

B U R M A

On The Road To Peace

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I. INTRODUCTION

One analyst has pointed out the central political issue in Burma in 1996/97 to be the contest of legitimacy between SLORC, State Law and Order Restoration Council - the ruling military council, and the main opposition party NLD, National League for Democracy - the winner of general election seven years ago ¹. SLORC seized state power in September-1988 after violently suppressing Burmese people's democracy movement in that year; and SLORC asserted its right to hold on to state power by its own Declaration No. 1/1990 after the general election of May-1990. After seven years of SLORC in power, the international community is beginning to question the legitimacy as well as legality of the military's hold on state power and SLORC's continued arbitrary rulings in Burma ².

In regards to the situation of refugees and displaced people from Burma, there has been no progress made over the year. The United Nations organized repatriation program for Rohingyas, the Burma-Muslim refugees in Bangladesh, has encountered particularly difficult residual cases that directly linked to the issue of statelessness in Burma ³. The repatriation program is also facing with obstacles from another dimension as the new wave of displaced Rohingyas fleeing Bangladesh, citing economic hardships and forced labour in Arakan state in western Burma ⁴.

On eastern part of Burma's border, the military government early this year has staged an offensive against Karen National Union (KNU), one of the largest remaining ethnic rebel groups that have not signed ceasefire with Burmese army. This offensive had resulted 20,000 more Karen refugees fleeing into Thailand; adding total refugee population in the camps to become 115,000.

During this year, the refugees in Thailand received unusually harsh treatment by the Thai authorities. Thailand's relatively tolerant policy for Burma's refugees in previous years appears to have shifted towards the policy of *refoulement*. Earlier this year, the Thai authorities, especially Royal Thai Army, forcibly repatriate a large number of refugees into war zones. The Royal Thai Government, on the one hand, denied Burma's refugees of United Nations protection, leaving refugees in Thailand vulnerable to abuses. Such non-cooperation with United Nations by Royal Thai Government, more importantly, is depriving the opportunity for refugees to seek longer-term solutions. Independent observers suggest that such hardening of attitude to Burma's refugees in Thailand is the result of increasing trade link between the two governments. There were reports throughout the year of Thai authorities repatriating the 'illegal immigrants' from Burma's Mon and Shan ethnic minority groups. Thailand currently housed an estimated 600,000 illegal

¹ Asian Survey, Vol. XXXVII, No.2, "BURMA IN 1996: One Economy, Two Politics" by J. Guyot, February 1997.

² United Nations Commission on Human Rights reports on Myanmar prepared by Special Rapporteur. UN Documents: A/51/466, 8 October 1996; E/CN.4/1997/64, 6 February 1997.

³ The State of the World's Refugees 1995 by UNHCR, *Repatriation to Myanmar*, pp.32-63; *The Problem of Statelessness*, pp.67, Oxford University Press, 1995.

⁴ Amnesty International, "Myanmar/Bangladesh: Rohingyas - The search for safety", AI Index: ASA 13/07/97, September 1997.

Burmese workers ⁵ ⁶.

There have also been reports of SLORC stepping up repression on opposition members and supporters with the aim of decimating representative-elects of National League for Democracy party. Throughout the year, many independent sources reported of harassment and intimidation made upon the opposition by military authorities ⁷. The SLORC's renewed repression is causing many elected representatives of May-1990 to resign from their duties. The heightened awareness is needed regarding this particularly alarming trend of SLORC repression to decimate opposition ⁸ †.

On a positive note, the Year-1997 brings the democratic forces to a new level of political cooperations in their struggle. The ethnic nationalities, who struggling for political equality with Burman majority, are politically united with the democratic opposition, especially National League for Democracy. Parties in opposition agree to solve national political problems, in particular transition to democracy and establishment of genuine federal union, at a tripartite dialogue with Burma military government.

In July of this year, the Association of South East Asian Nations (ASEAN) admitted Burma to become a member. There have been intense debates and also protests throughout this year about the inclusion of Burma into ASEAN. There are some indications that the ASEAN's policy of '*constructive engagement*' is beginning to move away from the so-called '*commercial diplomacy*' towards Burma ⁹. A broader level of ASEAN engagements to Burma, including diplomatic and humanitarian concerns, appears to have taken shape in the latter part of this year ¹⁰.

Whilst the international community and regional countries in particular are giving more attention to the political situation inside Burma, there appears to be severe deterioration of economic and humanitarian condition in Burma. Burma's economy is reported to be in a state of serious decline ¹¹. The sharp rise in food prices as a result of poor rice harvest and inflation have also been reported ¹². Observers state that current economic crisis is comparable to that of 1987/88, which led to widespread unrest in Burma.

Burma's situation clearly need urgent attention from the international community and regional countries. Following in this paper, the United Nations General Assembly and Secretary-General of United Nations are called upon to assist the people of Burma in bringing peace and national reconciliation.

⁵United States Committee for Refugees, "*Situation report for Burmese refugees in Thailand (preliminary)*", 16 May 1997.

⁶Human Rights Watch/Asia, "*Burma/Thailand: No Safety in Burma, No Sanctuary in Thailand*", Vol.9, No.6(C), July 1997.

⁷"LETTERS TO A DICTATOR: Official correspondence from NLD Chairman U Aung Shwe to the SLORC's Senior General Than Shwe, from December 1995 to March 1997" Published by All Burma Student Democratic Front, July 1997.

⁸Amnesty International, "*Myanmar: Intimidation and Imprisonment September-December 1996*", AI Index: ASA 16/01/97, February 1997.

†In a latest development, SLORC allow the NLD to hold a congress in 27-29 September 1997 without arresting members of NLD. This was interpreted by observers as of SLORC trying to mitigate the international community's concern about the lack of political dialogue in Burma.

⁹The particular aspects of *constructive engagement policy* of Thailand in 1991/92 is explained in the report by Human Rights Watch/Asia, "*Burma/Thailand: The Mon - persecuted in Burma, forced back from Thailand*", Vol.6, No. 14, December 1994.

¹⁰The ASEAN engagements appears to be in progress:(1) On 23-September-1997, Burma's strongman, General Ne Win paid a 'private visit' to the President Suharto of Indonesia. (2) On 3 October 1997, SLORC Secretary-1, General Khin Nyunt, and ministers are in Singapore for 'trade mission' and (3) On 16-18 October 1997, President Fidel Ramos of Philippines to visit Rangoon.

¹¹Far Eastern Economic Review, *Paper Tigers* by Bertil Lintner, 7 August 1997

¹²The Economist Intelligence Unit Country Report, 2nd quarter 1997. The EIU survey has shown that 65 percent increase in staple food price during 1996 with estimated annual inflation of 25 percent.

II. POLITICAL DEVELOPMENTS IN 1997

§2.1 National Convention and Dialogue

Burma since independence from Britain in 1948 had two constitutions. The 1947 Constitution of Burma guaranteed some ethnic minority states the right of secession after initial period. Following General Ne Win's military coup of 1962, the 1947 Constitution was abolished and another constitution enacted in 1974. The SLORC came into power in 1988 by abolishing the 1974 Constitution.

In 1992, SLORC made initiatives to draw up a new constitution amidst the request to transfer state power to elected representative by United Nations General Assembly and Commission on Human Rights. SLORC's primary motives of convening National Convention appear to be to derive its legitimacy to stay in power and to enshrine the role of military in future constitution¹³. To achieve its principal aim of securing the role for military in future governments, SLORC hand-picked the majority of convention delegates from the so-called workers, peasants and intelligentsia; and SLORC appointed the National Convention Convening Committee to laid down guidelines for drafting of the constitution. SLORC legitimize its convention by including a number of representatives-elect, together with few delegates from various ethnic minority groups who signed cease-fire accord with Burmese army¹⁴.

The constitutional guidelines laid down by SLORC include, among other measures, the army to have a leading role in national politics. Since the military to have a permanent role in Burma's government, in fact, is not agreeable to genuine people's representatives, it became primary source of dispute between convention organizers and elected representatives. As a result, there have been numerous stoppages at the National Convention since its beginning in 1993. In November 1995, the National League for Democracy withdrew its participation from the convention to protest the undemocratic work-procedures laid down by National Convention Convening Committee. Since then, the process for writing the constitution under SLORC appear to have lost its momentum: there were no reports made by SLORC's media of any significant meeting on National Convention taking place during 1997.

§2.2 Ceasefire with Karen National Union

Throughout the year 1996, the SLORC and KNU held several round of meetings for ceasefire without any success. Among the terms of the ceasefire agreement being discussed, the major dispute appears to be on the conditions put forward by Karen National Union that (1) SLORC to declare a nation-wide ceasefire and (2) SLORC to make a comprehensive political settlement with oppositions and ethnic groups¹⁵.

The negotiation process for SLORC and KNU appeared to have broken down totally following the Ethnic Nationalities Seminar of January 1997 held in *Mae-Tha-Raw-Hta*

¹³BURMA REPORT on Human Rights Practices in 1996, United States Department of State, 30 January 1997.

¹⁴Parliament of the Commonwealth of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Report on Human Rights and the Lack of Progress Towards Democracy in Burma (Myanmar)*, October 1995. Section 5.21:

In all 702 delegates attended the first session of the Convention: 99 were representatives who had won seats the May 1990 elections, another 48 came from political parties, categories 1 and 2 above. Therefore over 550 of the delegates were selected by the SLORC. Since 1993, the attendance at the Convention has declined by 61 delegates. At the beginning, only one in seven delegates were representative in the democratic sense of the word.

¹⁵Bangkok Post, 17 March 1996. See also 06/09/96: *Evaluating Current State of Ceasefire*, [<http://www.physics.adelaide.edu.au/~uneoo>].

– a village in KNU controlled territory. Attended by 111 delegates from 16 different ethnic organizations, the Seminar called for the establishment of genuine federal union for Burma based on equality and self-determination for ethnic minorities. The Seminar agreement, known as *Mae-Tha-Raw-Hta agreement*, also pledged support for Burma democracy movement under Aung San Suu Kyi's leadership and demanded the dissolution of SLORC-controlled National Convention. It also demanded a tripartite dialogue to solve the nation's political problems.

The ethnic minority groups that have signed *Mae-Tha-Raw-Hta agreement* included those who concurrently participated the SLORC-sponsored National Convention. This *Mae-Tha-Raw-Hta agreement* appears to remove the last remaining source of legitimacy for the SLORC-sponsored National Convention - i.e. the participation of ethnic minority groups - and, thus, causing political embarrassment to SLORC. The obvious sign of growing unity on the federal movement by ethnic minority groups, combined with the support for civilian opposition National League for Democracy, may also have alerted SLORC to suppress the last remaining bases of Karen National Union. In the months following *Mae-Tha-Raw-Hta* Seminar, SLORC launched a series of attacks on KNU posts, resulting in 20,000 refugees fleeing to Thailand.

The February/March attack on Karen National Union is a conclusive evidence that SLORC has no intention of solving ethnic nationality problems by political means. It has become clear from earlier our suspicions that the reason SLORC entered into the various ceasefire agreement with the rebel groups has been to concentrate its energy on confronting civilian democratic oppositions and not necessarily of SLORC seeking any long-term settlement with ethnic insurgents of Burma ¹⁶.

§2.3 Fundamental Political Problems

Current political issues in Burma can be resolved into two main problems:(1) the dispute on the control of state power by military authorities and representatives-elect of May-1990 election and (2) the struggle by ethnic minorities for political equality with majority Burman. At this juncture, there still remain a number of technical obstacles, this author believes that the major political disputes at the policy level have been resolved. Therefore, the political solution to this crisis can be implemented by making the necessary compromises from all sides.

Within the context of election held in May-1990, there is no question of the elected representatives' right to form a government in Burma. However, a compromise may be made, on the part of elected representatives, to include representatives from the military in forming a government. SLORC has suggested a composition of 25 percent of representatives from the military to be included in Burma's parliament ¹⁷.

The ethnic nationality groups have the desire to work with federal system for Burma, a system in which the political equality of Burman majority and ethnic minority can be achieved. The National League for Democracy, particularly Daw Aung San Suu Kyi, in principle have supported the possibility of a future federal Burma. A National Convention in which all political entities in Burma can freely discuss and debate - i.e. the tripartite dialogue between SLORC, NLD and ethnic minorities - is vital in seeking a political

¹⁶See also discussion on 01/10/96: *Towards Political Solution to Burma's Refugee Problem, The Report to U.N. General Assembly in 1996* [<http://www.physics.adelaide.edu.au/~uneoo>]

¹⁷The Special Rapporteur for Human Rights has raised concerns about such composition of un-elected representative in a parliament may cause contradiction to democratic principles (See A/51/466, 8 October 1996, Section D. Non-Conformity of the legal framework with international norms). Such problem may, nevertheless, be remedied by making special arrangements. (See 29/04/97: *Letter to the Secretary-General Kofi Annan* [<http://www.physics.adelaide.edu.au/~uneoo>])

solution for the ethnic minorities of Burma.

III. REFUGEES FROM BURMA

§3.1 Burmese-Rohingyas at Bangladesh border

During June/August-1997, there were reports of new influx of Rohingya refugees entering Bangladesh. The number of newly-arrived Rohingyas appeared to be larger than that of last year. The displaced Rohingyas cited (as of those in the exodus last year^{18 19}) the increased cost of rice, excessive taxation, forced labour and restriction on the freedom of movement as the reasons for their flight. Report on this new influx has surfaced amid the reports of forcible repatriation of 399 Burmese-Rohingya refugees by the Bangladeshi authorities²⁰.

This new wave of displaced Rohingya seems to constitute a dilemma for UNHCR. Firstly, the UNHCR is still in the process of managing residual cases from original exodus of 1991-92. A significant proportion of the new arrivals were found to be originally repatriated refugees²¹. The root causes of displacement appears to be a mixture of economic hardship as well as Convention related persecutions in Arakan state.

Currently, there are 21,800 Rohingyas from the original exodus of 1991-92 at two existing camps in Bangladesh. Burmese authorities have given clearance for 7,500 for repatriation, meaning the rest of camp population, numbering 14,000 in total, are not being considered as Burmese nationals. Burmese and Bangladesh Governments reportedly set 15 August 1997 as deadline for all repatriation. The UNHCR, without success, has made request to the Government of Bangladesh for local resettlement for these residual cases.

These residual cases appears to include a few hundred of members of the armed opposition group fighting Burmese government along with some Bangladeshi nationals who illegally entered Burma before 1991. These residual cases also seem to include a number of stateless Rohingyas. As the Bangladeshi authorities began to repatriate what appears to be the last batch of remaining Rohingyas, to whom apparently were given clearance by Burmese side, the incidences of violent resistance by camp residents were being reported. Following weeks of the repatriation, the militant leaders in the camps forced the refugees not to accept food and medicine as a protest to these forced repatriations²².

Such response by militant leaders and camp residents appear to be the result of various factors. Firstly, if the existing camps in Bangladesh were to be closed down, the refugees who do not have clearance would feel threatened to be left in Bangladesh indefinitely. Secondly, the marginal improvement in the human rights situation in Arakan state, though suitable for the majority to return, may not necessarily be conducive for some refugees who have been involved in anti-SLORC activities. It is clear that considerate measures

¹⁸Reports and analysis on Rohingya exodus in 1996 can be found in — Human Rights Watch/Asia, "Burma: The Rohingya Muslims - Ending a Cycle of Exodus ?", Vol.8. No.9(C), September 1996.

¹⁹See also in — United States Committee for Refugees, "USCR site visit to Bangladesh June 20-July 1, 1996", July 1996.

²⁰Latest report on the situation of Rohingyas can be found in — Amnesty International, "Myanmar/Bangladesh: Rohingyas - The Search for Safety", AI Index: ASA 13/07/97, September 1997.

²¹U.S. Committee for Refugee in July-1996 report confirmed the existence 'reverse flow' of repatriated refugee in the exodus last year as:

"Observers estimate that between one quarter and one third of recent arrivals appear to be former refugees who repatriated to Burma in past years. This reverse flow has fueled concern about the degree to which UNHCR has been able to guarantee the safety of returnees, to monitor their wellbeing, and to assist their reintegration."

One can expect the same situation exist in the exodus of this year.

²²Agence France Press, 27-29 July 1997; Reuters, 31 July 1997; AFP, 3 August 1997.

need to be made in approaching these residual cases.

In regards to newly displaced Rohingyas, as Amnesty International has noted in its latest report ²³, there are difficulties in making the distinction between economic migrants and refugees. Even though the UNHCR is operational in Arakan, it is unrealistic, for the time being, to expect there should be no new exodus of Rohingyas: there will continue to be economic displacements from Arakan state for some times. The UNHCR, nonetheless, must be concerned with the existence of Convention related persecutions (i.e forced labour, forced relocation and restriction on the freedom of movement) in Arakan State. The best remedial measure may be to expand the protection mandate of UNHCR in Arakan state and also in Burma. The UNHCR should coordinate with the Commission on Human Rights in the monitoring of returnees in Burma.

§3.2 Burma's ethnic minority refugees in Thailand

Following the offensive in February/March-1997 on Karen National Union, an estimated 20,000 Karen refugees, who previously lived in KNU controlled areas, have fled into Thailand. The Thai government's treatment of these refugees have been particularly harsh: instances of forcible expulsion from, and refusing entry to, Thai territory of Burma's refugees have been reported ^{24 25}.

Observers also note that differing treatments were given to Burma's ethnic minority refugees by different sectors of the Thai Government ²⁶. Informed sources also indicate that the economic self-interests by Thai authorities (possibly on individual basis) are likely motives for such a harsh treatment made to Burma's refugees. There are also indications of a shift in the Royal Thai Government's policy of informally tolerating Burma's refugees to that of forcibly repatriating refugees.

Burma's ethnic minority refugees (especially Karens) have been taking refuge in Thailand since 1984. In those earlier years, at a time Burma was under General Ne Win's government, the ethnic rebels received tacit support from Thai authorities and were given access to Thailand. At that time, the refugee movements at the Thai-Burmese border were also of seasonal in character: refugees usually enter Thai territory during the Burmese government's dry season offensive, and then, returning to their villages in the wet season when the offensive is over. The refugees are mainly close relatives or family members of those ethnic freedom fighters.

After SLORC seized power in 1988, the pattern of this refugee movement as well as the composition of refugees has dramatically changed. As a result of KNU losing their territory, the refugees have to live within Thai territory all year round. The refugees in the camps include ethnic minority villagers - not necessarily of only family members of the KNU - who fled from the Burmese army's human rights abuses.

Along with these changes in refugees and their movements, there appears to be some policy shift in Thailand for Burma's refugees. The policy for Burma's refugees in Thailand is changing from an informal tolerance to the forcible repatriation. In this regard, the cooperation between the Burmese government and Thai authorities, also in particular of trade and other economic activities, were reported since 1989 ²⁷. In 1993, Thai and Burmese authorities set up the Thai-Burmese Regional Border Committee to deal with

²³AI Index: ASA 13/07/97, September 1997.

²⁴Human Rights Watch/Asia, *"Burma/Thailand: No Safety in Burma, No Sanctuary in Thailand"*, Vol.9, No.6(C), July 1997.

²⁵Burma Issue (a special edition), *"To Forcibly Repatriate or Not: Thailand's Dilemma"*, April 1997.

²⁶United States Committee for Refugees, *"Situation report for Burmese refugees in Thailand (preliminary)"*, 16 May 1997.

²⁷The circumstances surrounding Burmese refugees and Thai authorities in 1988-92 may be found in - Asia Watch, *"Abuses against Burmese refugees in Thailand"*, Vol.4, No.7, 20 March 1992.

various refugee issues ²⁸. Through this Regional Border Committee, the SLORC is able to pressure the ethnic insurgent groups in Thailand to sign cease-fire agreements with the Burmese military. The 16 May 1997 report by the United States Committee for Refugees noted a specific pattern in the Thai authorities' response to current border situation, in parallel to that of Mon ethnic rebels and refugees: ²⁹

"Specific actions by Thai authorities in recent years (and particularly in recent months) indicate that Thailand is yielding to SLORC pressure on the refugee question. These action include:

- + forcing residents of various refugee camps to relocate their camps to sites within Burma;
- + pressing for the inclusion of a clause in the cease-fire agreement between SLORC and Mon insurgents calling for the repatriation of Mon refugees, and forcing the Mon refugees to repatriate following the cease-fire.
- + preventing thousands of new Burmese asylum seekers from entering Thailand and forcibly returning some who managed to cross the border;

The New Mon State Party, under pressure from Thai authorities, had signed a ceasefire with SLORC in 1995, followed by pushing all Mon refugees back into the Burma side of the border. Currently, the Karen National Union is the largest of the remaining ethnic rebel groups that have not signed a ceasefire agreement with SLORC. In recent developments, the Thai authorities appear to be pressing the KNU to sign a cease-fire agreement with the Burmese army. On the one hand, the Thai authorities are equating the cessation of fighting as an adequate condition for Burma's refugees to return. These appear to indicate the Royal Thai Government's policy shift towards forcible repatriation for Burmese refugees, as Human Rights Watch/Asia in its report has concluded ³⁰.

The growing crisis of displaced Burmese workers in Thailand is a likely pressure on the Royal Thai Government to adopt a more hardening attitude towards Burma's refugees. There are an estimated 600,000 displaced Burmese working in Thailand's labour intensive industries. Thai businesses have utilized these illegal workers as a cheap source of labour. Current economic down-turn in Thailand, which forced many labour-intensive industries to close down, will put these illegal Burmese workers into a more vulnerable position. Most of these illegal workers come from ethnic minority areas in Burma and therefore the reasons of their flight are similar to that of the refugees.

Regarding ethnic insurgency issues in Burma, it must be stressed that the problem is not simply about a few thousand disgruntled minority people taking up arms against the central government. The central issue, as noted in §2.3, is the ethnic minority's struggle for economic, social and political equality between minority people and majority Burmans. Clearly, SLORC's attempt to subdue minority rebels by military means, and the Thai authorities tendency to assist in doing so, will not bring a lasting peace to Burma.

²⁸Human Rights Watch/Asia, *"Burma/Thailand, The Mon: Persecuted in Burma, Forced back from Thailand"*, December 1994. pp-18,

"To facilitate the repatriation of Burmese, a Thai/Burmese Regional Border Committee was formed in 1993. The committee was also to assist in other border problems: fishing rights, illegal logging (in Burma), tourism, narcotics and*Abridged*..... At an April 29, 1994 meeting, Thailand agreed to "arrest 'terrorists' traveling on false passports through Bangkok". ...

²⁹United States Committee for Refugees, *"Situation report of Burmese refugees in Thailand (preliminary)"*, 16 May 1997.

³⁰Human Rights Watch/Asia, *"Burma/Thailand: No Safety in Burma, No Sanctuary in Thailand"*, Vol.9, No.6(C), July 1997.

IV. RECOMMENDATIONS

§4.1 The Role of General Assembly in Improving Human Rights

In recent years, it is noticeable that the international community's understanding about the human rights situation in Burma has greatly improved. There are many high quality reports in which human rights abuses in Burma are systematically documented by international organizations as well as by Burmese groups.

- *Recommendations should be translated into Action*

As regards the opinion of international community and, especially, United Nations General Assembly, there have been strongly worded resolutions expressing serious concerns about the human rights situation in Burma. In the latest UN General Assembly resolution in December 1996 (51/117), for example, recommendations for improving the human rights situation in Burma were made in a most comprehensive manner. Nonetheless, these recommendations still need to be translated into action since the General Assembly's human rights resolutions are not legally binding upon the Member States of the United Nations, in our case Burma, to implement those measures. It is therefore the view of this author that the Assembly's resolutions should be more specific in its demands, forcing the various organizations and political entities in Burma to take appropriate measures to improving the human rights situation in Burma ³¹. Such specific requests and instruction to the Burmese military government to improve its human rights records will also give the guidance to the non-government and human rights organizations in their campaigns.

- *Dialogue in Burma is most important*

One principal issue of importance in Burma, as has been highlighted by Special Rapporteur for Human Rights in his February 1997 report ³², is to initiate a tripartite political dialogue by parties to the hostilities. The 1996 UN General Assembly resolution (51/117) also recommended a tripartite dialogue:

6. Urge the Government of Myanmar to engage, at the earliest possible date, in a substantive political dialogue with Aung San Suu Kyi and other political leaders, including representatives from ethnic groups, as the best means of promoting national reconciliation and the full and early restoration of democracy;

The United Nations General Assembly should recommend the Secretary-General and the UN Secretariat to use more resources concerning the promoting of a dialogue in Burma. In the last year, we were distressed to learn that former U.N. Special Rapporteur for Human Rights, Professor Yozo Yokota, in his visit to Burma was not afforded by a Burmese translator. More frequent visits by UN officials, especially from the Department of Political Affairs and Special Rapporteur for Human Rights, should also be recommended.

The current political environment also suggest that the improvement to the human rights situation in Burma should be made in a small but firm steps. To the view of

³¹For instance, the UN General Assembly resolution of 1996 (51/117) urge the government of Burma regarding with refugee problem:

para.16. *Encourages the Government of Myanmar to create the necessary conditions to ensure an end to the movements of refugees to neighbouring countries and to create conditions conducive to their voluntary return and their full reintegration, in condition of safety and dignity;*

Where it is possible, the UNGA, in addition, should made the demand to the Government of Myanmar to sign a Memorandum of Understanding with United Nations High Commissioner for Refugees for the safe and voluntary repatriation of refugees in Thailand. Such step will enable United Nations system to follow-up in implementing General Assembly resolutions.

³²E/CN.4/1997/64

this author, the two main areas on which the international community can focus are (1) removing the root causes of refugee flow and (2) curbing the effects of SLORC's draconian laws promulgated since 1988.

● *To remove root causes of displacement*

Regarding refugee movements, the Special Rapporteur in his reports has pointed out the Forced relocation and Forced labour and portering as important root causes of the refugee flow³³. The General Assembly resolution (51/117) has also recommended regarding forced labour:

13. Strongly urges the Government of Myanmar to fulfill its obligations as a State party to the Forced Labour Convention, 1930 (No.29) and to the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) of the International Labour Organization, and encourages the Government of Myanmar to cooperate more closely with the International Labour Organization;

The problem of forced labour and forced relocation are also of concern to the UNHCR in connection with the new influx of Rohingyas to Bangladesh. The Amnesty International and Human Rights Watch/Asia also have reported a widespread occurrence of the problem of forced labour and forced relocation inside Burma^{34 35}. It is therefore appropriate to tackle the forced labour and forced relocation problems throughout Burma.

In order to reduce the forced labour and forced relocation in Burma, the United Nations General Assembly should recommend the representative-elects of May-1990 to legislate and enforce acceptable practices for their local area. The U.N.Commission on Human Rights and UNHCR should supervise such process in Burma.

● *To curb SLORC's repressive laws*

In order to curb the effects of SLORC's draconian laws that have been promulgated after 1988, the UN General Assembly should highlight the illegitimate and non-constitutional nature of those laws in this year's resolution. As Special Rapporteur for Human Rights has pointed out³⁶, these laws criminalize far too many aspects of normal civilian conducts. The fact that military authorities enforce these laws selectively to members and supporters of the opposition, these laws become the instruments of oppressions.

SLORC seized state power in 1988 with the promise to hold power until democratic elections were completed³⁷. The announcement of Declaration 1/1990 and subsequent rulings by SLORC therefore must be considered to be non-constitutional and illegitimate. The Special Rapporteur has highlighted these fact in his reports as:

Para.18. In these circumstances, as announced in Declaration 1/88 of 18 September 1988, the Armed Forces established martial law, overturning the Constitution of 1974, dissolved all State

³³Report to General Assembly – A/51/466, Section IV. Para 117-145; Report to Commission on Human Rights – E/CN.4/1997/64, Section III.

³⁴Amnesty International, "Myanmar: Ethnic minority rights under attack", AI Index: ASA 16/20/97, 22 July 1997.

³⁵Human Rights Watch/Asia, "Thailand/Burma: No Safety in Burma, No Sanctuary in Thailand", Vol.9, No.6(C), July 1997.

³⁶See A/51/466, Section IV: Impact of Myanmar Law on Human Rights; E/CN.4/1997/64, Section II: The exercise of civil and political rights.

³⁷SLORC made to transfer power to elected government on many occasion in 1988. On 23-September-1988, for example, SLORC chairman Gen. Saw Maung stated the military has "No desire whatsoever to cling on to power for a long period." and "our Tatmadaw on its part would ... after handing over power to the government which emerges after the free and fair general elections in which the citizens of the nation would be able to exercise their full democratic rights. (SLORC communication to all Burmese missions on 27/9/88).

organs, including the Pyithu Hluttaw (People's Assembly) and the State Council....*Abridged*.... From a juridical standpoint, the assumption of power by SLORC constituted a break from constitutionality and legal continuity. However, everything indicated that SLORC did not intend to arrogate to itself for all time the extra-constitutional powers it had assumed.(A/51/466)

The report further revealed as:

Para.31.{ *abridged* }....There could, arguably, have been some legitimacy in the assumption of power by SLORC, without the consent of the people, in circumstances which could be said to have amounted to a state of public emergency threatening the life of the nation. In any event, as its name indicates, an emergency is only temporary and cannot be said to last longer than a given situation required.{ *abridged* }....The question arises, with growing urgency, as to whether any juridical legitimacy that could, arguably, have been derived from past acquiescence in the assumption of power by the Military Forces can any longer provide a defensible basis for the continued maintenance of a non-constitutional system based on the assumption of martial power.

The SLORC, in its own Declaration 1/1990, has also stated the non-constitutional nature of its rulings. In paragraph 6 of Declaration 1/1990, SLORC explicitly states that:

6. The State Law and Order Restoration Council (Tatmadaw) is not an organization that observes any constitution; it is an organization that is governing the nation by Martial Law.....

Any rulings and laws promulgated by SLORC after the May-1990 election, therefore, are unaccountable to any constitution of Burma and, hence, to the people of Burma. The UN General Assembly should state in its resolution that these repressive laws in Burma are illegitimate and non-constitutional.

§4.2 Recommendation to the United Nations system

(a) Two existing problems for Rohingya refugees, clearly, are the problem of residual cases from original exodus of 1991-92 and the difficulty in separating between economic migrants and refugees.

The residual cases for Burmese-Rohingyas, although it is an obstacle to the current repatriation program, does present the opportunity to solve the problem of statelessness and the issue of citizenship in Burma. It also presents as an opportunity to remove Burmese suspicions about the existence of illegal-migrants from Bangladesh amongst the Rohingya population, thus providing a good ground for the long-term reintegration of the refugees ³⁸.

As a first step, the Special Rapporteur for Human Rights, Judge Rajsoomer Lallah, should visit the two remaining Burma-Rohingya refugee camps in Bangladesh. An independent Commission, with the support of Special Rapporteur, should be set up to determine the status/composition of the remaining 14,000 camp residents. Those found to be Bangladeshi nationals who have illegally migrated to Burma before 1991 must be taken back by the Government of Bangladesh. The former members of anti-SLORC armed Rohingya groups (possibly numbering in the few hundreds) should be given temporary refugee status, as long as necessary, in Dhaka. Those found to be long-time residents of Arakan and are stateless should all be taken back by Burma at the appropriate time.

The problem of economic displacements, combined with Convention related persecutions, can also be tackled. Clearly, the major violations of concerned to the UNHCR are those of forced labour, forced relocation and restriction on movements. The United

³⁸09/08/97: *Rohingyas - resolving residual cases*. [<http://www.physics.adelaide.edu.au/~uneoo>]

Nations General Assembly in this year should give the representatives-elects in Burma the responsibility to legislate and to monitor with regards to forced labour acceptable to their region. The mandate of UNHCR should also be broadened to include the protection of forced labour, forced relocation and restrictions on the movements of the refugees.

It is also reported that the UNHCR personnel, for operational reasons, cannot be as vocal as human rights monitors in raising concerns with the governments. Therefore, the United Nations General Assembly should recommend to send in-country human rights monitors to Burma.

(b) The Secretary-General and High Commissioner for Refugees should urge the Royal Thai Government to transfer protection responsibility of Burma's refugees living in the camps to the UNHCR.

The Secretary-General should also make initiative to form a U.N. Contact group for Burma. The U.N. High Commissioner for Refugees, with the support of ASEAN and ASEAN Regional Forum (ARF), should set-up an *ad-hoc Regional Committee* to tackle refugee and displaced people problems for Burma ³⁹.

The U.N. Secretary-General should set-up an escrow account for the Burmese refugee repatriation program. Initiatives should be made by the UN to seize monies from the selling of Burma's natural gas to Thailand.

(c) The Special Rapporteur for Human Rights and United Nations Commission on Human Rights should give particular attention to oppressive laws promulgated by SLORC. The United Nations General Assembly resolution should highlight the non-constitutional nature of SLORC and its rulings. The Commission on Human Rights should instruct SLORC to repeal those laws restricting freedom of speech, association and assembly.

(d) Member States of the United Nations generally have the anxiety of setting a precedent by the UN whenever human rights matters are raised at UN Forums, and call upon the Burmese government to improve its behaviour. Therefore, the U.N. Secretary-General, Commission on Human Rights, Governments of Democratic countries - especially the United States - must take strong stand on human rights issues at the U.N. forums.

§4.3 Recommendation to UN General Assembly

The United Nations General Assembly:

1. Urge the Government of Thailand to allow the United Nations High Commissioner for Refugees to protect and assist Burma's refugees in Thailand;
2. Urge the Government of Thailand and the Government of Burma to sign a Memorandum of Understanding with the UNHCR for the safe and voluntary return of Burma's refugees from Thailand;
3. Urge the Government of Bangladesh to take back all Bangladeshi nationals currently in refugee camps who were found to have migrated into Burma before 1991;
4. Urge the Government of Bangladesh to provide temporary asylum to those Burmese nationals until such time that a change of government in Burma has been effected;
5. Authorize the United Nations to send human rights monitors to Burma;
6. Authorize the Secretary-General to set-up escrow account for Burma's refugee repatriation programs; and authorize United Nations Secretary-General to seize funds from Burma's sale of natural gas to Thailand.

³⁹Notes on International Protection, Executive Committee of the High Commissioners Program, (A/AC.96/863 Para.31, 1-July-1996)