DAVID & GOLIATH — SANCTIONS STYLE

State and local sanctions have been used by Americans in several instances to condemn repressive or discriminatory practices of foreign governments, most notably with regard to apartheid in South Africa. That's why, when the state of Massachusetts passed its Burma Selective Purchasing Law in 1996, few would have predicted the scenario that has unfolded over the past three years. A lawsuit has been brought against Massachusetts by the National Foreign Trade Council (NFTC) on behalf of over 500 corporate members, setting the stage for a "people" vs. "big business" showdown. Serving as a focal point for debate on the rights of citizens to choose how their tax dollars are spent and the role of states in American foreign policy decisions, the bill restricts the granting of state contracts to those companies doing business in Burma. A U.S. District Court and a Federal Court of Appeals have struck down the Burma law as unconstitutional. The state of Massachusetts has now asked the Supreme Court to hear the case.

IN THEIR OWN WORDS

Are economic sanctions an effective tool in bringing about political change? Do states and local governments have the right to enact laws that impact American foreign policy? Do American citizens collectively have the same rights as they do individually in determining how their hard-earned money will be spent? How do state and local sanctions affect our obligations under global trade agreements? These are some of the questions discussed by experts during a recent briefing sponsored by the Washington DC-based New Economy Communications on trade sanctions and selective purchasing laws.

ONE FOOT OUT THE DOOR?

For the past several years, the use of forced labor in Burma has been condemned through a series of resolutions and "special paragraphs" issued by the International Labour Organization (ILO), the oldest member of the United Nations family. A Commission of Inquiry, recently established to investigate the situation, produced overwhelming evidence of "the continued, widespread use of forced labor" in the country. The government's claim that these allegations are "groundless," as well as its "flagrant and persistent failure to comply" with the ILO conventions it has ratified, has resulted in some of the strongest measures ever taken by the ILO against one of its member countries. The resolution issued in June by this tripartite body of government, employer and worker representatives, prohibits the government of Burma from receiving technical cooperation and assistance from the ILO or invitations to attend the organization's meetings, symposia and seminars, a move some view as a possible "first step" toward expulsion.
THE PEOPLE HAVE SPOKEN
An address by Rep. Byron Rushing

CORPORATE AMERICA VS. THE STATE OF MASSACHUSETTS
Summary of the National Foreign Trade Council Challenge of the Massachusetts Burma Law

TRADE SANCTIONS & SELECTIVE PURCHASING LAWS
A Briefing and Debate

REPORT OF THE INTERNATIONAL LABOUR ORGANIZATION'S COMMITTEE ON THE APPLICATION OF STANDARDS

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Byron Rushing is a member of the Massachusetts Legislature and the sponsor of the Massachusetts Burma Law. Passed in 1996, the law effectively prohibits companies doing business in Burma from receiving government contracts. The National Foreign Trade Council (NFTC), representing 550 member companies and financial institutions, has challenged the constitutionality of the law in court. It was struck down by a U.S. district court and a federal court of appeals. The Massachusetts Attorney General recently announced that the state will appeal the case to the Supreme Court.

Representative Rushing gave this address in Boston at a March 1999 event sponsored by the New England Burma Roundtable and the Unitarian Universalist Service Committee. It was transcribed and edited for Burma Debate.
Let me just say that I am not at all being unduly humble when I tell you that none of this would have happened without you—all of you. The passage of the Burma Law in Massachusetts was as good an example of positive and creative democracy as I have ever seen in Massachusetts and you are responsible for that.

When I came into the legislature in 1983, a group of legislators led by my predecessor had just passed one of the first South African anti-apartheid divestment bills. The Massachusetts South African Divestment Bill was passed in 1982. It was vetoed by the governor. It took nearly five months to build enough support to have a two-thirds majority of both houses to override that veto in the last weeks of the session. This first Divestment Bill became law "over the objections of the Governor."

So when I came into the legislature, we had the new divestment bill on the books and I became one of several [lawmakers] who worked very hard to make sure that the law was carried out. And Massachusetts did, over the period of three years, divest all of the public pension funds assets from companies that were doing business in South Africa.

I was talking to a reporter the other day who said, "yeah, but...." It was his understanding that none of the grassroots anti-apartheid activities had any effect. The President just decided to have sanctions against South Africa. I asked the reporter, "How old are you? Where were you when these things were happening?" If you weren't an activist in the '70s and '80s, then read the history!

Because, of course, what happened was that we had to get the United States Congress to take the position against what was called "constructive engagement" in South Africa. The U.S. Congress passed the sanction law against South Africa. The president of the U.S. vetoed the sanction law against South Africa. And that veto was overridden in Congress.

The reason you could get congressmen and women to do that, to take that stand and deliver that veto, was because they were hearing from their constituents. They were hearing from their constituents not only in letters and phone calls and petitions, but they were hearing from their constituents who had already gotten their towns, cities, counties, and their states to take positions against apartheid in South Africa by pressuring American companies to leave South Africa. It is that movement that has informed subsequent movements and informs this one that we are involved in today.

When American companies were faced with this pressure, they looked around and they did two things. One set of companies said, "Well. It's bad public relations. There are these significant groups in the country who are supporting the anti-apartheid movement. One of those significant groups is African-Americans." This, of course, is what we call "hyphenated American" foreign policy. It is foreign policy informed by groups of people who have an ethnic relationship with the country that is under some form of oppression. So the companies looked around and they said, "Well, if we get out of South Africa, we may avoid domestic boycotts led by people in the black community saying that we are anti-black. So we will leave." And those companies that sold things to consumers left South Africa early.

The companies that sold things to businesses or were privately held, however, — they stayed. We searched for a strategy to put pressure on those companies. We learned that many companies were far more concerned about having states not buy their products than having states not invest in their stock. If we did not invest in their stock, generally they didn't lose money. Someone else went and bought the stock. But they had to sell their products. So when local and state governments in the United States said we would not be buying their products, they started to listen. We then were able to put pressure on another group of businesses. These were businesses not only in the United States, but corporations abroad that wanted to do business with governments in the United States. And we called this strategy "selective purchasing."

That is why when activists sought my support and leadership in the legislature in 1994, I suggested "selective purchasing," a modified boycott by a local government of goods and services sold by companies doing business in Burma. The Massachusetts Burma Law, Chapter 130 of the Acts of 1996, except for a few exceptions, bars the Commonwealth from buying goods or services from companies that do business in Burma. By so doing, we have joined an international movement for the restoration of democracy in that country, in the same way we were early supporters of the successful movement to end apartheid in South Africa.

Similar Burma legislation has been adopted by other jurisdictions and these laws are having an impact. Since their passage, over 15 companies have withdrawn from Burma. We have no accurate count of how many have put off plans to enter Burma.

On April 22, 1997, President Clinton announced that the Administration would ban new U.S. investment in Burma. He took this action under the "Federal Burma Law" approved in September 1996, three months after the Massachusetts Burma Law.

It is clear that President Clinton took this action for three main reasons. The most important factor was the call for sanctions by the democracy movement inside Burma. Their principled call for sanctions, despite the regime's brutal crackdown, laid the moral foundation for President Clinton's decision. Secondly, the Administration took this
CHRONOLOGY OF EVENTS

While facing a constitutional battle in U.S. courts, the Massachusetts Burma Law has also been challenged by the European Union and Japan under the World Trade Organization (WTO) Agreement. Although on separate legal tracks, the WTO action has moved the political debate into a global arena.

July 1996
Massachusetts Legislature enacts Massachusetts' Burma Selective Purchasing Law, "An Act Regulating State Contracts with Companies Doing Business with or in Burma," sponsored by Representative Byron Rushing. By stipulating that any company doing business with Burma must pay a 10% penalty surcharge on procurement contracts with the Massachusetts state government, the Massachusetts Burma Law effectively deters investment in that country.

September 30, 1996
Cohen-Feinstein amendment signed into law by President Clinton. The provisions, authored by Senator Diane Feinstein (D-CA) and then-Senator William Cohen (R-ME), ban new U.S. private investment in Burma "if the Government of Burma has physically harmed, rearrested for political acts, or exiled Aung San Suu Kyi, or has committed large-scale repression of or violence against the democratic opposition."

April 16, 1997
USA*Engage, a coalition of 674 businesses and trade associations, is announced. The stated purpose of USA*Engage is to promote U.S. investment abroad. William Lane, the Washington Director for Caterpillar, Inc., is named chairman, and the organization actively begins its campaign against local, state, and federal sanctions.

May 20, 1997
President Clinton issues Executive Order 13847 that bans new investment in Burma, judging recent actions by the regime to constitute the repression described in the Cohen-Feinstein amendment.

June 20, 1997
The European Union formally notes its position that the Massachusetts Burma Law violates the World Trade Organization's "Government Procurement Agreement" (GPA), to which the United States is a signatory. The GPA bans the use of non-performance criteria in assigning most federal and state contracts. The measure makes laws like Massachusetts' illegal if they involve procurement contracts above $500,000 for goods and services or $7 million for construction.

July 18, 1997
Japan joins the EU in criticizing the Massachusetts Burma Law as a violation of the United States' international obligations and requests WTO consultation on the conflict.

February 17, 1998
National Foreign Trade Council (NFTC), representing 550 members, adopts a resolution opposing state and local governmental restrictions on foreign trade. The resolution also authorizes the NFTC "to bring legal challenges to these state and local governmental restrictions upon foreign trade."

April 30, 1998

June 1998
Massachusetts Assistant Attorney General Thomas Barnico files a brief in defense of the Massachusetts law. The case in favor of the law is largely based on the "market participant doctrine," an exception to the Commerce Clause, which grants states the same right as people to choose with whom they do business.

June 2, 1998
In response to Massachusetts Attorney General's request for names of any companies that have incurred damages because of the Burma law, the NFTC files a motion to protect names of member corporations.

June 10, 1998
Massachusetts Attorney General Scott Harshbarger files a memorandum in opposition to NFTC's motion for a protective order. The submission to the
Federal District Court includes a statement by Secretary of State Madeleine Albright supporting consumer boycotts of Burma.

July 1998
Judge Joseph Tauro rules in favor of a protective order by the NFTC, allowing the coalition to keep secret the names of the companies claiming to have suffered damages due to the Burma law.

***
European Union, U.S. Chamber of Commerce, the Organization for International Investment, and the Washington Legal Foundation file amici brief in support of NFTC’s position.

***
EU requests a WTO panel to determine the compatibility of the Massachusetts law with appropriate international rules.

November 4, 1998
Massachusetts Burma Law is struck down in 10th District Court decision by Judge Joseph Tauro, finding the law unconstitutional as it “impermissibly infringes on the federal government’s power to regulate foreign affairs.”

February 1999
The EU suspends its WTO panel investigating the Massachusetts Burma Law following the Tauro decisions.

March 1999
The Commonwealth of Massachusetts appeals Judge Tauro’s decision. Briefs in support of the appeal are filed by members of Congress, human rights organizations, state attorneys general, labor organizations and civil liberties groups.

May 4, 1999
First U.S. Circuit Court of Appeals hears case of the Massachusetts Burma Law.

June 22, 1999
First U.S. Circuit Court of Appeals upholds 10th District Court decision finding the Massachusetts Burma Law to be unconstitutional.

July 1999
Massachusetts Attorney General announces that Massachusetts will appeal the Burma Law to the U.S. Supreme Court.

action in response to pressure for sanctions from Congress. And thirdly, grassroots pressure, particularly in the form of state and local selective purchasing laws, built the political momentum for President Clinton’s decision.

We in Massachusetts can be proud that we were the first state to adopt a Burma selective purchasing law. The selective purchasing laws put pressure on many companies in Burma that are not affected by the president's sanctions: Companies that are already investing in Burma and foreign-owned companies in Burma—if they wish to do business with the Massachusetts government and its authorities—are covered by our Burma selective purchasing law.

Remember that the tools that we are using, like divestment tools and selective purchasing, cannot be used in every human rights struggle in the world. We have to have certain conditions. We used to believe that there were three things we had to have. We had to always have a group of people on the ground in the country who are an organized opposition. There had to be a group of people in the country that we could talk to with the legitimacy to say, "Please. Put this pressure on the companies that are investing in our country. Help us get them out. Help us to keep foreign investment from coming in." In South Africa of course it was the ANC [African National Congress] and later on, COSATU—the unions. In Burma it is the National League for Democracy, the NLD.

The second piece that we need is to have a clear understanding of the end. There has to be an end. There has to be a point when we have done what we are supposed to do. In South Africa, it was free, universal, nonracial elections. In Burma, we have a clearly defined end. We know what it is. It's not that every Burmese should feel good; it's not that the Burmese will have solved all their problems. It is that we will have the restoration of democracy, that people will be able to go to vote and the people who have been elected and never sat will be able to sit.

And the third condition, needed was a "natural" constituency, a "hyphenated group" of Americans (African- or Irish-Americans, for example) to be at the center of the base of American activists. This third condition is being revised. And this is the point I want to stress tonight; it is what has gotten people so upset about this movement. Neo-liberal corporations and governments are so upset about the Burma movement,
more upset than they were about South Africa, or about the McBride Principles, because they were not prepared for groups of Americans who would organize around a place where there were so few people from that place in their midst.

What is so remarkable is that people have said: "No! It doesn't matter if I know those people, I know what that situation is." We understand the oppression and we understand the need. We're supporting democracy in ways that connect with the people who are doing that work on the ground there in Burma. That attitude is what is so shocking to American corporations, what is so shocking to the followers of structural engagement and free trade with tyrants. There are people in America who really believe that we should have human rights in the world, who are willing to work so we can have human rights in the world, are willing to work so we can have sustainable democracy throughout this globe. And you are a part of those people.

Now, the corporations have done something that they never dared to do during the anti-apartheid movement. Under the cover of the National Foreign Trade Council, they've gotten themselves together and they have sued us.

This, however, has given us a lot of "ink." You know that part of our strategy is publicity. We like publicity. If we don't get publicity, we're in trouble. Any grassroots movement knows that one of the worse things that can happen is not to be written about, not to be on television. It's terrible. You are always working to get publicity because that's the cheapest way that you have to get your message out to all the people who need to hear it. We learned that very well in the civil rights movement.

So, on one hand, having the corporations sue Massachusetts was wonderful. How many times had the Economist magazine written about the democracy movement in Burma? But now, they had a handle: "American Corporations Sue Massachusetts." Why? Because Massachusetts supports the restoration of democracy in Burma. And so, they had to get that word in there: "Burma." And they had to put the little map in there: "Burma." And they have to start showing people where Burma was! And that there was this democracy movement in Burma! And that there was suppression in Burma by the regime, I still refer to as SLORC. [Editor's note: Now renamed the State Peace and Development Council (SPDC)]

Central to our support for these legal struggles to defend the Burma Law in court must be our support for the struggle in Burma. When this case is won, we will call it, "The Burma Case." And people will remember that it was because of our work in helping to restore democracy to Burma, that Americans were assured their right to petition their local governments, their right to petition their state governments, their right to organize their governments to purchase what they wish to purchase, and from whom they wish to purchase.

If we as citizens have the right to make moral judgments about what we buy, we together as governments can make those same moral judgments. We know as individual consumers that it is not enough to ask that the widget works. We have to be able to ask, "Has the widget been made by somebody who has not been exploited and oppressed?" We have to be able to make moral judgments about what we buy. We have to be able to forcefully say what we believe the policy of our government should be.

It is precisely because of our success that this cabal of corporations has come together and sued Massachusetts: Just remember, if we lose this, these corporations will go off and figure out all sorts of other neo-liberal, constructive engagements in the world. And there will be far more people suffering and far more people having to work so much harder to regain their dignity and integrity in countries throughout the world.

Bishop Desmond Tutu, in 1993, wrote, "International pressure can change the situation in Burma. Tough sanctions, not constructive engagement, finally brought the release of Nelson Mandela and the dawn of a new era in my country. This is the language that must be spoken with tyrants—for, sadly, it is the only language they understand. The courageous, committed witness of Burma's democratically elected leadership, Aung San Suu Kyi ... is an inspiration. We must ensure that because she is out of sight, she is not therefore out of mind."

These first steps taken in Massachusetts, in New York City, in Los Angeles and in other jurisdictions begin to assure all the people of Burma that although they are out of sight of the United States, Burma is not out of mind of all of us who believe in democracy and human rights.
Summary of the National Foreign Trade Council
Challenge of the Massachusetts Burma Law

This summary was written by the National Foreign Trade Council and can be found on the USA*Engage website: http://www.usaengage.org.

The Massachusetts Burma Law, 7 M.G.L.A. & 22G-M, enacted in June 1996, effectively prohibits companies that do business in the Union of Myanmar (formerly Burma) from providing goods and services to Massachusetts state agencies. The sole purpose of the law is to attempt to alter the Union of Myanmar’s domestic policies. The Massachusetts law directly intrudes on the exclusive power of the national government to regulate foreign affairs, discriminates against companies engaged in foreign commerce, and subverts the policies and objectives of the federal statute imposing sanctions on the Union of Myanmar.

There is no disagreement between the parties as to the need for reform in the Union of Myanmar. The current authoritarian regime, the State Peace and Development Council, has reportedly committed egregious human rights violations and has refused to recognize the results of the democratic election held in that country in 1990. The issue presented by this case, however, is not whether the Burmese government is bad or good, but whether that Commonwealth’s effort to conduct its own foreign policy is a constitutionally permissible one. It is not.

The Massachusetts law prohibits state agencies and authorities from contracting with companies that do business in the Union of Myanmar, with only a few limited exceptions to this broad prohibition. The law defines "doing business in Burma" expansively: It includes not only having any place of business in that country and/or doing business with the government, but also being the wholly owned subsidiary of any company doing business in the Union of Myanmar. As an example, imagine that "Subsidiary" were a U.S. company that was wholly-owned by a Japanese "Parent." "Subsidiary" might have absolutely no business contacts in Myanmar of any sort, and no involvement in the decision whether "Parent" should do business in that nation. But if "Parent" does any business in Myanmar, "Subsidiary" will be barred from contracting with Massachusetts agencies.

The effects of this law on companies seeking to do business with Massachusetts are serious. Any company that wishes to provide goods or services to the Commonwealth must cease any business con-
NFTC Profile

Membership and Organizational Structure

The Council’s membership consists of some 550 U.S. manufacturing corporations, financial institutions and other U.S. firms having substantial international operations or interests. It is the oldest and largest U.S. association of businesses devoted to international trade matters. Its membership consists primarily of U.S. firms engaged in all aspects of international business, trade, and investment. Most of the largest U.S. manufacturing companies and most of the 50 largest U.S. banks are Council members. Council members account for at least 70% of all U.S. non-agricultural exports and 70% of U.S. private foreign investment. The Council’s members govern the Council through a Board of Directors, consisting of representatives of over 50 member companies.

Because the Council’s membership is composed of firms having strong interest in international trade and investment, and those members are committed to an open international trading system, there is a broad consensus on basic policies within the membership.

Objective of the Council

The fundamental goal of the Council is to develop policies reflecting the interests and consensus of council members, designed to expand exports, protect U.S. foreign investment, enhance the competitiveness and profitability of U.S. industry and promote and maintain a fair and equitable trading system.

Specific Objectives

To influence U.S. Government policies and actions related to trade, foreign investment, taxation of foreign source income, export finance, and other selected issues of importance to U.S. foreign trade and to NFTC members.

To keep the NFTC membership informed of the Council’s progress in advocating and implementing NFTC Policy recommendations as developed with the membership and to provide members with detailed statements of NFTC positions for members’ use in communicating their positions to policy makers and the public.

Excerpt from the USA*Engage website.
companies doing business in the Union of Myanmar. In so doing, it unquestionably discrimi-
nates against foreign commerce. The Massachusetts Burma Law also interferes with the ability of the
United States government to "speak with one voice" on foreign commerce questions. Indeed, as discussed
above, when Framers met to design the Constitu-
tion, they were motivated in substantial part by a
desire to nationalize foreign trade dealings. The
drafters of the Foreign Commerce Clause under-
stood that discriminatory treatment of foreign com-
merce by one state could create problems, such as
the potential for international retaliation, that con-
cern the entire nation.

The Massachusetts law is not saved simply
because the Commonwealth cloaks its effort to
change Myanmar's domestic policies in a purchas-
ing law. The so-called "market participant excep-
tion," which the Supreme Court has applied in a
handful of Interstate Commerce Clause cases, is
inapplicable to the Massachusetts Burma Law for
two reasons: (1) the market participant exception
does not apply to Foreign Commerce Clause chal-
lenge; and (2) with the Massachusetts Burma Law,
the Commonwealth is acting to regulate, not simply
to participate, in a market. The Commonwealth can
point to no economic motivation for this law; its
exclusive goal is to affect policy in the Union of
Myanmar. The Supreme Court has recognized that,
even when a purchasing law is involved, a state effort
to set policy is regulation, not market participation.

Finally, the Massachusetts Burma Law conflicts
with the sanctions enacted by Congress and the
President to implement a federal strategy for encour-
gaging political change in the Union of Myanmar. In
the face of this conflict, the state law must give way
to the federal provisions. Congress and the President
have determined that the best approach to sanctions
against Myanmar is a limited withdrawal of United
States resources, combined with a strong multilat-
eral effort, which requires the federal government to
work in cooperation with neighboring nations and
trading partners to encourage democratic change.

The Massachusetts law's unilateral, complete
withdrawal approach conflicts with the federal strat-

gy and impedes the effectiveness of federal efforts.
Under the circumstances, it is preempted by the fed-
eral enactments.

NFTC "Warning" Letter
NATIONAL FOREIGN TRADE COUNCIL, INC.
1625 K Street, N.W., Washington, DC  20006-1604
Tel: (202) 887-0278 Fax: (202) 452-8160

November 20, 1998

Mr. Joseph N. de Raismes, III
City Attorney
P.O Box 791
Boulder, CO  80306

Dear Mr. de Raismes:
This letter concerns Boulder Ordinance 5855, barring the
purchase of goods and services from companies doing business
in Burma.

On November 4, 1998, in a suit brought by the National
Foreign Trade Council ("NFTC") on behalf of its 500 member
companies, the United States District Court for the District of
Massachusetts held a similar Massachusetts law unconstitution-
al because it "impermissibly infringes on the federal
government's power to regulate foreign affairs." (NFTC op., at
3) A copy of this decision is enclosed, together with a copy of
the judgment dated November 17, 1998, declaring the law
unconstitutional and enjoining its enforcement. The court also
allowed NFTC to assert a claim for its attorney's fees under 42
U.S.C. & 1998, providing for payment of attorneys' fees to the
prevailing parties in civil rights litigation. We enclose for your
information a two-page summary of the decision and editorials
supporting the decision from the Boston Globe and Boston
Herald.

Although Massachusetts has announced that it plans to
appeal this decision to the United States Court of Appeals for
the First Circuit, the NFTC believes that the District Court's
decision is correct and that laws and resolutions, such as
Ordinance 5855, are equally unconstitutional.

We urge the City of Boulder promptly to repeal its Burma
ordinance. We are prepared to discuss with you our reasons for
concluding that the Massachusetts decision is correct; that it is
equally applicable to the City of Boulder; and that the
ordinance should be repealed.

We look forward to hearing from you.

Sincerely,
Frank D. Kittredge
President
National Foreign Trade Council

Letters such as this were distributed by the NFTC to local municipalities
that had passed selective purchasing legislation similar to the Massachu-
setts Burma Law.
The lawsuit brought by the National Foreign Trade Council (NFTC) against the state of Massachusetts as to the constitutionality of the Massachusetts Burma Law has become part of a much larger debate on issues surrounding global trade and investment. It has opened the door to questions about the effectiveness of economic sanctions in general, and the rights of state and local governments to establish value-based parameters around investment and purchasing decisions.

At a forum on May 12, 1999, sponsored by the Washington-based New Economy Communications, Mr. Dan Griswold, Associate Director of the Cato Institute's Center for Trade Policy Studies, and Professor Robert Stumberg of Georgetown University Law School and Director of the Harrison Institute for Public Law, presented varied points of view on the Burma Law and the role of state and local governments. The discussion was transcribed and edited for Burma Debate.
Dan Griswold

State and local sanctions ... fail two fundamental tests. One, they're unconstitutional, and two, they're bad policies. To get right to the constitutional question, there are basically three fundamental constitutional principles that the state and local sanctions run afoul of. I'll spend most of my time on the one which I think is the most egregious violation, and the one that the Tenth District Court judge cited to throw out of the Massachusetts statute last November.

And that is, foreign policy is the exclusive domain of the Federal Government. It's right there in the Constitution. We have a system of limited enumerative powers. There are certain things that the federal government is charged to do exclusively ... and to conduct foreign policy is a prominent one among them. The problem with state and local sanctions is that states and local governments are getting into the business of conducting foreign policy. It's important that the United States speak with one voice to other nations, and to the rest of the world. I think that was part of the genius of the Constitution. We can't have fifty separate, sovereign entities making policy. And when you throw in counties, municipalities and townships, you're talking about, I believe, 36,000 independent state and local entities. You would just have ... a mess.

The Supreme Court's been quite clear about this whenever these questions come up. Back in 1931, in the Supreme Court case of Hines v. Davidowitz, the Supreme Court said, "The Federal Government, representing as it does the collective interests of the states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties. Our system of government is such that the interests of the cities, counties and states no less than the people of the whole nation, comparatively requires that the Federal power in the field of foreign relations be left entirely free from local interference." The Supreme Court basically upheld that principle in a 1968 case....

And the Tenth District [Court] in Boston, Judge Joseph Tauro, agreed last November. The National Foreign Trade Council has challenged the Massachusetts statute in court, and the judge agreed entusiastically and unambiguously with the court's earlier reasoning. The judge said in striking down the Massachusetts law, that it was an infringement on "the exclusive role assigned to the Federal Government in the area of foreign affairs." He went on to say, "The Federal Government has exclusive authority to conduct foreign affairs, and states and municipalities must yield to the Federal Government when their actions affect significant issues of foreign policy. State interests, no matter how noble, do not trump the Federal Government's exclusive foreign affairs power." The Massachusetts law clearly runs afoul of the Constitution. To me, that's the end of the story.

Two more constitutional reasons which the judge didn't dismiss — if you just found one constitutional flaw, there's no need to have two others — are the Commerce Clause, which gives Congress the exclusive power to regulate commerce with foreign nations, and the Supremacy Clause, which says that when federal law collides with state and local law, federal law should be supreme. And Congress has spoken very explicitly on policy with regard to Burma. [Editor's note: The U.S. government enacted federal sanctions on new investment in 1997.] But let me talk about why state and local sanctions are just a bad idea, even if they were constitutional. One, they hurt American companies. They make them face a cruel choice between bidding for contracts with state and local governments — and somewhere around $250 billion a year is spent by state and local governments on contracting for goods and services so there is a big pot there — and investing in foreign countries. I don't think they should have to make those choices. [It means] lost opportunities, lost markets abroad.

One estimate by the Institute for International Economics is that American companies lose 15 to 19 billion dollars a year in export sales. That's because of sanctions generally, not just state and local sanction, but a broad range of sanctions. It hurts U.S. foreign policy. It confuses our friends and foes alike. The Europeans are pursuing WTO [World Trade Organization] action, or threaten to, because this violates our obligations in the WTO for open procure-
ment. The State Department testified before the Maryland House of Delegates last year that, "state and local sanctions may impair the President's ability to send a clear and unified message to the rest of the world."

And [sanctions] hurt taxpayers. The Massachusett's law decided if you're doing business in the country of Burma, you have to be at least ten percent below any other bid in order to be considered for a state contract. So if you're nine percent below, and the state rejects it, you have cost taxpayers money. Taxpayers are not getting their bang for their buck.

Finally, and I think this is the saddest irony, [sanctions] hurt the people that they're supposedly trying to help. The people who are paying the biggest price for this dis-investment in Burma are the people of Burma. They are deprived of the job opportunities, the increased wages and the intangible, but yet important, aspect of just more contact with Westerners, with Western business people, with tourists. You, in affect, isolate the people of Burma through this policy.
The Massachusetts Law alone has reportedly led to the withdrawal of Hewlett-Packard, Apple, and Eastman-Kodak out of Burma. Byron Rushing and other people in Massachusetts have left the people of Burma poorer and more isolated. Pope John Paul II, when he was in Cuba last year said, "Sanctions are always deplorable, because they hurt the most needy."

And then — a matter of small consideration — sanctions don't work! The fatal flaw of sanctions is that the countries that are most likely to draw the fire of sanctions, by their nature, are the countries that are the least influenced by sanctions. Look at Burma: a classic sanctions target; repressive government, bumbling dictatorship. Those countries tend to be the least economically developed, the least integrated in the global economy, but also the most politically insulated from their own citizens. So basically we have very little leverage over Burma, because they just don't have that much integration in the global economy. They don't have that much to lose. They're already isolated through their own bad policies. We do manage to inflict some pain on their citizenship but it doesn't transfer to the elected officials because they don't have to face voters, they don't allow mass protests.

I think that the law here really takes a backseat to common sense. Most of the technical, legal principles, that the lawyers call "market participation," the "foreign commerce clause," and the "exclusive foreign affairs power," are all a kind of jargon for common sense principles of democracy. I'd like to summarize what I think the three basic principles of democracy are, but perhaps we should first [address] Dan's last point as to whether or not sanctions work, because if we agree that there's nothing of value here, the legal merits are meaningless. But I think there is something of value here.

Do sanctions work? It seems to me that selective purchasing, which is what Massachusetts has done, serves at least three functions. Those functions are:

First, to define a standard for doing business, in this case, a standard of public morality. Secondly, to give that standard political visibility, to give it a litmus test, which is viewed by other cities, states and Congress. And thirdly, if those first two steps are successful, to put economic pressure on companies and perhaps on countries.

So let's just look at what's going on in Burma and compare it to the most recent analogy, which is what happened in the anti-apartheid campaign in South Africa. I think that analogy is apt because the Free Burma campaign is explicitly modeling its behavior out of the anti-apartheid campaign.

In terms of setting a standard for doing business, and by copying the African anti-apartheid campaign,
the Free Burma advocates are basically saying that the secondary boycott of companies that do business in Burma makes sense. But there is a moral issue here. It's got enough resonance that other cities, and then states, have followed suit and copied that process. Compared to this stage of the South Africa campaign, which is to say about two years into the organizing process, there are just as many, if not more, jurisdictions that joined on to the secondary boycott. So it appears to be on track with where the anti-apartheid campaign was—a campaign that was ultimately successful.

In terms of political visibility—and perhaps it's because the state of Massachusetts has been sued that it's been such a public relations bonanza in terms of global visibility—Burma is now a household word and selective purchasing is clearly understood to be an option for state and local purchasing officials. The Massachusetts law preceded action by Congress by over six months, so many people feel that this established the political context, and in fact, woke Congress to the need for economically significant action with respect to Burma.

In terms of economic pressure, whether or not market behavior can influence Burma through the companies that Burma depends on, poses an open question. Aside from saying that the jury's still out, the comparison between Burma and South Africa is a fair one. Burma is by no means as strong, as diversified, as economically sophisticated as was South Africa. The Burmese economy is now a basket case. Even withdrawal of a few companies, not only denies the regime of Burma a certain degree of political credibility, but also is affecting its economy, and making it almost impossible for Burma to capitalize on its principle strategy for economic diversification, which includes tourism...

So it strikes me that as selective purchasing was clearly influential in the case of South Africa, it would be even easier for it to have a real impact in the case of Burma. To suggest that the history of the world proves that sanctions don't work strikes me as over-arguing. I think there is ample proof that in certain circumstances they can, and the comparison between Burma and South Africa is a favorable one.

Now let me summarize what I think the three principles of democracy are. They involve definition of public morals, the role of states in American democracy, and finally, accountability when it comes to foreign affairs.

The easiest way to explain the question of public morality when we're talking about a secondary boycott is to make a very close analogy to the government of Burma—and that's the Mafia. It is well established in American state and local law that states

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need not do business with companies that do business with "the mob" [organized crime syndicates]. And the reasons for the court's allowing state and local governments to avoid doing business and having a secondary boycott of this nature, is to protect the integrity of the bidding process and to avoid the appearance that state government is in any way, indirectly even, supporting the activities of the mob.

So what's so bad about providing the financial wherewithal that ultimately, indirectly, supports the mob? Organized crime engages in narcotics trafficking. They integrate their narcotics businesses with legitimate businesses that provide cash flow and the opportunity to launder funds. The Mafia is known to engage in economic and physical coercion. The mob is known to kill people who represent an economic or political threat to its leadership structure.

The analogy here directly links to the way the government in Burma operates. It's the world's largest exporter of heroin. The last report I read from the State Department suggests that it's the biggest exporter of heroin to the United States, using private companies within Burma to launder the funds — including state-owned enterprises, which are the principal links for trade in Burma.

Burma engages in systematic forced labor to build its entire infrastructure for commerce. In Burma there are 5.5 million laborers who have been forced to build the infrastructure of Burma over the previous decade in a country of 45 million people. That compares to the United States in the 1860s when we had four million slaves in a country of 35 million people. Forced labor accounts for over seven percent of the GNP in Burma, according to U.S. Embassy estimates in Rangoon. You can't do business in Burma without using infrastructure that is created with forced labor. You can't do business in Burma without trading with a state-owned company or a private company that is controlled by the government of Burma.

The people who are helped by the structure of the Burmese economy and who stand to suffer by cutting off foreign exchange and foreign investment are the military officers who control the companies, or their friends in the private sector who owe allegiance to the military.

In Burma, purchases of military arms, which are used for purposes of internal repression, are perfectly correlated with the amount of foreign exchange that the government gets through foreign trade and investment. To the extent that foreign exchange goes up, the purchase of military arms goes up. If foreign exchange goes down, so too, does the purchase of arms.

So, my analogy to the Mafia is appropriate based upon the way the government of Burma functions. I use it to serve as a way not only to describe in explicit terms the government of Burma, but also to distinguish between nation states which apply regulatory economic sanctions against the government on the one hand, and the market participation standards, the moral standards by which elected officials in the United States can spend taxpayers' money.

Selective purchasing is not like regulatory sanctions employed by nation states. I brought a visual aid to try to explain the difference here. This is it [a coin]. Every coin has two sides. On the one side, I have to say that Dan Griswold is right. We're talking about economic behaviors here which do have an economic affect. After all, state and local purchasing is twice as big as federal purchasing. It's the biggest government power question that the European Union (EU) has raised under the WTO about the American economy. They're always complaining about state and local purchasing and the constraints that it imposes on free trade from the point of view of the EU.

But there's another side to that coin. If you think about what state governments do on a day-to-day basis, particularly in terms of promoting economic development — recruiting capital from anywhere, from any investor that wants to invest in a state or local government, in this case purchasing goods and services and in other cases taxation — you cannot separate the day-to-day functions of state govern-

To the extent that foreign exchange goes up, the purchase of military arms goes up. If foreign exchange goes down, so too, does the purchase of arms.
ment from our economy, which is now global. You just can't take them apart.

So what we have to do in order to make a decision on this issue is either to say we're all going to go in favor of 'heads,' which is to look at this only as a federal issue,... or we're all going to go in favor of 'tails,' which is to look from the 'bottom up.' Or we can try to think about whether it's possible to slice it down the middle, but there's not much room in the middle.

When we watched the oral arguments last week in Boston at the U.S. Court of Appeals, we found that the judges were uncomfortable with both sides because they knew how little room they had to operate, between the layers of this federal/local dichotomy.

I'll make my other two points very cryptically. The point about democracy is simply that in American constitutional law we keep the federal government from exercising a monopoly. We do it in lots of ways. The separation of powers issue that's most talked about, of course, is the separation of power between the states and the federal government. But this case raises a very important additional separation of powers question which is, should states have less than equal footing in the economy in comparison to private companies when states are acting in the private market?

You can think of this in two ways. In terms of choosing your business partners, every private company in America, Levi Strauss or Liz Claiborne, for example, can choose not to do business in Burma, or with the companies that have connections with the government of Burma. They have their own standard, whether it's based on marketing sense, common sense, or ethical sense, that they'd rather not do business that way. "We don't want to be associated," they say, "with companies that do business with the government of Burma."

The second has to do with speech.... We have for many years recognized that spending is speech. "Money talks." "Put your money where your mouth is." Doing business with companies that directly support the regime in Burma, that provide the exchange necessary to buy arms in Burma, which builds pipelines and other infrastructure necessary to promote the economy of Burma means that these companies are speaking in favor of that regime. In contrast, the state of Massachusetts has chosen to speak against being associated with those who would support repression.

The final point I want to make involves accountability. It's been often said that this little Burma law in the state of Massachusetts interferes with American foreign policy. And I would suggest to you that it's exactly the opposite — 180 degrees the opposite. We have a foreign policy with respect to government procurement and trade that has been enshrined in the World Trade Organization Charter and the eighteen multilateral and plurilateral agreements that go with it. It's over 2050 pages of legal text.

When Congress adopted this law, the Congress and the President made a deal with the American states, which Congress described as "a cornerstone of American foreign policy as respects trade." It provides two assurances to American states: Number one, the provisions of the WTO Agreement, including that procurement can only be enforced against an American state or city by the U.S. federal government. We call that the "buffering function." The impact of the WTO Agreement is never automatic, it's always a decision that sits in the hands of the president and Congress as to whether the U.S. government will prosecute any violations of standards against a state.

The second assurance responds to concerns by 44 state attorneys general who warned that WTO agreements would give legal cause to any company that wants to come in and sue an American city or state claiming that they have violated American foreign policy, because we have this huge trade agreement, which is the standard for foreign affairs when it comes to trade. In other words, in 1994, state officials predicted this case and Congress said, "We're not going to want to adopt this over the objections of states." So, the second assurance is that no private company may bring a legal action against a state in connection with the WTO Agreement.

In sum, I would say there's a fundamental principle of accountability here because private companies that brought this law suit are asking the court to step in and upset the political and legal commitment that was recommended by the president and adopted by Congress back in 1994. Public morality, the democratic role of states in terms of equal footing, and accountability with respect to foreign affairs, that's what's at stake here from the point of view of cities and states.
This June, in an extreme move by the International Labour Organization (ILO), a resolution was passed that prohibits one of its member countries, Burma, from receiving technical cooperation and assistance from the ILO or attending its meetings, symposia or seminars. These restrictions were a culmination of events that have taken place over the past year following an ILO Commission of Inquiry investigation into the "Use of Forced Labor in Myanmar" and the release of its damning report. The Burmese regime called the allegations in the report "groundless" and the ILO Director-General later concluded that the government failed to respond to the Commission's recommendations to halt its forced labor practices.

What will be the "next steps" for Burma and the ILO, the United Nations tripartite, international labor body?

The following discussion by the government, worker, and employer members of the Committee of the Application of Standards provides insight into the reactions that led to the passing of this year's resolution. [Edited by Burma Debate.]
Resolutions of the 103rd Session of the International Labor Conference

The International Labor Conference

RESOLUTION ON THE WIDESPREAD USE OF FORCED LABOR IN MYANMAR

Reaffirming that all member States have an obligation to apply fully, in law and in practice, the Conventions that they have voluntarily ratified,

Recalling that Myanmar ratified the Forced Labor Convention, 1930 (No. 29), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), on 4 March 1955,

Taking note of the provisions of United Nations General Assembly resolution 53/162 of 9 December 1998 and of United Nations Commission of Human Rights resolution 1999/17 of 23 April 1999, which also address the use of forced labor in Myanmar,

Recalling the decision of the Governing Body to place on the agenda of its November 1999 session an item entitled: "Measures, including recommendations under article 33 of the ILO Constitution, to secure compliance by the Government of Myanmar with the recommendations of the Commission of Inquiry."

Gravely concerned by the Government’s flagrant and persistent failure to comply with the Convention, as concluded by the Commission of Inquiry established to examine the observance of the Forced Labor Convention, 1930 (No. 29),

Appalled by the continued widespread use of forced labor, including for work on infrastructure projects and as porters for the army,

Noting the report (dated 21 May 1999) of the Director-General to the members of the Governing Body on measures taken by the Government of Myanmar following the recommendations of the Commission of Inquiry in its report on "forced labor in Myanmar (Burma)."

1. Deeply deplores that:

   (a) the Government has failed to take the necessary steps to bring the relevant legislative texts, in particular the Village Act and Town Act, into the line with the Forced Labor Convention, 1930 (No. 29), by 1 May 1999, as recommended by the Commission of Inquiry;

   (b) at the end of the twentieth century, the State Peace and Development Council (SPDC) has continued to inflict the practice of forced labor — nothing but a contemporary form of slavery — on the people of Myanmar, despite repeated calls from the ILO and from the wider international community for the past 30 years;

   (c) there is no credible evidence that those exacting forced labor in Myanmar have been punished under section 374 of the Penal Code;

2. Reaffirms that this issue should be further considered by the Governing Body in November 1999.

3. Resolves:

   (a) that the attitude and behaviour of the Government of Myanmar are grossly incompatible with the conditions and principles governing membership of the Organization;

   (b) that the Government of Myanmar should cease to benefit from any technical cooperation or assistance from the ILO, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, until such time as it has implemented the said recommendations;

   (c) that the Government of Myanmar should henceforth not receive any invitation to attend meetings, symposia and seminars organized by the ILO, except such meetings that have the sole purpose of securing immediate and full compliance with the said recommendations, until such time as it has implemented the recommendations of the Commission of Inquiry.
THE GOVERNMENT OF MYANMAR supplied the following written information:

...The Permanent Mission of the Union of Myanmar would like to request that this Memorandum be treated as an official document in response to the Director-General's Report for use in any proceedings of the Governing Body and other relevant meetings.

Myanmar became a Member of the ILO a few months after its independence in 1948. As a responsible Member it has a long record of cooperation with the ILO and had settled several issues in the best spirit of cooperation.

It has been a consistent policy of successive governments of Myanmar to promote the welfare of labor. Myanmar is determined to build a society where peace and prosperity prevail and where rights of women and children are given all the encouragement and protection which they rightly deserve.

From around 1990 allegations were made to the effect that there is use of forced labor in Myanmar. Myanmar strongly feels that these allegations were largely the result of misconceptions and misunderstandings of the situation and the mentality of the Myanmar people.

Since a sound infrastructure is essential for economic development, the Government of Myanmar has placed special emphasis on this sector. Hence, a substantial effort to improve the infrastructure of the country's economy by building roads, bridges, dams and reservoirs has been undertaken. Realizing the benefits to the country from these projects, people have traditionally contributed labor so that they can be completed sooner. Moreover, it is Myanmar's thinking that "you reap what you sow before death in the present world or in the future cycles of life."

This is the background thinking of our people, and without understanding of these facts people tend to make all kinds of false allegations.

International organizations must not be used as forums to put pressure on member States by the powerful and influential quarters as a means to achieve their political objectives.

However, as stated earlier, since the early 1990s, Myanmar has been the subject of political pressure from some quarters who do not understand the reality in Myanmar. They tend to act largely on information from anti-government elements. They are making these politically motivated allegations to tarnish the image of the Government using every opportunity including various international fora.

In a move to further apply political pressure on Myanmar, the anti-government elements succeeded through false allegations in persuading a few members of the Workers' group to file a complaint against Myanmar under article 26 of the ILO Constitution. This resulted in the formation of the Commission of Inquiry in 1996. Myanmar, on the other hand, very firmly stood up against such allegations. However, the Commission, based on reports of certain terrorist organizations, both inside and outside Myanmar, and also on information given by certain other sources, came up with recommendations in July 1998 that:

(1) Myanmar must bring the Village Act, 1907, and Towns Act, 1907, in line with the forced labor Convention, namely, Convention No. 29 of 1930. Certain provisions of this law are also to be put in line with the Convention;

(2) to take measures to stop current practice through public acts and make them public and not through secret directives;

(3) to enforce penalties upon offenders for extraction of forced or compulsory labor.

As we have said earlier, Myanmar is building a modern nation and a society where peace and prosperity shall prevail. In this process, Myanmar does realize that these recommendations were based on false allegations. But with the spirit of cooperation, goodwill and sincerity towards the ILO, it never rejected these recommendations.

Furthermore, it is in the process of revising on its own independent sovereign right, old laws that are not in conformity with the present situation. Under public international law, it has every right to perform this task on its own.

Myanmar finds that these recommendations were not too difficult to accommodate. But at the same time, one must take into account that Myanmar is inhabited by some 135 national races, with a changing economic system....

True to its word, Myanmar firmly acted in accordance with its legal system and acted in accordance with the law of the land.

The recommendations made by the Commission were: firstly, that the Village Act and Towns Act be brought in line with Convention No. 29. The essence of the recommendation "brought in line" is in the
domain of Convention No. 29. But on the other hand, it is the domain of national law or municipal law as to how to put into effect the provisions of the Convention which is not in the domain of the Convention. At this juncture, it is to be pointed out that legal systems of the world differ from State to State. One legal system in a State cannot be the same with the system of another. The modus operandi for putting in effect the essence of the Convention into national law might be different between two States.

Myanmar in its own legal system has on 14 May 1999 put a "stop" to the offending provisions of the above two laws through an Order from the Legislature to the ministry concerned not to exercise powers for the offending provisions under these two laws. In Myanmar's legal system, the State Peace and Development Council is the Legislature of Myanmar. As in all other countries under constitutional law, it is above the Executive. Executive encompasses the various ministries which includes the Ministry of Home Affairs, which implements these two laws. The Memorandum of the State Peace and Development Council was issued on 14 May 1999 and under it the Ministry of Home Affairs issued Order No. 1/99 of 14 May 1999 ordering all implementing authorities not to exercise powers under Towns Act, section 7, subsection (i)(1) and (m), and section 9 and 9A, and similarly in the Village Act, section 8, subsection (l)(g), (n) and (o), and section 11(d) and section 12. This Order has the force of law to stop all implementing authorities from exercising the offending powers of these provisions.

Thus, under our legal system this measure is taken in compliance with the related recommendation of the Commission of Inquiry.

The second recommendation of the Commission of Inquiry stipulates that the Order be made public. The Order has been made public and distributed immediately to 16 authorities. Besides this step, it will be published in the Myanmar Gazette where all laws are published. There is complete transparency. For the sake of the record, it has been circulated for action to 16 authorities. ....

Thus Myanmar firmly believes that the second recommendation is fully complied with.

The third recommendation says that penalties should be imposed for persons under section 374 of the Penal Code for transgression. It is pertinent to draw attention to paragraph 6 of the above-mentioned Order which reads: "any person who fails to abide by this Order shall have action taken against him under existing laws..." This is beyond all reasonable doubt that offenders will be punished under section 374 of the Penal Code which is enacted as follows:

Unlawful compulsory labor

374. Whoever unlawfully compels any person to labor against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Despite these positive actions and steps taken decisively and effectively by the Government, the ILO office on 21 May 1999 issued the "Report of the Director-General to the members of the Governing Body on measures taken by the Government of Myanmar following the recommendations of the Commission of Inquiry established to examine its observance of the Forced Labor Convention, 1930" that:

(1) the Village and Towns Act had not been "amended";
(2) in actual practice, forced or compulsory labor continues to be imposed in a widespread manner;
(3) no action appears to have been taken under section 374 of the Penal Code to punish those extracting forced labor.

The facts of the report are inaccurate. The alleged facts mentioned in the report are based on allegations supposed to have taken place prior to 14 May 1999. Not a single allegation is found after the Order of 14 May 1999 was issued....

Observations and conclusions

The most pertinent observations to be made of the report of the ILO Office dated 21 May 1999 are on the three negative points contained in paragraph 61....

Hence, it can be seen that Myanmar had adequately and specifically taken action to respond to, and to rectify the provisions of the Village and Towns Acts, and also taken additional measures as called for in the recommendations of the Commission of Inquiry. All this had been done in a timely manner.

But the question arises as to why such action taken by the Myanmar authorities was not reflected in the Director-General's Report, which, as a result led to the three negative observations as seen in paragraph 61 of the Report.

The answer would seem to be that Order 1/99 was issued only on 14 May, which was only five working
days away from the 21 May deadline. It may be con-
cluded that time constraints prevented any examina-
tion of this Order and compelled the drafters of this
Report to only affix it to the Report as Appendix III.

But nevertheless, this time constraint cannot be
used as an argument to the effect that Myanmar had
not complied with the recommendations.

The Report in question contains oversights and
omissions as stated above. Furthermore, the following
additional observations and conclusions can be found.

The Report is full of unfounded and biased
charges deliberately levelled at Myanmar and the
Myanmar Government.

The alleged facts in this Report are manifestly false
accusations concocted with evil intent to bring about
the destruction of Myanmar by Myanmar expatriate
organizations abroad and renegade groups that oppose
all measures undertaken by the Myanmar Government.
They are also based on blatantly false accusations made
verbally, in writing and in the form of announcements
by the National League for Democracy (NLD), whose
only aim is to create difficulties for the Government
to place it in an untenable position.

At present the Government is implementing con-
struction projects with systematic planning and
proper budget appropriations. Moreover, most of
the work being done on these projects is through the
use of mechanized implements and machinery. In
any project where human labor has to be unavoid-
dably employed, there is a budget allotment for pay-
ment of wages to the workers. Any worker so
employed is paid fair wages and there is not a single
instance or a shred of evidence that forced labor is
being used in these projects.

Work on the highways under construction in var-
ious regions, including the union highway in the
Shan State, and new railroads being laid, are being
done by servicemen of the armed forces. There is
not a single civilian working on them.

Any jobs in which the people are involved are
confined to the digging of small irrigation ditches
to convey water to their own private cultivation
plots. The larger state projects for the building of
irrigation canals and dams do not use forced or con-
scripted labor of civilians. As stated, if people are at
work at all, they are working in their own interest
and according to their own plans and schedules on
their privately owned plots of land.

State construction projects employ only military
servicemen. So the accusation that the Government
is using forced labor on these projects is baseless and
flagrantly false. Since only members of the armed
forces are employed in the construction of rail and
motor roads, to say that forced labor is being used
is utterly meaningless.

"The alleged facts in this Report are manifestly
false accusations concocted with evil intent to
bring about the destruction of Myanmar by
Myanmar expatriate organizations abroad and
renegade groups that oppose all measures
undertaken by the Myanmar Government."

Representative of the Government of Myanmar

Other ongoing projects such as the reclamation
of vacant and fallow lands and the construction of
residential housing and hotels are all ventures by pri-
vate entrepreneurs who have made capital invest-
ments. The use of forced labor in such cases is totally
out of the question. In fact when incidents arise
over labor grievances, the Government stands firmly
on the side of the workers in settling such disputes.

Concerning the charge that the army conscripts
porters in its military operations, it could be said
that this was the practice in former times when the
insurgencies were rampant. But the fact remains that
these porters were always paid and the defense bud-
get always had an allotment for payment of their
wages. These porters enjoyed the same rights as a
soldier. He was given the same rations and paid the
same wages. Moreover, a porter, if wounded,
obtained equal compensation with a serving soldier.
and he was entitled to the same hardship allowances. But this issue of military porters is no longer relevant and has become a non-issue since military operations are no longer an urgent necessity.

The Myanmar Government categorically refutes all the false information deliberately fed by the NLD. An esteemed organization like the ILO should not give credence to fabricated news and lies supplied by those who only see Myanmar and the present Government through hostile and resentful eyes, and who are moreover bent upon destroying the country to put the Government in a predicament.

Finally, it is relevant to reiterate that Myanmar, as a responsible Member of the ILO, has a long record of cooperation with the ILO, and has in the past settled issues in a spirit of cooperation. This spirit of cooperation will continue in the future.

As examples of this cooperation, Myanmar had signed a considerable number of ILO Conventions, including some core Conventions.

At present the ILO is in the process of inviting and persuading countries that have not done so, to sign, to ratify or accede to those Conventions that they had not yet become State parties.

In this positive atmosphere being created at present by the Members of the ILO, it would indeed be unfortunate, even counter-productive, to have more and more ILO Members become State parties to core Conventions, if one Member who had signed a core Convention, in this case the Union of Myanmar, is singled out unfairly and unduly criticized.

Such an exercise will no doubt serve as a reminder to those who have not yet signed the core Conventions to maintain their status quo, and will certainly help to dissuade them from signing the core Conventions, much to the detriment of the ILO membership as a whole.

A Government representative reiterated the written information provided by his Government on the case, set forth in the preceding paragraphs.

The Worker Members recalled that in the Committee's general discussion the Government member of India had stated that the article 26 constitutional procedure was an extreme measure designed to address an extreme situation, reached only when a member State wilfully and deliberately refused to take measures to comply with the suggestions and recommendations of the supervisory bodies. He had concluded that article 26 should only be applied as a last resort. By that measure, the Government of Myanmar was particularly deserving of the strongest and most extreme measures available to the supervisory bodies for its stubborn refusal to abide by its commitments under the Convention.

For over 35 years, the Committee of Experts had been denouncing the evils of forced labor in Burma. However, no action whatsoever had been taken by the Government to end the practice. On the contrary, in recent years the practice had grown. This was the fourth time in the past eight years that the Conference Committee had examined the case. In the meantime, an article 24 representation had been accepted by the Governing Body. In 1994, the Governing Body had adopted tripartite conclusions confirming that Myanmar was in fundamental violation of the Convention and calling on the Government to make the necessary changes in the law, to enforce the law, and to punish those responsible for the continued exploitation of forced labor throughout the country. Once again, no action had been taken by the Government in either law or practice.

The Conference Committee had expressed its deep concern at the serious situation in the country in both 1995 and 1996. It had restated in ever stronger terms its admonition to the Government to abolish all legal provisions and immediately abandon all practices which were contrary to the Convention. To emphasize its concern, it had set its conclusions aside in special paragraphs to its report and in 1996 had cited the case as one of persistent failure to implement a ratified Convention. Yet there had still been no action on the part of the Government, except for denials, delays and deception. Finally, after many years of attempting to persuade the Government to fulfill its treaty obligations and end the misery of hundreds of thousands of victims of this egregious practice, a complaint had been submitted under article 26 of the Constitution and rapidly accepted by the Governing Body. A Commission of Inquiry had been established in March 1997, which had held closed hearings in November 1997 and visited the region early in 1998. The military regime could have participated in the hearings and presented its own witnesses. It could have cooperated with the Commission of Inquiry when it travelled to the
region, but it had chosen not to and had barred the Commission from even entering the country.

Despite this total lack of cooperation, the Commission of Inquiry had completed its work and submitted a document of almost 400 pages. The Commission had concluded that there was abundant evidence showing the pervasive use of forced labor 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, agricultural work and work on other production projects undertaken by the authorities or the military, sometimes for the profit of private individuals, as well as the construction and maintenance of roads, railways, bridges and other infrastructure. The Commission of Inquiry had also concluded that forced labor in the country was widely performed by women, children and elderly persons and that the burden of forced labor was particularly great for non-Burman ethnic groups, especially in areas where there was a strong military presence.

The recommendations of the Commission of Inquiry had been taken up by the Committee of Experts. These included urging the Government to take all necessary steps to ensure that the relevant legislative texts, and particularly the Village Act and the Towns Act, were brought into conformity with the Convention, as the Government had been promising to do for over 30 years. The Commission of Inquiry had also insisted that no more forced labor should be imposed by the authorities, and particularly by the military. Finally, the Commission of Inquiry had emphasized that the power to impose compulsory labor would continue to be taken for granted unless legal action were taken against those responsible. Information was, therefore, required on whether any offenders had actually been punished.

At its session in March 1999, the tripartite members of the Governing Body had called on the Government to make all the necessary changes in the laws to bring them into compliance with the Convention by 1 May 1999. This letter was a clear admission that the Government had not changed the law by 1 May 1999, as requested by the Governing Body. Indeed, the Director-General had recognized in his Report that the Order did not represent a change in the two Acts, as recommended by the Commission of Inquiry. Moreover, it could be reversed at any time.

The above information provided the context for the information supplied by the Government. It had indicated in a letter of 18 May 1999 to the Director-General that Order No. 1/99 directed the relevant authorities not to exercise the powers conferred upon them by the Village Act and the Towns Act. This letter was a clear admission that the Government had not changed the law by 1 May 1999, as requested by the Governing Body. Indeed, the Director-General had recognized in his Report that the Order did not represent a change in the two Acts, as recommended by the Commission of Inquiry. Moreover, it could be reversed at any time.

Nor had the Government representative provided any new information to suggest that it had implemented the other recommendations. The only new element put forward by the Government representative was the suggestion that all the evidence previously collected had been prior to 14 May 1999, and that the coming into force of the new Order had radically changed the situation.

The Worker members recalled that, as recently
as 1 May 1999, the Chairman of the State Peace and Development Council, Senior General Than Shwe, had urged workers to beware of new colonialists meddling and exerting control in international organizations with an air of safeguarding human rights and workers' rights. Two weeks later, at a press conference held during the 13th meeting of ASEAN Labor Ministers, the military regime had reiterated its long-standing blanket denial of the existence of forced labor in Burma and had argued once again that it was one of the noble traditions of the Burmese people to give freely of their labor, since they believed that voluntary labor would bring benefits to them in their present and future existence. These comments revealed the true nature of the regime's cooperation with the ILO.

In conclusion, the Worker members quoted from the conclusions of the Commission of Inquiry, which had considered that "the impunity with which government officials, in particular the military, treat the civilian population as an unlimited pool of unpaid forced laborers and servants at their disposal is part of a political system built on the use of force and intimidation to deny the people of Myanmar democracy and the rule of law."

"The experience of the past years tends to prove that the establishment of a government freely chosen by the people and the submission of all public authorities to the rule of law are, in practice, indispensable prerequisites for the suppression of forced labor in Myanmar." The Commission of Inquiry had hoped and trusted that in the near future the old order would change, yielding place to the new, where everyone in Myanmar would have an opportunity to live with human dignity and to develop his or her full potential in a freely chosen manner, and that there would be no subjection or enslavement of anyone by others. It had concluded that this could only happen if democracy were restored, so that the people as a whole could wield power for their common good. The Worker members reaffirmed that, until such fundamental change occurred, the challenge of ridding the country of decades of forced labor could not even begin.

THE EMPLOYER MEMBERS noted that the Committee of Experts had begun publishing observations in this case in the beginning of the 1990s and that the case was not new to the Conference Committee, which had indeed noted it in special paragraphs in the past. In the meantime, there had also been a representation submitted pursuant to article 24 of the Constitution and a complaint under article 26. They emphasized that all the information presently before them could only confirm their previous apprehensions as to the gravity of the situation in Myanmar. They contended that the situation was simple but sad, and in that regard quoted the following from the report of the Commission of Inquiry:

"There is abundant evidence showing the pervasive use of forced labor 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 .... Forced labor in Myanmar is widely performed by women, children and elderly persons as well as other persons otherwise unfit to work.... All the informa-
tion 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 labor ... and many are killed or injured …"

They recalled that the concerns raised were based on provisions of the Village Act and Towns Act, and more particularly on the problems in practice. While there was indeed a law providing for the punishment of those compelling any person to labor against their will (section 374 of the Penal Code), they stressed that this provision had not been implemented and that forced labor was being carried out and ordered by the authorities.

They remarked that a Commission of Inquiry seldom uses such forceful terms as those found in its report on forced labor in Myanmar which referred to the "widespread and systematic" use of forced or compulsory labor "with total disregard for the human dignity, safety and health and basic needs of the people of Myanmar." They emphasized the three main recommendations of the Commission of Inquiry: (i) that the relevant legislative texts be amended as had been requested by the Committee of Experts and promised by the Government for over 30 years; (ii) that in actual practice, no more forced or compulsory labor be imposed by the authorities, in particular the military; (iii) that the penalties that may be imposed under the Penal Code be strictly enforced since the power to impose compulsory labor will not cease to be taken for granted unless those used to exercising it are actually brought to face criminal responsibility. According to the Employer members, since the line between ordinary labor and forced labor had become so blurred, as confirmed by the statement of the Government representative to the effect that people have traditionally contributed labor so that projects for the improvement of the country’s infrastructure could be completed sooner, enormous efforts would need to be taken to change attitudes and to inform the population of changes in practice. They then referred to the statement of the Government representative to the effect that the Report of the Commission of Inquiry was full of unfounded and biased charges and that the alleged facts were manifestly false accusations which were politically motivated. The Employer members were of the view that this illustrated the attitude of the Government that no changes were needed and none would be carried out. However, the Government had also indicated its intention to cooperate with the ILO to comply with the recommendations. The Employer members viewed the Government's response as continuing to illustrate its contradictory attitude and approach and a lack of credibility. Referring to Order No. 1/99 issued on 14 May 1999, they queried whether such an instrument could amend a law, and whether indeed the Government intended to comply with the recommendations at all. Since the Order provided that any Acts or laws in force should be applied if provisions of the Order were not implemented, the Employer members asserted that this showed clearly that the Government had no intention of abrogating or amending the legislation at issue.

Concerning the recommendation that concrete action be taken to stop the present practice through public acts of the executive promulgated and made known to all levels of the military and to the whole population, the Government representative had pointed out that the new Order had been distributed to 16 authorities and thus in its view it had complied with this requirement. The Government representative had also said that anyone not complying with the new Order would be subject to penalties; however, in the view of the Employer members, such statements could only be evidence of a continuation of the Government’s refusal to amend the laws and to apply penalties under existing laws.

The Employer members regretted that they had not heard any clear statement from the Government representative indicating a political willingness to change the existing law and practice. They called on the Committee to note with deep regret the continuation of the practice of forced labor in Myanmar and to urge the Government in the strongest possible terms to meet its obligations.

The Government member of China hoped that the Committee would take note of the new progress achieved by the Government in the application of the Convention, as reported by the Government representative.

The Government member of the United Kingdom, also speaking on behalf of the Government members of Austria, Belgium, Canada, Denmark, Finland,
Germany, Iceland, Netherlands, Norway, Portugal, Spain and Sweden, stated that the report of the Committee of Experts once again provided disturbing evidence of the use of forced labor and other human rights abuses in Burma. The Governments on behalf of whom he was speaking had expressed grave concern at this deplorable situation on a number of occasions, both in the Conference Committee and elsewhere.

He recalled the findings of the Commission of Inquiry, which had concluded that the military regime in Burma had absolute authority to exploit forced labor under threat of torture, rape and murder, and that the burden of forced labor in the country was felt disproportionately by ethnic minorities and other vulnerable groups, including women, children and the elderly. The Commission of Inquiry had recommended that the use of forced labor should be halted with immediate effect and that the authorities should bring the legislation into conformity with the Convention and enforce existing legal penalties. Despite the repeated assurances made by the Government representative that the regime was taking action to end the use of forced labor, the recent report of the Director-General once again made it clear that the recommendations of the Commission of Inquiry had not been implemented and that the people of Burma continued to suffer gross and systematic human rights abuses.

When adopting the Declaration on Fundamental Principles and Rights at Work, all 174 member States of the ILO had reaffirmed their commitment to the Organization's core human rights principles, including the abolition of forced labor. He warned of the clear danger that the entire Organization and its supervisory system would be discredited if decisive action were not taken to ensure that the Burmese authorities complied with the recommendations of the Commission of Inquiry and that the people of Burma continued to suffer gross and systematic human rights abuses.

The Government Member of Canada noted once again that the situation in Burma remained unchanged. Freedom of association had not been truly respected, the use of forced labor and child labor was pervasive. Burma was the most long-standing and egregious violator of basic workers' rights and international labor standards and continued to show its utter disdain for the proceedings of the ILO and the opinion of the international community, as shown by the total lack of sincerity and substance in the statement of the Government representative.

The case had been discussed by the ILO since 1987, but there had been a consistent lack of concrete action by the Burmese authorities to comply with the recommendations of the Commission of Inquiry. She expressed agreement with the statement made by the Government member of the United Kingdom that there was a clear danger that the entire Organization and its supervisory system would be discredited if decisive action were not taken to ensure that the Burmese authorities complied with their commitments to the ILO. All the available options should be considered in securing the compliance of Burma with its obligations to the ILO.

The Worker Member of Colombia expressed incredulity that, at the close of the century, forced labor or conditions similar to slavery still existed in Myanmar. ... He said that the Government representative of Myanmar should be asked what type of society it was seeking to build by violating human dignity and how long the members of the Committee would have to listen to justifications that did not resolve the issue. He concluded by urging the Government to end its rhetorical references to legal texts, and to adopt practical measures to bring forced labor to an end.

The Worker Member of Ireland emphasized that deception and double-speak had been the hallmarks of the attitude adopted by the Burmese authorities towards the international community in general and the ILO in particular, as demonstrated beyond any shadow of doubt by the issue of forced labor and its failure to comply with the Convention.... She concluded that all possible steps would have to be taken by the ILO to bring this abominable practice to an end. The findings and conclusions of the Commission of Inquiry needed to be widely disseminated throughout the United Nations system, and particularly to the agencies working in Burma. The ILO would have to continue to closely monitor the situation for as long as it persisted. It should also be taken
into account that the data gathered by the ILO might one day be referred to the International Criminal Court. Above and beyond the violation of the Convention, forced labor and slavery constituted crimes against humanity and should be condemned as such. Moreover, the ILO should consider revoking or restricting the privileges accorded to the country as a member State of the ILO until it fully complied with the recommendations of the Commission of Inquiry and basic international standards of decency and respect for humanity, as set forth in the Convention.

The Worker Member of Pakistan joined with previous speakers in emphasizing his concern at the situation in the country. The difference between freedom and slavery lay in the right to take up freely chosen, remunerated and productive employment. Slavery consisted of the imposition of labor against the will of the persons concerned. All those who believed in human dignity and respect condemned forced labor and slavery. Indeed, it was one of the basic objectives of the labor movement as a whole to combat these scourges, which destroyed the dignity of mankind in all countries.

Although the Commission of Inquiry had made it clear that the current legislation needed to be amended, the authorities had merely adopted an executive order, which did not have the legal authority to suspend the two Acts in question. Nor had any information been provided on the numbers of persons who had been convicted for the imposition of forced labor, or the other measures adopted.

The Worker Member of Zimbabwe recalled the conclusion of the Commission of Inquiry that there was abundant evidence of the pervasive use of forced labor imposed on the civilian population by government authorities and the military. Forced labor was used for various purposes, including logging, agricultural work, construction, the maintenance of roads, railways and bridges, and sometimes for the profit of individuals. The worst aspect was that forced labor was performed by women, children and elderly people, including persons who were unfit for work. This was totally unacceptable by any standards. Yet the Commission of Inquiry had also concluded that the Government showed utter disregard for the safety and health and basic needs of the victims of forced labor....

The Government Member of Indonesia stated that he had followed the present case with great interest in the Governing Body and the Conference Committee and shared the concerns expressed by the Employer and Worker members and several Government members. In March 1999, his delegation had joined with those of several other countries in requesting the Governing Body to give the Government time to respond to the conclusions of the Commission of Inquiry. He had also stated that he would convey the concerns of the Governing Body to the Government. In May 1999, he had visited the country and had met representatives of the Government. He had been informed that two national teams had been established, one composed of senior officials and one at the ministerial level to prepare the reply and communications to the ILO concerning the case. Both teams had taken several steps in relation to the conclusions of the Governing Body and the Commission of Inquiry. Before he had left the country, the Government had issued Order No. 1/99 prohibiting the exercise of powers under certain provisions of the Towns Act and the Village Act. This appeared to him to be an important step by the Government leading in the right direction towards concrete action. From the informal talks which he had held with government officials and the statement made by the Government representative, he had gained the impression that the Government was committed to reviewing the two Acts.

He expressed the conviction that, after a certain period of time, the Government would be able to comply with the conclusions of the Commission of Inquiry and with the Convention. However, it had to be understood that several years were required to amend legislation. The Committee should, therefore, provide support to the Government so that it could proceed with the steps that it had taken.

The Government Member of the United States expressed full support for the statements made by the Government members of the United Kingdom and Canada and recalled that the Committee had been making strong comments on the flagrant violation of the Convention by Burma for a number of years....

At each of the sessions of the Conference Committee and the Governing Body, the authorities had promised change, but none had been forthcoming. The Commission of Inquiry had recommended that
these horrible practices cease immediately and had established a deadline of 1 May 1999 for legislative changes. In response to a request by the Governing Body, the Director-General had issued a report on the follow-up to the recommendations of the Commission of Inquiry. No fewer than ten international organizations and 14 member States had contributed information to the report. The Director-General had concluded that, despite the Order issued on 14 May 1999, there was no indication that the recommendations of the Commission of Inquiry had yet been followed up. The Village Act and the Towns Act had not been amended; the practice of forced and compulsory labor continued to be widespread; and no action appeared to have been taken under section 374 of the Penal Code to punish those exacting forced labor. The collective lives of thousands of citizens were still at risk and patience had run out. It was time for the Organization to take its most serious measures to ensure compliance with the obligations accepted voluntarily by the Government when it ratified the Convention.

The Myanmar Government Representative stated that he had listened with great patience to all the speakers. It was necessary to bear in mind the particular situation of each country and the circumstances of its law-makers. The Convention was an international treaty in the domain of international law. However, every country had its own system of national law or municipal law through which the provisions of the Convention would be put into effect. There was, therefore, no uniform practice for the implementation of treaties at national level. His country had its own system of implementing and amending legislation. If there had not been any political will, no measures would have been adopted.

Scholars of international law in their works had written as their opinion that there is not uniform practice concerning the application with the municipal sphere, each country has its own particularities as regards promulgation or publication of treaties, legislative approval of treaties and so on. As to the manner in which its municipal law is framed, the State has under international law a complete liberty of action, and its municipal law is a domestic matter in which no other State is entitled to concern itself, provided that the municipal law is such as to give effect to all the international obligation of the State. This is the international opinion and practice of the international legal scholars which is a source of international law.

The Order 1/99 is a strict municipal law measure, made under practice as referred to above. The legislature which the legal authority to make laws can provide amendments of laws through an order in the Myanmar's legal system. Here, it gives Orders to the Home Ministry through a memorandum to issue an order to stop the implementation of the offending provision of the Village and Towns Act. Thus, offending provisions that are not in line with Convention No. 29 are stopped. In Myanmar Orders can stop the implementation of certain laws to be in line with the treaty. It is the modus operandi of how to put the municipal law in line with the Convention. This right is given to municipal law by international law and Myanmar has fulfilled this condition.

As already stated, Myanmar made these [steps] of implementation in accordance with its own sovereign rights under municipal law according to its internal legal practice by international law. The order has been given by the Legislature and an Order has been issued by the Executive.

However, the adoption of Order No. 1/99, constituted a step forward. The instruction had been given by the legislative authority and the order had been adopted by the executive. The effect was to bring an end to the offending provisions of the Village Act and the Towns Act. He noted in this respect that a press conference had been held on 15 May 1999, on the occasion of the Asian Labor Ministers' meeting, at which publicity had been given to the fact that measures had been taken to bring an end to the implementation of the offending provisions, in accordance with the legal system in the country. He reaffirmed the liberty of action of each State to give effect to the necessary measures according to its own system....

He reaffirmed the differences in national legal systems and circumstances and reiterated that, if there had been no political will, Order No. 1/99 would not have been adopted. The country was in the process of developing a new Constitution. Once the Constitution had been adopted, all of its laws would be reviewed. The members of the Committee needed to show proof of consideration and understanding for the situation of the country. Compliance with the conclusions of the Commission of Inquiry
required a change in the law. In this respect, Order No. 1/99 had been publicized.

The Government Member of Sri Lanka proposed that, in view of the legal steps taken by the Government to change the law, the Committee should give consideration to the establishment of a timeframe for the Government to give effect to the recommendations of the Commission of Inquiry.

The Committee noted the written and oral information supplied by the Government, and the discussion which followed. It noted in particular the Government's position that the findings of the Commission of Inquiry and the Committee of Experts had no basis, and that the Report of the Director-General of 21 May 1999, supplied to members of the Governing Body, on the measures taken by the Government to comply with the recommendations of the Commission of Inquiry, was based on false and misleading information. The Committee also noted the issuance of Order No. 1/99 of 14 May 1999, directing that the power to requisition forced labor under the Towns Act, 1907, and the Village Act, 1907, not be exercised.

The Committee recalled the long history of the case and the series of actions taken by the ILO supervisory bodies, including the recommendations of the Commission of Inquiry established by the Governing Body. It considered that the explanations provided by the Government did not respond to the detailed and well-substantiated findings and recommendations of the Commission of Inquiry and the Committee of Experts. It noted with deep concern the findings of the Commission of Inquiry that there was convincing information available that forced and compulsory labor on a very large scale still occurred in Myanmar. The Committee regretted that the Government had not allowed the Commission of Inquiry to visit the country to verify the situation for itself. It could also have been the occasion for the Government to present its own position before the Commission in a very objective and impartial manner. It regretted that the Government had shown no inclination to cooperate with the ILO in this respect.

It called upon the Governing Body, the Committee of Experts and the Office to continue taking all possible measures to secure the observance by Myanmar of the recommendations of the Commission of Inquiry, which confirmed and expanded the Committee of Experts' own previous conclusions.

The worker members, in view of the continued failure of the Government to implement the conclusions of the Commission of Inquiry, called for the Committee to include its conclusions in a special paragraph of its report on the grounds of flagrant, persistent and repeated failure to comply with the provisions of a ratified Convention.

The employer members observed that the case was particularly serious and that the Committee had already dealt with it on several occasions in the past by expressing its deep concern in a special paragraph of its report. It would, therefore, be consistent and appropriate once again to place its conclusions in a special paragraph for consistent failure to comply with the provisions of a ratified Convention.

The Committee decided to include this case in a special paragraph in its report and to mention it as a case of continued failure to implement a ratified Convention.
WASHINGTON, DC — A Burma Roundtable was held on July 27 with guest speakers David Chandler and Tory Clawson of World Vision and Steve Honeyman of Population Services International, who are all currently based in Burma. The panelists discussed strategies and challenges of providing humanitarian assistance inside the country.


NEW YORK — A June 16 briefing entitled, "Women in Contemporary Burma," featured panelists Mya Sandi Aung of the Asia Pacific Center for Justice and Peace; Betsy Apple, an attorney from the Women's Rights Project of Earth Rights International; and Naw May Oo of the Burma/UN Service Office. They addressed such topics as the trafficking of Burmese women and mass displacement and its impact on women of ethnic groups.

The New York Roundtable holds periodic meetings of organizations and individuals interested in Burma. For more information contact: Burma/UN Service Office by phone: (212) 338-0048 or fax: (212) 692-9748.

NEW ENGLAND — The New England Burma Roundtable is an informal group of individuals and organizations working to promote human rights and democracy in Burma. Meetings are held the second Monday of every month. For information contact Simon Billenness of Trillum Asset Management by phone: (617) 423-6655 or fax: (617) 482-6179.

PHILADELPHIA — The Philadelphia Burma Roundtable hosts a monthly activity. For more information contact Dan Orzech by e-mail: Orzech@well.com.

SAN FRANCISCO — The Bay Area Burma Roundtable is held the third Wednesday of every month. For more information contact Jane Jerome by phone: (408) 995-0403 or e-mail: jjerome@igc.apc.org.

LONDON — Information on the Britain-Burma Society, which hosts frequent events in London, can be obtained by email: sec@britainburma.demon.co.uk or phone: 0118-947-6874.

The Burma Briefing, a meeting of NGOs working on Burma, is also held periodically in London. For information contact Edmond McGovern by phone: (44-392) 876-849 or fax: (44-392) 876-525

BRUSSELS/PARIS — The NGO communities in France and Belgium host periodic roundtables in Paris and Brussels. For more information on this European forum contact Lotte Leicht of Human Rights Watch by phone: (32-2) 732-2009 or fax: (32-2) 732-0471.

NETHERLANDS — The Netherlands Burma Roundtable is held once every two months with the goal of updating organizations and individuals on current events and activities surrounding Burma. For more information contact: Burma Centre Netherlands (BCN), by phone: (31-020) 671-6952 or fax: (31-020) 761-3513.

CLINTON EXTENDS SANCTIONS

President Bill Clinton announced on May 19 that the U.S. would extend its sanctions on Burma for another year. Clinton, in a letter to Congress, stated that the ban on new investment would remain in place because, "As long as the government of Burma continues its policies of committing large-scale repression of the democratic opposition in Burma, this situation continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States."

U.S. CONGRESS HONORS WOMEN OF BURMA

A June 23 event on Capitol Hill brought together members of Congress and representatives of Burma's National Coalition Government of the Union of Burma (NCGUB), as well as non-governmental organizations and church groups, to mark "Women of Burma Day" in conjunction with the June 19 birthday of Aung San Suu Kyi. Among those Congress members who addressed the crowd were Representatives Nancy Pelosi, Dana Rohrabacher and Louise Slaughter. A panel of Burmese women spoke on the role of women in politics, mass displacement and the situation of Burmese women refugees and migrant workers. The event was organized by the Burmese Women's Union.
A CANCER IN RAKHINE

The construction of a Buddha museum is now underway in Sittwe and SPDC soldiers are using forced labor from Sittwe town, including children, old women, young girls, and men from all walks of life. Even at night, the SPDC doesn't let people go home. They demand that the people complete the work. They let some of the attractive young girls go home only after midnight.

I have worked there myself three times. The first time was on 10 September 1995. Each family has to work one day at a time. All the families of Sittwe have to work one day each by turns.

This project started in 1991. It is quite big, spread over a wide area. They are building it on paddy fields. Some fields were owned by villagers who were moved from there. The army forcibly occupied that land and relocated the villagers somewhere. Part of these fields were also owned by an orphanage. The orphanage got no compensation, because SPDC has no regulation for compensation.

SPDC is trying to collect and find all the ancient Buddha images and gather them in this museum. Then later, all will be taken to Rangoon. The junta is trying to collect all the Buddha images and other ancient objects from all over Arakan State.

The people don't like this museum. Now it is almost finished. It is a two-story building. They still have to start building the partitions to make separate rooms. The roof is already finished as well as the external walls. Only the people from Sittwe township have to do the work. Everybody has to go — Rakhines, Muslims, Hindus, Christians. In each quarter SPDC orders some families for one day and people have to rotate turn by turn. They take 200 to 300 people per day.

When I was working there, I saw soldiers throwing stones at people who were taking a rest for a little while. They also hit them with a cane stick, kicked them and scolded them rudely. But I was not beaten up. Some people were badly hurt. One woman was having a mouth and kicked her. Then he hit her with a cane stick. She lost consciousness. She was 17 years old.

...Sittwe, the capital of Arakan, is also the capital of the military. There is actually no trade. It is all in the hands of the army. All kinds of businesses are in the hands of the military in Sittwe. The army forcibly occupied that land and relocated the villagers somewhere. Part of these fields were also owned by an orphanage. The orphanage got no compensation, because SPDC has no regulation for compensation.

Development means road construction. The people have to give money and labor for that although they are not willing. People are starving more than before. In Sittwe, they also ordered families who have a house on the streetfront to build a brick house surrounded by a brick wall and a pavement with their own money. If they fail to do so, they have to move. Then, the soldiers build a brick house on these people's land and sell it. The people even have to build the pavement with their own money although the pavement is public and belongs to the government.

On the waterside, all the houses were completely destroyed by SPDC. Now it is a wasteland and the people had to move out of town. SPDC said: "When the foreigners visit this area and travel down the river, this is not beautiful for their sight. These houses are too ugly."

The army built a hotel called Sittwe Hotel at the seaside for tourism year ["Visit Myanmar Year 1996"]. They used forced labor to build it. It is a SPDC hotel. The hotel contractor is the son of former trade minister Kyaw Ba but he didn't pay the workers. That hotel is medium-size. It is a 3-story building.

I haven't been to Ngapali for the last three years [Ngapali on the Arakan coast is promoted as one of Burma's main beach resorts]. There were coconut plantations belonging to the people. The military occupied them and built bungalows on them, bungalows for the army and for the officers, and also General Ne Win's bungalows. They also built bungalows for recreation for disabled military men and for tourists.

There is also a small island there. This island is named "General Ne Win's island." It is only for his family and they cultivated pearls. This is his pearl business. His sons and daughters and their in-laws are staying there and it is the family business center. No one is allowed to enter that area. It is surrounded by soldiers. Previously it was controlled by the Department of Pearls and Fisheries. Now they control it themselves.

The army is now fishing with the people's boats and with the boats that they seized from the Thai fishermen [trawlers seized from Thai companies fishing illegally in Burma's waters]. People have no more space to fish in the sea. We are dependent on fishing from the sea, but people can't go because the army is taking their boats all the time.

One Australian company [joint venture] started their business in Sittwe. The company name was Thin Di Aung. They brought in all the fishing equipment, boats, nets, etc. to catch fish and shrimp, to pack them and send them to Australia. But they were not able to fish or send any fish to Australia. Although they got SPDC permission, they were not allowed to fish in the sea [by the Army]. They were there for one year without any business activities.

Their fishing trawlers became all rusty and then they left.

Now in Arakan it is very difficult economically. After I left, because of me, my family had to go to the military camp for investigation and torture. When I was there, my wife did sewing and tailoring to survive, but I don't know about her present condition. I was not the only person oppressed by SPDC. It is all the people from Burma. We suffer so much because of forced labor. Until they have to resign from power, they will torture the people.

This account by an Arakanese refugee in Bangladesh first appeared in the March 25, 1999, Rangoon Post, under the subject heading: "Forced Labor to Take Precious Objects and Build Museum in Burma." The Rangoon Post is an English-language newsletter published in the United States.
VOICES OF BURMA

Ethnicity: Shan
Age/sex: 19, female
Family situation: Five (parents, her and two sisters)
From: Ho Park, Lashio township, Shan State (village had 50 households)

The witness arrived in Thailand at the end of 1997 with five other people (she was the only member of her family who left). She left because of excessive forced labor, which meant her family could not survive. In one month someone from each family would have to do about one week of forced labor, but sometimes as much as 20 days. She herself had done forced labor many times since the age of 15. She usually did forced labor only for short periods (usually one day); longer forced labor assignments (three to ten days) would be done by her father. Villagers had to work at the army camp making fences, and cleaning, and also constructing roads. She herself did mainly the cleaning at the army camp. The soldiers treated her badly, often swearing at her, but never beating her. Some of her friends (male) were beaten, but she did not know why. Orders for forced labor were given by the army through the village head. If someone failed to turn up for forced labor they would be arrested and food or money would be demanded for their release. It was possible to hire another person to go in her place for forced labor, but paying money directly to soldiers would not work. Her father had to do portering. He said he had to carry things for the soldiers over mountains, and if he was slow he was beaten and kicked. When he was away portering, the family faced many problems and had to sell belongings in order to eat. This happened very often.


BUSINESS WATCH

UNOCAL VICE-CHIEF LEAVES OIL GIANT

Vice-Chairman of the U.S. oil conglomerate UNOCAL, Mr. John Imle, has announced that he will be leaving the company. Imle was one of the architects of UNOCAL’S involvement in the controversial gas-pipeline project in Burma. Over the life of the project, UNOCAL has faced criticism from human rights groups and democracy activists because of the company’s close collaboration with Burma’s military regime. Imle, along with UNOCAL, is currently being sued for reported human rights violations connected to the project, including the use of forced labor by the regime to create the infrastructure supporting the pipeline.

BURMA’S FOREIGN INVESTMENT CLIMATE GETS GLOOMY FORECAST

According to a recent report of economic indicators published by Burma’s central statistical agency and reported by the Xinhua News Agency, foreign investment plummeted during Fiscal Year 1998-1999. The country received a total of 29.45 million USD in foreign investment during this year, which accounts for only 3.78% of that in FY 97-98 and 1.04% in FY 96-97. The 1998-1999 figures were the lowest level over the past five years and far from the peak year of 1996-97 when 2.814 billion dollars was generated. Brigadier-General David Abel, minister at the office of the Chairman of the State Peace and Development Council, attributed the decline to the impact of the Asian financial crisis and admitted that investment by member countries of ASEAN had fallen by 70 percent.

Meanwhile, a report issued in July by the U.S. government titled, “1999 Investment Climate Statement - Burma” cited additional factors as contributing to the dramatic drop. These included U.S. sanctions on new investment in Burma, which have been in place since May 1997. According to the report, “without a doubt, sanctions have affected the economy of Burma.” The 1997 U.S. ban on new investment had a strong deterrent effect on investment in Burma.” It also attributed the economic decline to “poor management of the economy” and the “restrictive policies imposed by the government.”

MEDIA RESOURCES

STRENGTHENING CIVIL SOCIETY IN BURMA:
Possibilities and Dilemmas for International NGOs
Silkworm Books
54/1 Sridonchai Road
Chiang Mai 50100
Thailand

This collection of papers published in 1999 is the outcome of the 1997 conference "Civil Society in Burma: Possibilities and Dilemmas for International NGOs," organized by the Transitional Institute (TNI) and the Burma Center Netherlands (BCN). Scholars and practitioners examine various aspects of civil society in central Burma and the ethnic minority areas and discuss legal aspects of freedom of association and the debate surrounding the role of international non-governmental organizations.

MENTAL CULTURE IN BURMESE CRISIS POLITICS:
AUNG SAN SUU KYI AND THE NATIONAL LEAGUE FOR DEMOCRACY
by Gustaaf Houtman
1999

Institute for the Study of Languages & Cultures of Asia & Africa
Tokyo University of Foreign Studies
4-51-21 Nishigahara
Kita-ku, Tokyo 114-8580
Japan

An in-depth analysis of the Buddhist dimensions underlying Burmese politics, this book pays particular attention to modern Burmese politics and the role of Aung San Suu Kyi and the National League for Democracy. The author examines both military politics and the democracy movement and distinguishes between the politics of authority (ana) and the politics of influence (awza). A free copy can be obtained from the internet at http://homepages.tesco.net/~ghoutman.

BURMA: INSURGENCY AND THE POLITICS OF ETHNICITY
by Martin Smith
Zed Books
7 Cynthia Street
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Tel: (44-171) 837 4014
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Web Site: http://www.zedbooks.demon.co.uk

This updated edition charts the development of modern political parties in Burma and analyzes the complexities of the long-running insurgencies waged by a host of different political and ethnic nationality groups after independence. The new edition contains a further chapter on Burma in the 1990s, with particular examination of the problems of transition, the ethnic cease-fire movement and continuing deadlock between the SPDC, the NLD, and ethnic opposition groups.
**B U R M A : T H E M I L I T A R Y A N D I T S C O N S T I T U T I O N**

May 1999

Burma Lawyers' Council
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By providing an introduction to the drafting process of the Burmese military-controlled constitution, this book presents the argument that the military’s constitutional principles are primarily aimed at strengthening military authoritarianism in the country and legitimizing the regime. Background on the 1990 election and details of the National Convention procedural code are provided.


by Michael Gravers

CURZON
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In this book, the author looks at various aspects of nationalism including the fear of foreigners, a colonial era marked by violence, and the role of Buddhism. First published in 1993, this 1999 edition includes six new chapters and a preface that incorporates critiques of the earlier work.


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Public Information
Bureau of Public Affairs, RM. 6808
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Compiled by the American Embassy in Rangoon, this report outlines U.S. investment subject to economic sanctions while analyzing the effects of sanctions on the Burmese economy and the status of foreign investment in the country. It also provides statistical information on investment and the economy in general. The report will soon be available on the State Department website at: http://www.state.gov.

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**S P D C S P E A K S**

The following is an excerpt from the opening address by SPDC Secretary 1, Lt. Gen. Khin Nyunt at the 13th ASEAN Labor Ministerial Meeting held in Rangoon, May 14, 1999.

In Myanmar it has been the consistent policy of successive governments to promote welfare of labor. Myanmar is also proud that she is a party to some of the core Conventions under the ILO. Myanmar is determined to build a society where peace and prosperity prevail, where the rights of labor, the rights of women and the rights of children are given all the encouragement and promotion that they rightly deserve...If one is to believe some of the allegations found in the Western media, the picture will be rather somber indeed. We feel very strongly that these allegations were largely a result of misperception and misunderstanding of the situation and the mentality of our people.

Since a sound infrastructure is essential for economic development, our Government has placed specific emphasis on this sector. Hence, a sustained effort to improve the infrastructure of our economy by building roads, bridges, rail network, dams and reservoirs has been undertaken. Realizing the benefits to the communities from these projects, people have voluntarily contributed labor so that they can be completed sooner. Moreover, in Myanmar thinking, contribution of labor not only brings immediate material benefit in present life, but also merit for future life cycles.

Without understanding these factors, some people have made all sorts of allegations. On our part, to dispel these wrong impressions, the Government has issued instructions that only renumerated labor must be used in infrastructure projects. At the same time, with the return of peace, we are now mainly using our military personnel to undertake these public works. Therefore, the allegations of forced labor are groundless...

...Myanmar fully endorses the common stand of ASEAN that the ILO Convention is voluntary and should be achieved through promotional means and based on the stage of development of each member state. Myanmar also shares the view that the declaration and its follow-up mechanism should not impose new obligations on member states or create double scrutiny but should build upon well-established procedures.

International organizations should not be used as a forum to put pressure on member states by the powerful and influential quarters to fit their own political agenda. To protect Myanmar's interest as a developing country, it is her view that ASEAN needs to further coordinate and develop ASEAN position on various issues. To this end Myanmar stands ready to work with her fellow ASEAN members as well as the international community so that she would bring a better future not only to the labor but also to all the citizens of the world.

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**B R I E F I N G S A N D D E V E L O P M E N T S**

**A U S T R A L I A N H U M A N R I G H T S E N V O Y V I S I T S R A N G O O N**

Australian Human Rights Commissioner, Chris Sidoti, completed a three-day visit to Burma on August 5 to promote an initiative proposed by Australia's Foreign Minister, Alexander Downer. In an effort to establish an independent human rights organization inside the country, Sidoti met with top military leaders, as well as some members of Burma's democratic opposition, although he did not speak directly with National League for Democracy (NLD) head, Aung San Suu Kyi. The proposal is partly modeled after the commission established in Indonesia during Suharto’s reign and could include human rights training for civil servants and police. It has met with criticism from human rights groups that believe it is unlikely that such an organization in Burma could operate independently from the military regime.
Burma Debate is a publication of The Burma Project of the Open Society Institute.

Mary Pack, Editor

THE OPEN SOCIETY INSTITUTE (OSI) was established in December of 1993 to promote the development of open societies around the world. Toward this goal, the institute engages in a number of regional and country-specific projects relating to education, media, legal reform and human rights. In addition, OSI undertakes advocacy projects aimed at encouraging debate and disseminating information on a range of issues which are insufficiently explored in the public realm. OSI funds projects that promote the exploration of novel approaches to domestic and international problems.

The Burma Project initiates, supports and administers a wide range of programs and activities. Priority is given to programs that promote the well-being and progress of all the people of Burma regardless of race, ethnic background, age or gender.

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website: http://www.soros.org/burma.html