The SPDC and Burma’s Constitution

In his Union Day message, Junta leader General Than Shwe urged the nation “to strive in harmony for the emergence of a new State Constitution that would pave the way for the building of a new discipline—a flourishing democratic state.” Two legal issues arise from this hopeful, yet dubious, message to the nation—the type of state constitution he has in mind, and his definition of “discipline” and “a flourishing democratic state.” For the emergence of a state constitution, it is absolutely necessary for the participation of all classes, races, and nationalities. The entire population must be represented within each state, division, etc. Yet at this point, there is a ban on talking, and even reading, about the constitution. A breach of this law carries a lofty 25-year prison sentence.

As for the second issue, General Than Shwe’s avenues for establishing his stated goal must be clarified so that the constitution-making process will be free from governmental roadblocks. The process must not be restricted to discussions of the National Convention-drawn Constitution. Only the free will of the people will contribute to the emergence of a desired constitution based on specific conditions of the country, in essence an all-inclusive constitution. General Than Shwe must set in motion an assembly of the people composed exclusively of members elected in the 1990 election, as well as members of cease-fire groups, ethnic leaders, and other under-represented communities. This said, the Junta’s influence should extend no further in the conference. Surely there has to be freedom of expression so that different voices and interests can be vented and a common agenda is allowed to evolve. If and when the process gains momentum, political parties interested in erecting their own constitutional models should be granted freedom of association and allowed space and exposure in the media. These are the minimum legal requirements to catalyze the emergence of a legitimate, justifiable constitution. In addition, other legal issues should be addressed, such as the release of political prisoners and the legalization of political parties to add to participation transparency and credibility of the constitution making process.
The other question relates to the “disciplined, flourishing democratic state” that General Than Shwe proposes. What, particularly, does this mean? The Burmese Socialist Program Party (BSPP) ruled the state from 1974 to 1988 under the General's idea of an effective constitution. Before asserting discipline among the masses, the leadership needs to stop speculating and look within its own ranks. The historical record shows a continual failure on the part of the generals to rebuild a functional state constitution. Their constitutional creation in 1974 stood only briefly before collapsing to the ground, while another attempt in 1996 also proved futile. The clear message is that representatives of civil society should also be involved in this matter.

The 1990 elections were based on the principle of multiparty democracy. When the Generals were mandated, they refused to honor the results on the excuse that the election was not for transfer of power, but for the process of drawing up a constitution. This was an obvious ploy to uphold the dictatorship, as the representatives of the people were the only ones qualified to draw up the constitution. In the backdrop of elections, only the elected representatives of the State population possess the legitimate authority to construct the new constitution. Whether this will display General Than Shwe’s idea of “discipline flourishing,” it is for the people, and their elected representative, to decide. Generals must gracefully retreat and play a positive role to facilitate democratic transformation. Rule of law can be defeated today, tomorrow, but not in all time to come. The dialogue which the generals have grounded must continue if General Than Shwe’s message is to have any meaning, and not simply be a comic case of the devil quoting scripture.