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Burma

This Paper discusses the situation in Burma (Myanmar), where a military regime presides over economic decline, widespread human rights abuses, forced labour and insurgency by ethnic minorities.

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Summary of main points

- Burma (Myanmar), is ruled by a military regime known as the State Peace and Development Council (SPDC).
- This regime is the subject of widespread criticism from human rights organisations, the UN, the EU, and the USA. Neighbouring states have an ambivalent attitude.
- The main concerns are the roughly 1,300 political prisoners, including Aung San Suu Kyi, the leader of the most popular political party, the lack of meaningful progress towards democracy, economic mismanagement, widespread human rights abuses, especially against ethnic minorities in the course of counter-insurgency/civil war operations, and the practice of forced labour in the service of the military.

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I Introduction

Burma was administered as part of British India until 1937 and it became independent in 1948.¹ There was a period of constitutional government until 1962, but this was characterised by civil war, insurgency, corruption and mismanagement. There was a short period of military government, at the request of the civilian authorities, in the late 1950s, which led to new elections. However, the situation did not improve after the elections and in 1962 the armed forces intervened again, staging a coup, arresting members of the Government, suspending the constitution, and ruling initially by decree. From 1962 Burma was a one-party state ruled by the Burma Socialist Programme Party (BSPP) of General Ne Win, which was closely allied to the armed forces.

In 1988 an economic collapse provoked popular unrest, which came to threaten the BSPP's control. Ne Win officially retired, but he was believed to retain influence behind the scenes. At first the unrest was put down with force, with massacres of opposition demonstrators as the military attempted to maintain its position.

The regime's control came under increasingly serious threat through the year, prompting efforts to resolve the problems peacefully. These were unsuccessful, but they culminated in the BSPP's decision to hold free elections and to bar the military from direct involvement in politics. The armed forces staged a coup, and it was not clear whether the whole episode had been an internal power struggle between the party and the military, or a grand strategy to perpetuate their joint influence.

A State Law and Order Restoration Council (SLORC) was formed to run the country, renamed Myanmar, until elections could be held. Elections took place in 1990 and the opposition National League for Democracy (NLD), led by Aung San Suu Kyi, the daughter of independence hero General Aung San, won absolute majorities of votes and seats. The SLORC refused to recognise the results of the election, and instead it continued its repressive rule, held Ms Suu Kyi under house arrest until 1995,² and harassed and imprisoned members of the NLD.

In 1997 the SLORC was replaced by a State Peace and Development Council (SPDC), but this did not represent a change in the senior leadership nor in the repressive nature of the regime. Many political prisoners are still held, and Ms Suu Kyi was placed under house arrest again from 2000 to 2002 and from 2003 to date.

¹ The country was renamed Myanmar by the current military regime. Historically, both names have been used in Burma, being the formal (Myanma) and colloquial (Bamah) styles. Usage abroad varies, but this Paper follows the practice of the British Government in using Burma.

² Many publications use the Burmese honorific "Daw" instead of "Ms." Daw Suu Kyi is the same person as Aung San Suu Kyi, and she is referred to as Ms Suu Kyi in this brief.

Burma has numerous ethnic minorities in outlying regions, and the periphery has been in a state of civil war to a greater or lesser extent since independence. The Burmese military has been accused of abusing the human rights of ethnic minorities, both insurgents and civilians. Disappearances, extrajudicial killings and torture are commonplace, as is forced labour in the service of the military and the forced relocation of individuals and communities. Some of the ethnic minority groups have turned to illegal activities such as narcotics production and illicit logging. They have also been accused of human rights abuses against civilians and non-combatants.

In the economic field, the SLORC abandoned state socialism in 1988 and has since pursued similar policies on liberalising trade and investment to those followed in China under Deng Xiaoping or in Vietnam since the late 1980s. However, the regime's poor reputation abroad, and calls for sanctions and boycotts by the NLD and by human rights campaigners, have held back investment. Coupled with mismanagement of the economy, this has left Burma as one of the poorest countries in the region.

Burma was admitted to the Association of Southeast Asian Nations (ASEAN) in July 1997, despite protests from Europe and North America. Following the admission relations between ASEAN and the EU and the USA were strained. The EU and the USA have imposed sanctions against Burma.

Since 1999 the SPDC has made faltering steps towards engagement with local and overseas critics, and it has allowed visits from the EU, the UN, the International Committee of the Red Cross (ICRC) and Amnesty International. It has engaged in long-running discussions with the International Labour Organization over the use of forced labour. However, these moves have not resulted in substantive change.

II SLORC and SPDC

A. Early stages

The SLORC announced its rule in emphatic fashion: it suspended the constitution, introduced martial law and abolished all existing organs of government. More than 1000 civilian demonstrators were killed in the first few days. It retained an absolute monopoly on power, as its membership was almost identical to that of the cabinet, the opposition was systematically harassed and the state security apparatus was pervasive.

The first two years of SLORC rule were characterised by efforts to marginalise the opposition. Large numbers of urban opposition supporters were forcibly resettled in rural areas, while the main opposition leader, Ms Suu Kyi, was barred from standing in elections and placed under house arrest.

Elections were held in 1990 and the NLD won by a considerable margin. The SLORC ignored the election result, claiming that the election had not been for a legislature but for a Constituent Assembly which would draft a new constitution. This Assembly was to be placed under the direction of a National Convention appointed by the SLORC.

B. National Convention

In January 1993 the much delayed National Convention opened, with the aim of establishing principles to govern the drafting of a new constitution. Several adjournments were made to the National Convention and, although it convened every few months, little progress was made before it fell into an ongoing adjournment in 1996. Many of the delegates selected from the opposition and minority ethnic groups refused to accept the guiding principle set down by the SLORC that the military should continue to play a dominant role in politics.

The “six principles” guiding the National Convention were set out by the Chairman of its Convening Commission, General Myo Nyunt, at its opening session:

the non-disintegration of the union; the non-disintegration of national solidarity; the perpetuation of national sovereignty; the emergence of a genuine multi-party democratic system; the development of *lawkapala* principles of justice, freedom and equality; and the participation of the Defence Services in the leading role in national politics in the future.³

The rhetoric of sovereignty, solidarity and national unity is used to oppose self-determination for the ethnic minorities and freedom of expression for the political opposition.

The *Economist* echoed widespread analysis of the National Convention when it remarked:

the bottom line is that the new constitution must entrench and perpetuate the power of the armed forces.⁴

The NLD withdrew from the National Convention in 1995, claiming that it was illegitimate and undemocratic. The SLORC’s repression of the NLD became even stronger after this. It was subjected to constant harassment and legal constraints, many of its members were arrested and its meetings were routinely prohibited. This was coupled with the continued practice of official surveillance, with secret police spying on politicians and the public, and photographs being taken of those attending opposition rallies. In June 1996 over 200 delegates to a national congress held by the NLD were arrested and prevented from attending. Hundreds more were arrested in late September the same year and Ms Suu Kyi, who had been released from house arrest in 1995, was made subject to renewed restrictions on her movements. In September 1997 the restrictions on the NLD were relaxed, and the

³ *Summary of World Broadcasts*, 11 January 1993.

⁴ 22 January 1994.

party was allowed to hold a two-day national congress, but restrictions on Ms Suu Kyi's movements remained.

C. Creation of SPDC

In November 1997 the SLORC was disbanded and replaced by a slightly smaller State Peace and Development Council (SPDC). In part this was intended to allow a relaunch of the regime under a less sinister title, but analysts also pointed out that a "restoration council" ought logically to have a temporary lease on power, whereas a "peace and development council" might accord itself a permanent role.

The Burmese military was known to favour the kind of status which the Indonesian military enjoyed under President Suharto: a constitutional requirement to remain involved in politics. In 1997 Ne Win had meetings with President Suharto and was believed to have discussed the Indonesian model. The SPDC also promoted the role of the Union Solidarity and Development Association (USDA), which was a mass civilian movement established to voice SLORC interests in the National Convention. Civil servants were put under pressure to join USDA, the role of which appeared to be modelled on the Indonesian Golkar party. This lent support to the idea that the creation of the SPDC was designed to pave the way for a permanent military role in government, overarching any future settlement with the civilian opposition.

Some commentators saw the creation of the SPDC as the result of a power struggle within the SLORC.⁵ There are two tiers to the Burmese administration, the SPDC (all military figures) and the Government (ministers, a few of them civilians). General (now Field Marshal) Than Shwe, the Chairman of the SPDC, had become Prime Minister within the Government in 1992, and he retained this post under the SPDC. However, some felt that the head of the intelligence services, General Khin Nyunt, had gained influence. He was regarded as the protégé of Ne Win and he seemed to be the dominant figure within SLORC until the Commander-in-Chief of the army, General Maung Aye, began to use his natural constituency in the military to consolidate his position. Maung Aye is generally regarded as the leader of those opposed to dialogue with the opposition. Allies of Maung Aye were removed from the ruling group in its transition from SLORC to SPDC. The Council was reduced from 21 to 19 members and comprised regional commanders, rather than the senior generals who dominated the SLORC. This was interpreted as an indication of Khin Nyunt's desire to exert control over potentially troublesome elements and perhaps to develop his own tier of loyal officers. It seems that he used the pretext of an anti-corruption drive to remove his opponents: among the 14 members of SLORC who were retired were some of the more flagrantly corrupt and many of these were placed under virtual house arrest.⁶ Khin Nyunt was made first secretary of the SPDC.

⁵ *Far Eastern Economic Review*, 27 November 1997.

⁶ *Far Eastern Economic Review*, 7 May 1998.

There was a Government reshuffle in December 1997, which saw an increase in the number of civilian ministers. This seemed to be a response to the worsening economic situation (the currency had fallen to record low rates of exchange on the black market) and an effort to put technocrats in positions of influence other than national security. Later reshuffles moved more of Khin Nyunt's supporters into positions of influence.

In August 2003 Than Shwe resigned as Prime Minister, but he remained Chair of the SPDC and Head of State. Khin Nyunt became Prime Minister and Minister of Defence, but he lost his position in the SPDC. Maung Aye is Vice-Chairman of the SPDC, but he is not in the Government.

III Contradictory signals, 1998-2002

Between 1998 and 2002 there were sporadic signs that the SPDC might be considering moves towards a slight easing of its repressive policies towards the NLD and engagement with overseas opinion, but these never represented more than mild and passing attenuations of its authoritarian control.

A. The crisis of 1998: NLD Congress and people's parliament

In May 1998 the SPDC allowed the NLD to hold a party congress, which some 400 delegates attended. After this the NLD announced that it wished to see the parliament which was elected in 1990 inaugurated by 21 August 1998, implying the release of many imprisoned and exiled NLD members. Ms Suu Kyi made efforts to leave the capital, Yangon (Rangoon), to visit supporters elsewhere in the country. These efforts resulted in a number of bizarre incidents, as her car was stopped outside the capital by soldiers and ordered to turn back. On one occasion the car was lifted and turned around by troops, and on another Ms Suu Kyi spent six days in the car before the wheel was taken forcibly by a soldier, she was pinned in the back seat and the car was driven back to Yangon.

In August 1998, as the NLD's deadline approached for the convening of parliament, Ms Suu Kyi spent a period of 12 days in a minivan in an effort to breach the restrictions on her movements and to increase pressure on the regime. She has kidney problems and developed jaundice during this protest. She also repeated the call for the convening of parliament and the release of jailed opposition members. The SPDC detained around 40 NLD members and placed restrictions on the movement of others. In July 1998 NLD members who had been elected to the non-functioning parliament were required to remain in their own towns and report to their local police stations twice a day.

During Ms Suu Kyi's efforts to leave Yangon the SPDC made an offer of talks with the NLD, and in August 1998 Khin Nyunt met the NLD's Chairman, Aung Shwe. Khin Nyunt described the meeting as "open, frank and cordial," while the NLD was said to be "cautiously encouraged" by the tone of the meeting.⁷ Nevertheless the SPDC's refusal to convene parliament led the NLD to declare that it would shortly establish its own "people's parliament," based on the 1990 election results and with representation for the ethnic minorities. There were also large-scale student demonstrations in late August 1998, and it appeared that the opposition was taking a more active approach than it had for many years. Further demonstrations were dispersed by the security forces and almost 200 elected NLD members and hundreds of other party supporters were arrested.

On 16 September 1998 Ms Suu Kyi announced that she had formed a ten member Representative Committee to represent the parliament elected in 1990. The SPDC reacted with scorn, although it had previously threatened to proscribe the NLD if it went ahead with its people's parliament idea. There were also suggestions that Ms Suu Kyi might be expelled from Burma.⁸ The Representative Committee gained the support of four ethnic minority parties, representing the Shan, Mon, Arakanese and Zomi, as well as the All-Burma Students Democratic Front.

B. Subsequent engagement with overseas critics

The SPDC's decision to allow the NLD to hold its party congress may have led to renewed conflict between the regime and the opposition, but afterwards the SPDC showed signs that it perceived dangers in international isolation. In October 1998 the UN Assistant Secretary-General in the Department of Political Affairs, Alvaro de Soto, was allowed to visit Burma. He met Ms Suu Kyi and the leaders of the SPDC, and in October and November 1998 around 300 opposition members were released from custody. However, set against these relatively liberalising moves, around 500 more NLD members remained in detention, and the SPDC was accused of coercing tens of thousands of NLD members to leave the party. Then in March 1999 the SPDC refused to grant a visa to Ms Suu Kyi's husband, the British academic Michael Aris, who was in the terminal stages of cancer. They encouraged her to visit him in England, but she refused on the basis that she might not be allowed to return to Burma.

In May 1999 the SPDC gave permission to the ICRC to visit 48 prisons in Burma, including the notorious Insein prison, where up to 3,000 political prisoners were believed to be held, and which had been cited as a centre of torture in reports by the UN and international human rights organisations. Ms Suu Kyi claimed that hundreds of political prisoners were transferred to distant provincial prisons before the visit to Insein. Later, in July 1999, a delegation of officials from the EU visited Burma and met opposition figures and members of the SPDC in an unsuccessful attempt to encourage dialogue.

⁷ *Financial Times*, 19 August 1998.

⁸ *Independent*, 7 November 1988.

Throughout 2000 there were low-level acts of protest across the country, all of which were met with the usual repressive response. These culminated in an attempt by Ms Suu Kyi and several NLD colleagues to leave Yangon to visit provincial party members. They were stopped at a military roadblock and the group spent nine days in their vans before being returned forcibly to Yangon, where they were placed under house arrest for two weeks. The NLD headquarters was also raided and other leading party members placed under house arrest. Ms Suu Kyi made another attempt to leave Yangon, by train, in September 2000, but was again restricted to her home, while the party's Vice-Chairman, Tin Oo,⁹ and several others were detained at a Government "guest house."

In October 2000 the SPDC received the UN Secretary-General's Special Envoy to Burma, Razali Ismail, and allowed him to visit Ms Suu Kyi. In January 2001 it was announced that the SPDC and the NLD had been holding secret talks since about the time of the UN Envoy's visit, and that Khin Nyunt had met Ms Suu Kyi several times. In further moves towards apparent reconciliation the SPDC ordered the media to stop its attacks on the NLD, and it released Tin Oo and the others who had been detained since the attempt to travel outside Yangon. Also in January 2001 another EU delegation was allowed to meet Ms Suu Kyi, and in April 2001 a meeting took place with the UN Special Rapporteur on human rights in Myanmar, Paulo Sergio Pinheiro.

C. Release of Aung San Suu Kyi from second period of house arrest

In May 2002 Aung San Suu Kyi was released from her second period of house arrest. This followed 18 months of secret talks, in which Mr Razali played an important part. One commentator argued that the release of Ms Suu Kyi in 1995 had been the result of over-optimism by the regime, which thought that it had sufficient control over the country to neutralise any threat she might pose.¹⁰ The writer went on to argue that her release from custody in 2002 was a result of the reverse position, that the regime felt weak, since the economy had been hurt by the Asian financial crisis in 1998 and by sanctions and boycotts. There had also been limited pressure from the members of ASEAN, and the embarrassment of becoming the first country to be placed under sanctions by the International Labour Organization (ILO) in 2000, for failing to take adequate steps against forced labour (see below). The release of Ms Suu Kyi was seen as an effort to improve the regime's image and to improve relations abroad.

⁹ There was another Tin Oo, who was SPDC Second Secretary and Army Chief of Staff. He died in a helicopter crash in 2001.

¹⁰ A Thawngmung, "Preconditions and prospects for democratic transition in Burma/Myanmar," *Asian Survey*, May/June 2003.

There was also the prospect that the SPDC was searching for a different approach to resolving the political crisis. As mentioned above, there had been indications that it might seek a solution along the lines of Indonesia under former President Suharto, in which political parties were allowed to exist and to contest elections, but in which the political process was tightly controlled and the military had a constitutional role in parliament and a prominent role in society. It was assumed that some kind of understanding had been reached during the secret talks preceding the release.

After her release Ms Suu Kyi behaved in a more low-key way than she had done after her first release from custody. She made visits outside Yangon, but only to towns in the central areas, she tempered her criticism of the SPDC and she even appeared with officials at functions relating to infrastructure projects. The NLD also stopped calling for recognition of the 1990 election results.

IV The current period

A. Arrest of Aung San Suu Kyi, May 2003

The low-key approach adopted by the NLD after May 2002 did not lead to substantive progress towards reconciliation nor to the restoration of forms of democracy. Ms Suu Kyi complained in April 2003 that the SPDC had shown no interest in restoring democracy in the talks it had held with her since her release. She was arrested again at the end of May 2003, along with at least 23 others.¹¹ First she was sent to Insein prison, and then she was held incommunicado at an undisclosed location. In September 2003 she was transferred to house arrest, which the SPDC calls “protective custody,” where she remains.

The events surrounding her arrest are contested. She was conducting a tour of Kachin state in the north of the country.¹² According to the SPDC, NLD supporters had been antagonising and assaulting locals throughout the tour, and had driven through a crowd of people protesting against them, when fighting broke out. The authorities detained Ms Suu Kyi, and four people died in the fighting. According to the NLD, Ms Suu Kyi’s motorcade was ambushed by SPDC supporters, who attacked the NLD and local villagers, killing around 60-80 people. US diplomats visited the scene of the fighting and concluded that the violence had been premeditated. The opposition radio station Democratic Voice of Burma (DVB) claimed that a number of convicts from a nearby prison had been used in the attack, and that they were presumed to have been executed by the military afterwards. They also claimed that USDA had been involved, and that some of its members were forced to take part in the violence.

¹¹ This is the figure acknowledged by the SPDC as still in detention in December 2003. See *Myanmar: Amnesty International’s second visit to Myanmar. Official statement*, AI index: 16/037/2003, 22 December 2003, at: <http://web.amnesty.org/library/Index/ENGASA160372003?open&of=ENG-MMR>.

¹² *Keesing’s Record of World Events*, May and June 2003.

In response to the renewed detention Japan suspended aid to Burma, and ASEAN called for Ms Suu Kyi to be released and for a peaceful transition to democracy.¹³ The criticism by ASEAN was a departure from its habit of non-interference in internal affairs. Thailand's Prime Minister, Thaksin Shinawatra, said that the detention was weakening the reputation of ASEAN, and Malaysia's Mahathir Mohamad suggested that Burma might be expelled from the group.¹⁴ Burma is due to assume the chair of ASEAN in 2005.

B. Road maps

In July 2003 Thailand put forward a "road map" for change in Burma, as part of its opposition to new sanctions by the USA (see below). The details of this road map were not released, but the Thai Foreign Minister, Surakiart Sathirathai, said that he had discussed the ideas with the regime in a number of meetings:

Thailand has already proposed a road map for Myanmar and its direction towards democracy and we have discussed it with them. It's up to Myanmar to decide how they want to do it, but Thailand's road map is very practical. This road map is based on a common basis for national reconciliation in Myanmar. [Thailand would] like to see a clear cut plan that Myanmar announces to the world on its process to democracy, when it will release Suu Kyi and when it will have a constitution.¹⁵

Later that month there was a meeting of foreign ministers of the Asia-Europe Meeting (ASEM). There were differences of view between the European and Asian ministers at the meeting, but a compromise statement was agreed, which called for the immediate release of Ms Suu Kyi and other NLD members and for freedom of political activity.¹⁶

In August 2003 Khin Nyunt set out Burma's own road map, in his first speech since becoming Prime Minister a few days earlier. He said:

I shall now ... present the political programme that will be undertaken step by step by our government.

The Union of Myanmar, composed of over 100 nationalities living together in unity and harmony for thousands of years, is a nation striving with highest priority to build national unity. Thus, the non-disintegration of the Union, the non-disintegration of national solidarity, and perpetuation of national sovereignty were laid down as Our Three Main National Causes. In accord with these National Causes, we are currently systematically advancing towards the national goal after laying down the four political objectives, the four economic objectives,

¹³ *Keesing's Record of World Events*, June 2003.

¹⁴ *Far Eastern Economic Review*, 9 October 2003.

¹⁵ *Reuters News*, 17 July 2003.

¹⁶ *Reuters News*, 24 July 2003.

and the four social objectives for the emergence of a future, modern and developed nation.

At this junction, I would like to reiterate the ever-important four political objectives, which are:

1. Stability of the state, community peace and tranquillity, prevalence of law and order;
2. National reconsolidation;
3. Emergence of a new enduring state constitution;
4. Building of a new modern developed nation in accord with the new state constitution.

How the nation will be built can clearly be seen in these four political objectives. Accordingly, the emergence of a new enduring State Constitution is the most important key in building the future nation. Therefore, the government will continue to implement the following political programme, step-by-step, in a systematic manner to build the nation.

The first step is to reconvene the National Convention that was adjourned since 1996.

The second step is to implement the necessary processes for the emergence of a genuine and disciplined democratic system, step by step, after the successful convening of the National Convention.

The third step is to draft a new constitution in accordance with the basic principles and detailed basic principles laid down by the National Convention.

The fourth step is to adopt the draft constitution through a national referendum.

The fifth step is to hold free and fair elections for the People's Assemblies in accordance with the new constitution.

The sixth step is to convene the People's Assembly attended by People's Assembly members in accordance with the new constitution.

The seventh step is to build a modern, developed, and democratic nation by the state leaders elected by the People's Assembly, and the government and other central organs of power formed by the People's Assembly.

This is the road map of Myanmar.¹⁷

¹⁷ *Radio Myanmar*, 30 August 2003, in *BBC Monitoring*, Asia-Pacific, 1 September 2003.

ASEAN had a scheduled meeting in October 2003, and the road map appeared in part to be aimed at satisfying that group's concerns. Also, shortly before the meeting, Ms Suu Kyi was transferred to house arrest after undergoing surgery. ASEAN adopted a statement at its meeting, in which it welcomed "positive developments" in Burma.

Critics complained that the road map did not mention the NLD or Ms Suu Kyi, and that it did not have a timescale.

The US State Department spokesman, Richard Boucher, said,

they noted, quote unquote, "positive developments." We don't see those. And we don't see any need for a road map unless it has full participation of the opposition.¹⁸

He went on to say that the SPDC

should allow the reopening of the National League for Democracy's offices and begin meaningful discussions with [Ms Suu Kyi] and with political parties. So that national reconciliation can begin, we also look for the ethnic minorities to be part of that. That, to us, is the only way forward to achieve peace and stability in Burma.

The *Economist* pointed out that a transition to democracy was announced by the regime when it took power in 1988, but it refused to recognise the results of the election when the NLD won in 1990.¹⁹ The *Economist* argued,

The disgraceful treatment meted out to Miss Suu Kyi is only the most obvious outrage committed by South-East Asia's most repressive and incompetent government. The generals do not just imprison thousands of political prisoners: they have turned their country into a place where life expectancy has collapsed to around 55, and growth has vanished. The World Health Organisation ranks the efficacy of Myanmar's health system at 190 out of 191 nations.

When Myanmar was admitted into ASEAN's ranks in 1997, the best defence against the charge that this was just a cynical attempt to exploit its trees and oil was that engagement with its odious regime might lead to reform. Anyone except the most terminally starry-eyed or self-serving ought by now to have concluded that this policy has failed. Yet it is hardly surprising that ASEAN membership has not led to more pressure: ASEAN's other members have their own shortcomings.²⁰

¹⁸ *Reuters News*, 8 October 2003.

¹⁹ *Economist*, 11 October 2003.

²⁰ *Ibid.*

In December 2003 Thailand organised a meeting on the road map, involving Burma and a number of Asian and European countries, plus the UN.²¹ This is sometimes referred to as the “Bangkok Process.” According to Mr Sathirathai Burma undertook to take the first steps along the map during 2004. This would commence with the resumption of the National Convention, to which all parties, including the NLD, would be invited. He said that the regime aimed to complete the first three stages of the road map during 2004, which would imply that a new constitution would be ready by the end of the year. The UK and the USA were not invited, in protest at their stances, which are discussed below.²²

The opposition *BurmaNet News* carried an article on the Bangkok meeting.²³ This argued that the SPDC had accepted an international role in moving the situation forward, and it saw this as positive. However, it argued that the central question was

why, when talks between Suu Kyi and the SPDC have taken place over the last two years, the junta has taken this sudden step of announcing its road map unilaterally? As there has been no official announcement of the talks being terminated or suspended, it is reasonable to conclude that the subject matter of the junta-Suu Kyi talks had centred round a national convention talks and have failed. Thus, the only option for the military leaders was to go ahead without her. Hence, the development of the junta's road map and its unilateral announcement.

Opposition groups have been sceptical of the road map, calling instead for tripartite dialogue between the SPDC, the NLD and the minorities. They have shown some concern over the role of Mr Razali, who attended the Bangkok meeting, in what they took to be an expression of support for the road map and the resumed National Convention, rather than for tripartite dialogue.²⁴

V Minorities

Ever since independence in 1948 some of Burma’s many ethnic minorities have fought for their own independence or for greater autonomy. Most of the minorities are tribal groups living in outlying areas, particularly near the border with Thailand, while the ethnic Burmans occupy the centre of the country and control the political and economic scene and the military. In the pre-colonial period many of the hill tribes had links with the rulers of the Burman kingdoms that grew up in the fertile Irrawaddy valley and its rice-growing delta, but the relationship was often unhappy and their political allegiance was shallow. Under British colonialism they retained varying degrees of autonomy, and after independence they were

²¹ *Reuters News*, 16 December 2003. Participants were Burma, Thailand, China, India, Indonesia, Japan, Singapore, Austria, France, Germany, Italy and the UN.

²² HC Deb 16 December 2003, cc796-7w.

²³ “Road map: the last hope for a peaceful transition in Burma?” BK Sen, *BurmaNet News*, 18 December 2003, in *BBC Monitoring*, 20 December 2003.

²⁴ “Burma: democracy party more concerned about Suu Kyi than National Convention,” *Democratic Voice of Burma*, 19 December 2003, in *BBC Monitoring*, 21 December 2003.

never fully reconciled to the nature of the Burmese state. After the formation of the SLORC in 1988 the minorities allied themselves with Burman democracy activists in an effort to achieve change.

In the early 1990s it became apparent that the civil war had reached a stalemate. The minorities had neither the manpower nor the sophistication to defeat the *tatmadaw*, as the Burmese armed forces are known, while the *tatmadaw* was unable to make sufficient progress in between the rainy seasons to break the minorities on their various fronts. The SLORC reacted to this stalemate by seeking peace deals with the minorities on an individual basis. Under pressure from their external patrons, several of these groups accepted terms for peace. This reflected regional diplomatic shifts: as Burma's economic potential appeared to increase in the mid-1990s, the countries acting as patrons for the insurgent groups saw benefit in fostering relations with the SLORC. The peace agreements have not involved a general political settlement. Typically, an insurgent group agrees to cease fighting in return for relative freedom of action within a defined area, sometimes paying levies to government officials out of the proceeds of the logging or narcotics operations by which it funds itself.

The peace agreements brought the Karen, the largest and most effective group still fighting, under renewed pressure. The *tatmadaw*, bolstered by new Chinese armaments, could focus its attention almost exclusively on its conflict with the Karen National Union (KNU), which suffered serious reverses as a result.

Fighting has continued in the border areas where the KNU operates, despite sporadic attempts at negotiation between the two sides. Elsewhere the Karenni National Progressive Party (KNPP) has abandoned its ceasefire, while the Shan State Army (SSA), a remnant of a private army formerly maintained by the major narcotics producer Khung Sa, continues to fight. Several smaller groups representing ethnic minorities engage in sporadic insurgent activities.²⁵

According to the US State Department there are about 150,000 refugees from Burma living in camps in Thailand and thousands of others across the region.²⁶ Those in Thailand include Mon and Karenni as well as Karen. Tens of thousands of Shan are also living in Thailand, but are not confined to camps. There have been attacks on the displaced Karen in their camps, carried out by the Democratic Karen Buddhist Organisation (DKBO, a breakaway Karen group allied with the SPDC) with support from the *tatmadaw*. There are also about 100,000 internally displaced Rohingyas, a Muslim group not recognised as citizens by the SPDC, and thousands more living in refugee camps in Bangladesh.

²⁵ A detailed account of the minority problem is given in *Myanmar backgrounder: ethnic minority politics*, International Crisis Group, 7 May 2003, at: <http://www.crisisweb.org/home/index.cfm?id=1528&l=1>.

²⁶ "Burma," *2002 Country Reports on Human Rights Practices*, US Department of State, March 2003.

The minorities remain subject to alleged mass violations of human rights within Burma. According to a wide range of reports from human rights groups and international organisations, the *tatmadaw* uses torture and extrajudicial killings in the course of counter-insurgency operations, often directed at the civilian population in minority areas, and it is accused of using rape as an instrument of war.²⁷ These are breaches of the Geneva Conventions, which limit the use of force against non-combatants, and to which Burma acceded in 1992. There is also widespread trafficking of women and children to China and other Asian countries, mostly for involvement in prostitution.

In rural areas, sometimes as support for counter-insurgency measures, the *tatmadaw* forcibly recruits minority villagers and puts them to work as military porters, often under conditions of extreme privation. Torture, beatings and other abuses of these porters are reportedly commonplace, and many return to their villages suffering malnutrition or malaria. Many others die in service. Other forms of forced labour typically include construction projects such as road building. The *tatmadaw* has forcibly relocated whole villages in order to disrupt the support networks on which those groups still fighting depend. It is common for relocated villagers to be put to work as forced labour far from their homes. The SPDC sometimes makes the point that forced unpaid labour has a long history in Burmese culture. However, most historians argue that this was traditionally a means of carrying out local projects of benefit to the whole community, and was not combined with relocation and widespread human rights abuses of the workers.

Some of the armed groups fighting against the state have been accused of human rights abuses themselves, and many are involved in narcotics production and trafficking. Amnesty International has called on the KNU to order its fighters to abide by minimum standards of humane behaviour and to prohibit the killing of non-combatants, and believes that the KNU “may have deliberately and arbitrarily killed unarmed civilians.”²⁸ The SSA is also accused of killings, rapes and other abuses against civilians. This takes place in the context of the behaviour of the Burmese authorities. Amnesty based its report on interviews with Karen who had fled their homes for Thailand:

they cited several reasons for leaving their homes. Some had previously been forced out of their villages by the *tatmadaw* ... and had been hiding in the forest. Conditions there were poor, as it was almost impossible for them to farm. They also feared being shot on sight by the military because they occupied ‘black areas,’ where the insurgents were allegedly active. Many others fled directly from their home villages in the face of village burnings, constant demands for forced labour, looting of food and supplies, and extrajudicial killings at the hands of the military.²⁹

²⁷ Eg, *Myanmar: no place to hide*, Amnesty International, April 1996.

²⁸ *Myanmar: The Kayin (Karen) State: militarisation and human rights*, ASA 16/12/99, June 1999.

²⁹ *Ibid.*

VI Human Rights: Summary

A. UN Commission on Human Rights

The main concerns over the situation in Burma are summarised in the annual reports to the UN Commission on Human Rights by its Special Rapporteur on that country. From 1992 to 1996 this post was held by Yozo Yokota, and from 1996 to 2000 it was held by Rajsoomer Lallah, who resigned over what he saw as a lack of support from the UN. From 2000 to the present it has been held by Paulo Sergio Pinheiro.

a. Lallah report

In the Executive Summary to his last report, in January 2000, Mr Lallah gave an unusually sharp account by UN standards:

Political repression and the lack of real engagement in a political dialogue with opposition groups continue to be the main sources of measures adversely affecting democratic governance in Myanmar. The policy of large-scale displacement of certain ethnic groups, the continued practice of forced labour for military camp work and portering, and related human rights violations remain the main cause of refugee movements.

The Permanent Representative of Myanmar to the United Nations indicated at the General Assembly last November that the authorities in Myanmar were giving serious consideration to a visit by the Special Rapporteur. To date no concrete steps have materialized.

Myanmar's ethnic and religious minorities, such as the Karen, Karenni, Shan and Rohingyas, continue to suffer severe abuses, including arbitrary arrest, killings, forced labour in the army and trafficking of women.

The administration of justice continues to operate under the effective control of a military regime where the exercise of the basic freedoms of expression, association, assembly and movement are criminalized under the law itself. Vaguely worded laws, such as the 1950 Emergency Provisions Act and the 1975 State Protection Law, continue to be used to arrest and sentence persons for their peaceful political activities. It is estimated that in 1998 there were approximately 800 political prisoners in Myanmar.

According to reliable studies of the economic and social situation in Myanmar, the country is riddled with abject poverty. Child mortality rates are relatively high for a country with Myanmar's level of gross domestic product per capita. Poverty rates are approximately the same in urban and rural areas, but most of the poor (71 per cent) live in rural areas. Flawed policies and inefficient mechanisms for rice procurement are largely responsible for the high level of malnutrition and infant and maternal mortality. Government budgetary priorities that in effect limit expenditure on social services have exacerbated the current situation.

The adoption by the Government of Myanmar of military solutions to political problems, while seeking military and financial inputs from outside the country to impose its order on the people, continues to generate a pattern of gross and systematic human rights violations.

Unless the regime moves away from military solutions and engages instead in an all-inclusive political dialogue with the political opposition, including representatives of the ethnic groups, and addresses the concerns of the international community, the pattern of human rights violations which has characterized the last decade in Myanmar will continue and no significant progress can be expected towards realizing the country's economic potential and achieving the levels of human welfare and prosperity enjoyed by the rest of South-East Asia.³⁰

He concluded his report thus:

59. The Special Rapporteur, as in his previous reports to the General Assembly and the Commission on Human Rights, regrets that in spite of the Government's recent indications that "serious consideration" would be given to a visit by him, he has not so far been given permission to enter the country. He therefore has to rely on his personal interviews with refugees or other displaced persons as well as valuable information given to him by various organizations and institutions, both governmental and non-governmental, as well as by individual Governments.

60. A most welcome feature has been the resumption of cooperation by the Government in relation to the valuable work of the International Committee of the Red Cross (ICRC) which is now able to operate in accordance with its own procedures, as the Special Rapporteur has already been able to highlight in his last interim report to the General Assembly.

61. No concrete progress, most unfortunately, can be reported on the general situation of human rights in Myanmar. On the contrary, repression of political and civil rights continues in Myanmar, including summary or arbitrary executions, abuse of women and children by soldiers and the imposition of oppressive measures directed in particular at ethnic and religious minorities, including the continuing use of forced labour and relocation.

62. Persecution of the democratic opposition, in particular members of the NLD, continues as in previous years, including long prison sentences and the use of intimidation and harassment.

63. Well-documented reports and testimonies continue to be received by the Special Rapporteur which indicate that human rights violations continue to occur, as in the last decade. These include extrajudicial, summary or arbitrary

³⁰ *Situation of human rights in Myanmar*, E/CN.4/2000/38, 24 January 2000, p3.

executions, torture, portering and forced labour, particularly in the context of the “development” programmes and of counter-insurgency operations in ethnic areas.

64. With regard to the exaction of forced or compulsory labour, the Special Rapporteur reiterates, as in his previous reports, that information he has received from refugees and displaced persons indicates that the practice of forced labour continues, although there is an official order directing that the offending provisions of the Village Act and the Town Act should not be enforced. No law has been passed to make forced labour an offence and no prosecution against those exacting forced labour is possible. Impunity remains a serious problem.³¹

b. The “microphone incident”

After Mr Lallah’s resignation his successor, Mr Pinheiro, and the Special Envoy of the UN Secretary-General, Razali Ismail, pursued a non-confrontational approach to the SPDC. Optimists hoped that this would produce greater flexibility from the regime, and they pointed to the release of Ms Suu Kyi in May 2002 as an example (see above). Amnesty International even included Burma on its list of “good news stories” for the release.³²

In March 2003 Mr Pinheiro made a visit to Burma. He left on the day of his arrival, having discovered a hidden microphone in a room in which he was interviewing political prisoners. He had been promised absolute privacy in the interviews. This “microphone incident,” added to the events surrounding Ms Suu Kyi’s arrest and the deterioration of human rights since, led to a strong response in his latest report. The summary is as follows:

The present report is based upon the findings of the Special Rapporteur’s visit to Myanmar undertaken in March 2003 and information received by him up to 28 July 2003. The visit was curtailed by the Special Rapporteur when he discovered a functioning listening device in the room where he was conducting interviews with political prisoners.

During the visit, the Special Rapporteur noticed the lack of progress in the process of dialogue and detected some worrying signs of erosion of confidence between the Government and the National League for Democracy (NLD). Although he noted the urgency of addressing the evolving situation, the deadlock symptoms with regard to the dialogue and escalating political tensions contributed to setting the scene for the tragic events of the night of 30 May, followed by a significant deterioration of the human rights situation. On that day National League for Democracy members and supporters accompanying party General Secretary Daw Aung San Suu Kyi on her tour of Upper Myanmar were attacked by pro-Government protesters near Depayin (Sagaing Division). As a

³¹ Ibid, pp15-6.

³² *Good news stories January 2002 – April 2003*, Amnesty International, POL 10/004/2003, 28 May 2003.

result, more than 100 NLD members and supporters, among them elected members of Parliament, monks and students, were arrested, killed, wounded and missing. Information from various sources received thus far by the Special Rapporteur seems to indicate an element of premeditation on the part of the protesters and part of a general pattern of growing harassment of National League for Democracy supporters, particularly during Daw Aung San Suu Kyi's countryside trips.

The Special Rapporteur has sent several communications to the Government expressing his grave concern about the alleged death, bodily harm, detention and disappearance of scores of individuals as a result of the 30 May events, and urging the immediate and unconditional release of all those detained in this connection, as well as all other political prisoners. Although the Government has announced some releases, the Special Rapporteur believes that over 100 persons are still missing or in detention in connection with those events. Among the remaining detentions are: Daw Aung San Suu Kyi, National League for Democracy Deputy Chairman U Tin Oo and other leaders of the party. A series of these new detentions took place against the backdrop of continuing arrests and imprisonment of National League for Democracy members and other political activists since the beginning of 2003.

Other recent negative human rights-related developments included the closure of most (and perhaps all) National League for Democracy offices, among them its headquarters in Yangon; increased surveillance of members and supporters of the party and other political organizations; tighter control of the press, with no free access to information, including news about the 30 May incident, and reportedly frequent summoning and threatening of former political prisoners by the military intelligence.

Overall, the 30 May-related developments have constituted a potentially terminal setback on the political front and for that matter for the human rights situation in the country: it could be argued that all the progress that had been achieved since the process of dialogue began in 2000 has been undone in one stroke.

The Government's present posture has led to the freezing of diverse possibilities for cooperation with concerned States and international institutions, which had been ready to cooperate with Myanmar in the normalization of political and economic life. Thereby, the Government has put at serious risk the process of addressing urgently the existing precarious humanitarian situation, with all potential ramifications for the exercise of all human rights.

The Special Rapporteur has requested a visit to Myanmar as soon as possible, with a view to assess the present situation first-hand. He did so with the full support of the Office of the United Nations High Commissioner for Human Rights. This request remains to be officially answered by the Government. With regard to allegations of human rights violations in ethnic areas, the Special Rapporteur is of the view that the credibility of his findings depends on his ability to establish facts in an objective and impartial manner. Consequently, he followed a two-pronged approach to his investigations: (a) conducting research based on independent interviews of refugees from those areas in Thailand and (b) making

an independent assessment inside Myanmar by visiting some of the affected areas with a view to corroborating the results of his research and establishing facts about the alleged violations. While (a) had been completed, (b) has not yet taken place. The research conducted in Thailand in October-November 2002 documented such human rights abuses as forced labour, arbitrary taxation and extortion, forced relocations, torture, rape and extrajudicial executions, committed in parts of the States of Shan, Kayin, Kayah and Mon in Myanmar. At the time of writing, a reply from the Government was still outstanding regarding the proposed modalities of an independent assessment of the Special Rapporteur in Shan State.³³

B. ILO

In 1998 the ILO published a report on forced labour in Burma.³⁴ This followed a complaint in 1996 that Burma was violating the *Forced Labour Convention* 1930, and that it had been criticised for this in various ways by the ILO for 30 years.

A Commission of Inquiry was set up, which concluded that violations had occurred, and recommended remedial measures. The Commission concluded that

there is abundant evidence ... showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military.³⁵

The Conclusions and Recommendations from the report are reproduced in Annex I.

The Burmese authorities did not take actions that satisfied the ILO, and in 1999 it passed a resolution condemning Burma for the widespread use of forced labour and banning it from participation in ILO activities. The organisation recommended sanctions on Burma in 2000, though these were not binding on its member states. Burma reacted angrily to this and announced that it would not cooperate with the ILO any more.

In 2001 ASEAN issued a statement claiming that Burma had made efforts to meet the concerns over forced labour and calling on the ILO to end its campaign. This was followed by an ILO visit to Burma, which concluded that forced labour was still widespread in areas controlled by the *tatmadaw*. However, in March 2002 the ILO established a liaison office in Burma to take forward work on an action plan for the elimination of forced labour.

³³ *Situation of human rights in Myanmar*, A/58/219, 5 August 2003.

³⁴ *Forced labour in Myanmar (Burma)*, ILO Commission of Inquiry, 1998, in *ILO Official Bulletin*, special supplement, vol LXXXI, 1998, Series B. Not currently available on-line, but the main conclusions and recommendations are reproduced in *ILO Provisional Record* No 4, 88th Session, 2000, at: <http://www.ilo.org/public/english/support/publ/books.htm>.

³⁵ *Ibid.*

Mike O'Brien gave the British Government's position on this:

The UK has been at the forefront of support for the International Labour Organisation's (ILO) effort to eliminate the use of forced labour in Burma. At the meeting of the ILO Governing Body in March 2003, the Presidency of the European Union, on behalf of the UK and other EU countries, expressed continuing concern that the Burmese regime had not made further progress on this issue and said that it was a lack of political will on behalf of the Burmese authorities that was the root cause of this. The UK fully supports the decision taken by the ILO to call for a plan of action to be agreed before the next meeting of the ILO Liaison Officer and the Burmese authorities on the steps required to reduce and eliminate forced labour in Burma.³⁶

C. Amnesty International

Amnesty International was allowed to make its first ever visit to Burma in February 2003. Since that time it has reported a "grave deterioration of the human rights situation in Myanmar" and, since the arrest of Ms Suu Kyi, "an upsurge in detention of those peacefully exercising freedoms of expression and association."³⁷ It made a second visit in December 2003, after which it reported serious concerns about arbitrary arrests, incommunicado detention, unfair trials and the use of administrative procedures to prolong detention after sentences had been completed. It concluded that:

We have been told to be patient, and that change may come soon. But these assurances ring hollow in the face of continuing repression. Ultimately there comes a time for action, and that time is now. Once again, and in the strongest possible terms, we urge the authorities to:

1. Release all prisoners of conscience immediately and unconditionally.

They include members of parliament elect, journalists, doctors, lawyers, teachers and young activists. These men and women have the potential to make an invaluable contribution to the future of the country. Selective releases of a few high profile individuals will not suffice.

2. Stop the use of repressive legislation to criminalize freedom of expression and peaceful association.

These laws date from the nineteenth century to the present. Examples of their use in recent months include sentencing people for staging solitary protests, or discussing social problems in personal letters.

³⁶ 28 April 2003, cc119-20w.

³⁷ *Myanmar: Amnesty International's second visit to Myanmar. Official statement*, AI index: 16/037/2003, 22 December 2003, at: <http://web.amnesty.org/library/Index/ENGASA160372003?open&of=ENG-MMR>.

3. End the use of administrative detention provisions to hold prisoners of conscience without trial or prolong the incarceration of political prisoners who have completed their sentences.

Existing provisions (Articles 10a & 10b of the 1975 State Protection Law, amended by law 11/91) allow for up to five years' detention without charge, trial or recourse to appeal in the courts.

4. Address the black hole of incommunicado detention without charge or trial carried out by Military Intelligence Personnel and other members of the security forces.

Continued arbitrary detention under these provisions, intimidation and harassment by the authorities have created an atmosphere of fear and repression that will take more than rhetoric to dispel.

VII Position of UK, EU and USA

A. British Government's view

a. General

In December 2003 Baroness Symons gave the Government's position on Burma:

United Kingdom policy is to bring pressure to bear on the Burmese military regime to enter into genuine and substantive dialogue with opposition and ethnic groups, leading to democracy, national reconciliation and respect for human rights in Burma. We work closely with our international partners, including Burma's regional neighbours, to press the regime on these issues. United Kingdom pressure will be maintained until Burma is irreversibly committed to substantive, lasting political change.³⁸

She also commented on the SPDC's road map:

The military regime has put together something it describes as a "road map". It is a small but completely inadequate step. It has no time lines; it is unclear who will be allowed to join the national convention process; and as long as Aung San Suu Kyi remains under house arrest she will be unable to represent the National League for Democracy, as will others who are barred from doing so.³⁹

³⁸ HL Deb 11 December 2003, c866.

³⁹ HL Deb 11 December 2003, c867.

Mike O'Brien expressed the Government's support for Thai efforts to encourage dialogue:

The UK welcomes and is supportive of Thai efforts to encourage the Burmese military regime to enter into substantive genuine dialogue with democratic and ethnic minority leaders in Burma leading to national reconciliation. We believe that Thailand's proposal forms a good basis on which to build from.⁴⁰

b. *Human rights*

In February 2004 Bill Rammell gave the Government's position on efforts to tackle the human rights situation:

We continue to raise our concerns on human rights in Burma bilaterally and through the UN at every opportunity. We co-sponsored the UN General Assembly Human Rights Resolution on Burma last December and will play an active role in the forthcoming UN Commission on Human Rights in Geneva. We strongly support the efforts of the UN Special Rapporteur for Human Rights, Sergio Pinheiro. The EU has repeatedly condemned Burma's lack of progress on forced labour, most recently at the International Labour Organisation's (ILO) meeting in Geneva on 20 November 2003. We fully support the work of the ILO and have called upon the Burmese authorities to end permanently the use of forced labour.⁴¹

The UK co-sponsors resolutions each year in the UN Commission on Human Rights and the General Assembly. The latest available General Assembly Resolution, A/RES/57/231, is reproduced in Annex II. This was adopted in December 2002 and published in February 2003. A Resolution was passed in December 2003, but it has not yet been published. According to the UN Press Release on this,

The text on the situation of human rights in Myanmar would have the Assembly welcome efforts by the international community, including support from countries in the region, to encourage the Government of Myanmar to resume efforts towards national reconciliation and dialogue. The Assembly would also call on the Government to initiate an independent inquiry, with international cooperation, into the Depayin incident of 30 May 2003. It would call on the Government to secure the safe and unhindered access to all parts of Myanmar of the United Nations and international humanitarian organizations to ensure the provision of humanitarian assistance.⁴²

⁴⁰ HC Deb 6 November 2003, c817w.

⁴¹ HC Deb 12 February 2004, c1652w.

⁴² Press Release GA/10225, 23 December 2003.

c. Trade and investment

There is no consensus at present within either the EU or the UN Security Council for economic sanctions. The Government regards its obligations under the European Community Treaty as limiting the scope for unilateral sanctions, and its obligations in relation to the World Trade Organisation as similarly limiting its freedom of action in the absence of a Security Council Resolution.⁴³

However, the Government's own policy on trade and investment is as follows:

The British Government do not encourage trade with or investment in Burma while the regime continues to suppress the basic human rights of its people. We offer no support for companies wishing to trade with Burma or for those who want to invest there. Representatives of British companies or their subsidiaries that inquire about the prospects, either for trade with or investment in Burma, are informed of this policy.⁴⁴

The following table shows the value of UK imports of goods from Burma:⁴⁵

	<i>£ million</i>
1998	17.3
1999	23.8
2000	49.3
2001	66.6
2002	64.3
January – September 2003	44.2

At the end of 2001 foreign direct investment by UK companies in Burma was worth less than £0.5m.⁴⁶

Mr O'Brien gave the following account of investment:

The two largest UK investors in Burma, Premier Oil and British American Tobacco, have agreed to withdraw from Burma. British investment is now minimal; a number of British tour operators have links with Burmese travel companies and Sea Containers/Orient Express operate cruises in Burma. I have however written to ABTA to suggest that travel operators promoting Burma, should think twice before proceeding.⁴⁷

⁴³ HL Deb 27 April 1998, cc4-5w.

⁴⁴ HC Deb 15 July 2003, cc158-9w.

⁴⁵ HC Deb 2 December 2003, c20w.

⁴⁶ HC Deb 2 December 2003, c20w.

⁴⁷ HC Deb 4 December 2003, c118w.

British American Tobacco (BAT) sold its interests in Burma in November 2003, having previously owned 60% of a local company, the remainder of which was owned by a state enterprise. Campaigners complained that Distinction Investment Holdings, the Singaporean company to which BAT sold its stake, would still make BAT's products in Burma under license.⁴⁸ Premier Oil sold its stake in a Burmese gas field to Malaysia's Petronas earlier in 2003, and campaigners feel that efforts to embarrass European and North American companies out of Burma may simply open it up to greater investment from neighbouring countries.

d. Aid

UK policy on aid to Burma is shaped by the EU Common Position (see below). The position was set out in a series of Written Answers:⁴⁹

Vera Baird: To ask the Minister of State, Department for International Development whether UK development aid to Burma is made conditional upon specific policies or course of conduct by the Burmese Government. [130629]

Mr. Gareth Thomas: UK aid for the Burmese poor addresses priority humanitarian and other critical needs, including prevention of HIV/AIDS. UK aid is provided within the European Union (EU) Common Position on Burma, which states that ". . . Non humanitarian aid or development programmes shall be suspended . . ." except those "projects and programmes which should be, as far as possible, defined in consultation with democratic groups, including the National League for Democracy, and run with their involvement:

in support of human rights and democracy,

in support of poverty alleviation and, in particular, of the provision of basic needs for the poorest section of the population, in the context of decentralised cooperation through local civilian authorities and non-governmental organisations,

in support of health and basic education through non-governmental organisations."

We require partners to institute suitable mechanisms to ensure that UK aid is used in a transparent and accountable manner. Monitoring and evaluation systems have to be set up by recipients of UK aid, and such systems prevent any part of it going to the regime.

⁴⁸ *Reuters News*, 11 November 2003.

⁴⁹ HC Deb 6 October 2003, cc1004-5w.

Vera Baird: To ask the Minister of State, Department for International Development what the (a) extent and (b) nature is of Government development aid to Burma; and what plans there are to change the amount and nature of aid. [130631]

Mr. Gareth Thomas: In the current financial year 2003–04, UK aid for poor Burmese people is likely to be about £4 million, addressing needs in the areas of health, HIV/AIDS and support to refugees. Options for future aid are currently being assessed through the preparation of a new country plan.

Vera Baird: To ask the Minister of State, Department for International Development what proportion of UK development aid to Burma is channelled through the Burmese (a) Government and (b) Government agencies. [130632]

Mr. Gareth Thomas: UK aid for poor Burmese people is channelled through United Nations (UN) agencies and international and local non-governmental organisations. In 2003, some of the funding for the UN-led programme to tackle HIV/AIDS, to which the UK is the largest contributor, will be spent on activities delivered through the National AIDS Programme. It is not yet possible to say what proportion of UK aid will be used in this way. The UN is required to monitor these expenditures rigorously to ensure that they are used for the intended purposes in a transparent and accountable manner.

A new draft country assistance plan for Burma was issued by the Department for International Development on 5 February 2004.⁵⁰

B. EU sanctions

The EU has observed a package of sanctions against Burma since 1996. In April 2003 the sanctions were strengthened and embodied in a new instrument.

The first EU Common Position was adopted on 28 October 1996, and this was amended by a Council Decision of 26 October 1998.⁵¹ The package was extended for six month periods thereafter. It originally included an arms embargo and restrictions on travel for members of the regime. The 1998 amendment strengthened the travel restrictions by banning the issue of entry and transit visas for senior members of the SPDC and their families, for Burmese authorities in the tourist sector, and for senior military figures, and by suspending high-level bilateral government visits to Burma. EU states have not supplied aid to Burma, other than for humanitarian purposes or through NGOs, since 1988, and this was reflected, with certain exceptions, in the Common Positions. The

⁵⁰ http://www.dfid.gov.uk/Pubs/files/cap_burma_draft.pdf.

⁵¹ 96/635/CFSP, OJL 287, pp1-2, 8 November 1996 (amended by 98/107/CFSP, OJL 32, p13, 6 February 1998, to take account of the change of name of the ruling junta from SLORC to SPDC) & 98/612/CFSP, OJL 291, p1, 30 October 1998.

European Commission also suspended trading privileges for Burma in 1997, as a result of concerns over forced labour.⁵²

The UK wanted to strengthen this Common Position when it came up for renewal at the end of April 2003, but other EU states felt that the proposed changes were sufficiently wide-reaching as to require a new Common Position. This was duly adopted. It widened the scope of the visa ban and assets freeze, and it modified the arms embargo to prohibit technical training or assistance.⁵³ There was to have been a delay on this coming into effect until October 2003, pending possible progress in Burma. However, in response to the arrest of Ms Suu Kyi in May 2003 the EU decided to bring forward the implementation of the new Common Position to June 2003.⁵⁴

C. US sanctions

In July 2003 the USA imposed a ban on imports from Burma, to come into effect the following month. This was in addition to its existing ban on visas for the Burmese leadership and its opposition to loans for Burma from international financial institutions. According to reports, the USA took about 10% of Burma's exports at this point, including the great majority of its garment exports.⁵⁵ In 2002 US imports from Burma were about \$356m.⁵⁶

The USA had also imposed sanctions in June 2003 on one of the ethnic minority groups allied with the SPDC, the United Wa State Army (UWSA). This was on account of its involvement in drug trafficking, and the measure prevented US financial institutions from doing business with the UWSA or any front companies.⁵⁷

The import ban led to the closure of over 100 garment factories. The garment industry was one of the few relatively successful sectors of the Burmese economy. According to Burmese sources about 50,000 people, mostly young women, lost their jobs as a result of the closures.⁵⁸ They said that there were about 300 factories employing 300,000 people before the import ban. The USA acknowledged that about 40,000 jobs were lost in the first month after the ban was imposed. US Deputy Assistant Secretary of State Matthew Daly acknowledged that some of the young women who had lost their jobs had entered the sex industry as a consequence.⁵⁹ The Burmese Garment Manufacturers' Association

⁵² HL Deb 8 November 2001, c33w.

⁵³ 2003/297/CFSP, OJL 106, 28 April 2003, pp36-42.

⁵⁴ *Reuters News*, 16 June 2003.

⁵⁵ *Reuters News*, 28 August 2003.

⁵⁶ *Ibid.*

⁵⁷ *Reuters News*, 2 June 2003.

⁵⁸ *Reuters News*, 5 November 2003.

⁵⁹ *Ibid.*

said that orders from the EU now comprised the bulk of its trade, and that there was some growth in European orders. This had allowed a few of the closed factories to reopen.⁶⁰

The SPDC issued a statement saying that

sanctions especially targeted at developing countries directly hurt health care and education. Sanctions, in short, are imposed ... by rich and powerful nations mainly with the intention to create havoc and bring hardship on the mass population.⁶¹

Some Burmese businessmen claimed that the garment industry did not generate much revenue for the military regime.⁶²

Thailand led the regional opposition to the export ban, arguing that it would hurt the poor in Burma rather than the regime, and that it might lead to a “flood” of illegal labour entering Thailand.⁶³

⁶⁰ Ibid.

⁶¹ *Reuters News*, 16 July 2003.

⁶² *Reuters News*, 29 July 2003.

⁶³ *Reuters News*, 17 July 2003.

Annex I: Conclusions and Recommendations of ILO Report on forced labour, 1998⁶⁴

1. Conclusions on the substance of the case

528. There is abundant evidence before the Commission showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military for portering, the construction, maintenance and servicing of military camps, other work in support of the military, work on agriculture, logging and other production projects undertaken by the authorities or the military, sometimes for the profit of private individuals, the construction and maintenance of roads, railways and bridges, other infrastructure work and a range of other tasks, none of which comes under any of the exceptions listed in Article 2(2) of the Convention.

529. The call-up of labour is provided for in very wide terms under sections 8(1)(g), (n) and (o), 11(d) and 12 of the Village Act and sections 9(b) and 9A of the Towns Act, which are incompatible with the Convention. The procedure used in practice often follows the pattern of those provisions, in relying on the village head or ward authorities for requisitioning the labour that any military or government officer may order them to supply; but the provisions of the Village Act and the Towns Act were never actually referred to in those orders for the call-up of forced labourers that were submitted to the Commission; it thus appears that unfettered powers of military and government officers to exact forced labour from the civilian population are taken for granted, without coordination among different demands made on the same population, and people are also frequently rounded up directly by the military for forced labour, bypassing the local authorities.

530. Failure to comply with a call-up for labour is punishable under the Village Act with a fine or imprisonment for a term not exceeding one month, or both, and under the Towns Act, with a fine. In actual practice, the manifold exactions of forced labour often give rise to the extortion of money in exchange for a temporary alleviation of the burden, but also to threats to the life and security and extrajudicial punishment of those unwilling, slow or unable to comply with a demand for forced labour; such punishment or reprisals range from money demands to physical abuse, beatings, torture, rape and murder.

531. Forced labour in Myanmar is widely performed by women, children and elderly persons as well as persons otherwise unfit for work.

⁶⁴ *Forced labour in Myanmar (Burma)*, ILO Commission of Inquiry, 1998, reproduced from ILO *Provisional Record* No 4, 88th Session, 2000, at: <http://www.ilo.org/public/english/support/publ/books.htm>.

532. Forced labour in Myanmar is almost never remunerated nor compensated, secret directives notwithstanding, but on the contrary often goes hand in hand with the exaction of money, food and other supplies as well from the civilian population.

533. Forced labour is a heavy burden on the general population in Myanmar, preventing farmers from tending to the needs of their holdings and children from attending school; it falls most heavily on landless labourers and the poorer sections of the population, which depend on hiring out their labour for subsistence and generally have no means to comply with various money demands made by the authorities in lieu of, or over and above, the exaction of forced labour. The impossibility of making a living because of the amount of forced labour exacted is a frequent reason for fleeing the country.

534. The burden of forced labour also appears to be particularly great for non-Burmese ethnic groups, especially in areas where there is a strong military presence, and for the Muslim minority, including the Rohingyas.

535. All the information and evidence before the Commission shows utter disregard by the authorities for the safety and health as well as the basic needs of the people performing forced or compulsory labour. Porters, including women, are often sent ahead in particularly dangerous situations as in suspected minefields, and many are killed or injured this way. Porters are rarely given medical treatment of any kind; injuries to shoulders, backs and feet are frequent, but medical treatment is minimal or non-existent and some sick or injured are left behind in the jungle. Similarly, on road building projects, injuries are in most cases not treated, and deaths from sickness and work accidents are frequent on some projects. Forced labourers, including those sick or injured, are frequently beaten or otherwise physically abused by soldiers, resulting in serious injuries; some are killed, and women performing compulsory labour are raped or otherwise sexually abused by soldiers. Forced labourers are, in most cases, not supplied with food – they sometimes even have to bring food, water, bamboo and wood to the military; porters may receive minimal rations of rotten rice, but be prevented from drinking water. No clothing or adequate footwear is provided to porters, including those rounded up without prior warning. At night, porters are kept in bunkers or have to sleep in the open, without shelter or blankets provided, even in cold or wet situations, often tied together in groups. Forced labourers on road and railway construction have to make their own arrangements for shelter as well as all other basic needs.

536. In conclusion, the obligation under Article 1, paragraph 1, of the Convention to suppress the use of forced or compulsory labour is violated in Myanmar in national law, in particular by the Village Act and the Towns Act, as well as in actual practice in a widespread and systematic manner, with total disregard for the human dignity, safety and health and basic needs of the people of Myanmar.

537. Concurrently, the Government violates its obligation under Article 25 of the Convention to ensure that the penalties imposed by law for the illegal exaction of forced or compulsory labour are both really adequate and strictly enforced. While section 374 of the Penal Code provides for the punishment of those unlawfully

compelling any person to labour against the will of that person, that provision does not appear to be ever applied in practice, even where the methods used for rounding up people do not follow the provisions of the Village Act or the Towns Act, which are in any event never referred to in practice.

538. A State which supports, instigates, accepts or tolerates forced labour on its territory commits a wrongful act and engages its responsibility for the violation of a peremptory norm in international law. Whatever may be the position in national law with regard to the exaction of forced or compulsory labour and the punishment of those responsible for it, any person who violates the prohibition of recourse to forced labour under the Convention is guilty of an international crime that is also, if committed in a widespread or systematic manner, a crime against humanity.

2. Recommendations of the Commission of Inquiry

539. In view of the Government's flagrant and persistent failure to comply with the Convention, the Commission urges the Government to take the necessary steps to ensure:

(a) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Forced Labour Convention, 1930 (No. 29), as already requested by the Committee of Experts on the Application of Conventions and Recommendations and promised by the Government for over 30 years, and again announced in the Government's observations on the complaint. This should be done without further delay and completed at the very latest by 1 May 1999;

(b) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military. This is all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 above to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required;

(c) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. This requires thorough investigation, prosecution and adequate punishment of those found guilty. As pointed out in 1994 by the Governing Body committee set up to consider the representation made by the ICFTU under article 24 of the ILO Constitution, alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the penal prosecution of those resorting to coercion appeared all the more important since the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government's statements to the committee, was all the more likely to occur in actual recruitment by local or military officials. The power to impose compulsory labour will not cease to be

taken for granted unless those used to exercising it are actually brought to face criminal responsibility.

540. The recommendations made by the Commission require action to be taken by the Government of Myanmar without delay. The task of the Commission of Inquiry is completed by the signature of its report, but it is desirable that the International Labour Organization should be kept informed of the progress made in giving effect to the recommendations of the Commission. The Commission therefore recommends that the Government of Myanmar should indicate regularly in its reports under article 22 of the Constitution of the International Labour Organization concerning the measures taken by it to give effect to the provisions of the Forced Labour Convention, 1930 (No. 29), the action taken during the period under review to give effect to the recommendations contained in the present report. In addition, the Government may wish to include in its reports information on the state of national law and practice with regard to compulsory military service.

Annex II: UN General Assembly Resolution 57/231

57/231. Situation of human rights in Myanmar

The General Assembly,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights,⁶⁵ the International Covenants on Human Rights⁶⁶ and other human rights instruments,

Reaffirming that all States Members of the United Nations have an obligation to promote and protect human rights and fundamental freedoms and to fulfil the obligations they have undertaken under the various international instruments in the field,

Aware that Myanmar is a party to the Convention on the Rights of the Child,⁶⁷ the Convention on the Elimination of All Forms of Discrimination against Women,⁶⁸ the Geneva Conventions of 12 August 1949 on the protection of the victims of war,⁶⁹ as well as the Convention concerning Forced or Compulsory Labour, 1930 (Convention No. 29) and the Convention concerning Freedom of Association and Protection of the Right to Organize, 1948 (Convention No. 87), of the International Labour Organization,

Recalling its previous resolutions on the subject, the most recent of which is resolution 56/231 of 24 December 2001, and those of the Commission on Human Rights, the most recent of which is resolution 2002/67 of 25 April 2002,⁷⁰

Recalling resolution I adopted by the International Labour Conference at its eighty-eighth session, on 14 June 2000, concerning the practice of forced or compulsory labour in Myanmar,

Affirming that the will of the people is the basis of the authority of government and that the will of the people of Myanmar was clearly expressed in the elections held in 1990,

Affirming also that the establishment of a genuine democratic government in Myanmar is essential for the realization of all human rights and fundamental freedoms,

1. *Welcomes:*

(a) The preliminary steps taken by the Government of Myanmar towards democracy, in particular the release from house arrest of Aung San Suu Kyi on 6 May 2002 and her subsequent internal freedom of movement, the release of a number of political prisoners and the relaxation of some constraints on some political activities of the National League for Democracy;

⁶⁵ Resolution 217 A (III).

⁶⁶ Resolution 2200 A (XXI), annex.

⁶⁷ Resolution 44/25, annex.

⁶⁸ Resolution 34/180, annex.

⁶⁹ United Nations, *Treaty Series*, vol. 75, Nos. 970–973.

⁷⁰ See *Official Records of the Economic and Social Council, 2002, Supplement No. 3* (E/2002/23), chap. II, sect. A.

(b) The appointment by the International Labour Organization of a liaison officer in Myanmar as a first step towards the establishment of its full and effective representation in Myanmar;

(c) The visits to Myanmar by the Special Envoy of the Secretary-General for Myanmar during the past year, the visits by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, and the cooperation extended to them by the Government of Myanmar;

(d) The continuing cooperation with the International Committee of the Red Cross;

(e) The dissemination of human rights standards for public officials and some non-governmental organizations and ethnic groups through the convening of a series of human rights workshops;

2. *Notes* the establishment by the Government of Myanmar of a committee on human rights as a precursor to the establishment of a national human rights commission, which would follow the Principles relating to the status of national institutions for the promotion and protection of human rights annexed to General Assembly resolution 48/134 of 20 December 1993;

3. *Expresses its grave concern* at:

(a) The ongoing systematic violation of the human rights, including civil, political, economic, social and cultural rights, of the people of Myanmar;

(b) Extrajudicial killings; rapes and other forms of sexual violence carried out by members of the armed forces; torture; renewed instances of political arrests and continuing detentions, including of prisoners who have served their sentences; forced relocation; destruction of livelihoods; forced labour; denial of freedom of assembly, association, expression and movement; discrimination on the basis of religious or ethnic background; wide disrespect for the rule of law and lack of independence of the judiciary; deeply unsatisfactory conditions of detention; systematic use of child soldiers; and violations of the right to an adequate standard of living, in particular food and medical care, and to education;

(c) The disproportionate suffering of members of ethnic minorities, women and children from such violations;

(d) The situation of the large number of internally displaced persons and the flow of refugees to neighbouring countries;

(e) The ever-increasing impact of the human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) on the population of Myanmar;

4. *Calls upon* the Government of Myanmar:

(a) To fulfil its obligations to restore the independence of the judiciary and due process of law, and to take further steps to reform the system of the administration of justice;

(b) To take immediate action to implement fully concrete legislative, executive and administrative measures to eradicate the practice of forced labour and to implement fully the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of the International Labour Organization Convention concerning Forced or Compulsory Labour (Convention No. 29);

(c) To pursue the dialogue with the International Labour Organization with a view to full and effective representation of the Organization in Myanmar;

(d) To ensure safe and unhindered access to the United Nations and international humanitarian organizations and to cooperate fully with all sectors of society by means of consultation, especially with the National League for Democracy and other relevant political, ethnic and community-based groups, to ensure the provision of humanitarian assistance and to guarantee that it does reach the most vulnerable groups of the population;

(e) To continue to cooperate with the Special Envoy of the Secretary-General for Myanmar and the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar;

(f) To consider as a matter of high priority becoming a party to the International Covenant on Civil and Political Rights,² the International Covenant on Economic, Social and Cultural Rights,² the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁷¹ the International Convention on the Elimination of All Forms of Racial Discrimination,⁷² the Convention relating to the Status of Refugees⁷³ and the Protocol thereto,⁷⁴ the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict⁷⁵ and the International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Convention No. 182);

(g) To pursue through dialogue and peaceful means an end to conflict with all ethnic groups in Myanmar;

5. *Strongly urges* the Government of Myanmar:

(a) To restore democracy and implement the results of the 1990 elections, to ensure that the contacts with Aung San Suu Kyi and other leaders of the National League for Democracy move without delay into substantive and structured dialogue towards democratization and national reconciliation and at an early stage to include other political leaders in the talks, including the representatives of the ethnic groups;

(b) To end the systematic violations of human rights in Myanmar, to ensure full respect for all human rights and fundamental freedoms, to end impunity and to investigate and bring to justice any perpetrators of human rights violations, including members of the military and other government agents in all circumstances;

(c) To facilitate and cooperate fully with an independent international investigation of charges of rape and other abuse of civilians carried out by members of the armed forces in Shan and other states;

⁷¹ Resolution 39/46, annex.

⁷² Resolution 2106 A (XX), annex.

⁷³ United Nations, *Treaty Series*, vol. 189, No. 2545.

⁷⁴ *Ibid.*, vol. 606, No. 8791.

⁷⁵ Resolution 54/263, annex I.

(d) To release unconditionally and immediately all political prisoners;

(e) To put an immediate end to the recruitment and use of child soldiers and to extend full cooperation to relevant international organizations in order to ensure the demobilization of child soldiers, their return home and their rehabilitation;

(f) To lift all restraints on peaceful political activity, including guaranteeing freedom of association and freedom of expression, including freedom of the media;

(g) To end the systematic enforced displacement of persons and other causes of refugee flows to neighbouring countries, to provide the necessary protection and assistance to internally displaced persons and to respect the right of refugees to a voluntary, safe and dignified return monitored by appropriate international agencies;

(h) To recognize further the gravity of the situation regarding HIV/AIDS and the need to take the necessary action to combat the epidemic, including the effective implementation in Myanmar of the United Nations joint action plan on HIV/AIDS, in cooperation with all relevant political and ethnic groups;

6. *Requests* the Secretary-General to continue to provide his good offices and to pursue his discussions on the situation of human rights and the restoration of democracy with the Government and people of Myanmar, to submit additional reports to the General Assembly during its fifty-seventh session on the progress of those discussions, and to report to the Assembly at its fifty-eighth session and to the Commission on Human Rights at its fifty-ninth session on the progress made in the implementation of the present resolution;

7. *Decides* to continue the consideration of this question at its fifty-eighth session.

*77th plenary meeting
18 December 2002*