION

The SLORC military regime is one of the world's worst violators of international human rights law. Mass murder, torture, rape, forced dislocation, and slave labor are commonplace. Political freedom has disappeared. Despite some strong response, such as for-

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278. See RESTATEMENT § 703 cmt. f, *supra* note 118.

279. Mercenary activity may have already begun to aid the student and Karen opposition forces. Were nations to choose to use force, such would be permissible under international law only if the force is necessary, proportional, and in compliance with the U.N. Charter. RESTATEMENT § 905 cmt. g, *supra* note 118. It should be noted that China could block joint international action under the auspices of the U.N., due to its position as a permanent member of the Security Council.

eign aid cancellations by the West, international trade and investment continue to prop up SLORC with cash and diplomatic support. International sanctions are overdue. All foreign and U.N. aid should be suspended, and multinational corporations withdrawn. Economic and diplomatic sanctions provide a legal remedy, are required by moral necessity, and would hasten the demise of SLORC in favor of a truly democratically elected government. A concerted global campaign against SLORC would strengthen the international legal system, carry forward the momentum of international cooperation, and enable nations to take action to achieve universal respect for human rights in fulfillment of the word and spirit of their U.N. Charter pledge.