

limits on this conduct with exacting scrutiny; legislation that proposed to penalize the conduct in order to silence the message or out of disagreement with the message violates the First Amendment speech clause.

Rather clearly, subsections (b) and (c) would present no constitutional difficulties, based on judicial precedents, either facially or as applied. The Court has been plain that one may not exercise expressive conduct or symbolic speech with or upon the property of others or by trespass upon the property of another. *Eichman*, supra, 496 U.S., 316 n., 5; *Johnson*, supra, 412 n. 8; *Spence v. Washington*, 418 U.S. 405, 408-409 (1974). See also, *R.A. v. City of St. Paul*, 112 S.Ct. 2538 (1992) (cross burning on another's property). The subsections are directed precisely to the theft or conversion of a flag belonging to someone else, the government or a private party, and the destruction of or damage to that flag.

Almost as evident from the Supreme Court's precedents, subsection (a) is quite likely to pass constitutional muster. The provision's language is drawn from the "fighting words" doctrine of *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). That case defined a variety of expression that was unprotected by the First Amendment, among the categories being speech that inflicts injury or tends to incite immediate violence. *Id.*, 572. While the Court over the years has modified the other categories listed in *Chaplinsky*, it has not departed from the holding that the "fighting words" exception continues to exist. It has, of course, laid down some governing principles, which are reflected in the subsection's language.

Thus, the Court has applied to "fighting words" the principle of *Brandenburg v. Ohio*, 395 U.S. 444 (1969), under which speech advocating unlawful action may be punished only if it directed to inciting or producing imminent lawless action and is likely to incite or produce such action. *Id.*, 447. This development is spelled out in *Cohen v. California*, 403 U.S. 15, 20, 22-23 (1971). See also *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 928 (1982); *Hess v. Indiana*, 414 U.S. 105 (1973).

A second principle, enunciated in an opinion demonstrating the continuing vitality of the "fighting words" doctrine, is that it is impermissible to punish only those "fighting words" of which government disapproves. Government may not distinguish between classes of "fighting words" on an ideological basis. *R.A.V. v. City of St. Paul*, 112 S.Ct. 2538 (1992).

Subsection (a) is drafted in a manner to reflect both these principles. It requires not only that the conduct be reasonably likely to produce imminent violence or breach of the peace, but that the person intend to bring about imminent violence or breach of the peace. Further, nothing in the subsection draws a distinction between approved or disapproved expression that is communicated by the action committed with or on the flag.

In conclusion, the judicial precedents establish that the bill, if enacted, would survive constitutional attack. Subsections (b) and (c) are more securely grounded in constitutional law, but subsection (a) is only a little less anchored in decisional law.

Because of time constraints, this memorandum is necessarily brief. If, however, you desire a more generous treatment, please do not hesitate to get in touch with us.

JOHNNY H. KILLIAN,
Senior Specialist,
American Constitutional Law.

Mr. McCONNELL. I know my colleagues and their allies who support the constitutional amendment are motivated by the highest ideals and principles.

I share their reverence for the flag and the values and history it rep-

resents. But even a constitutional amendment won't succeed in coercing proper respect for the flag. It will, however, do damage to the Constitution and the cause of freedom.

After all, is that not what the flag signifies—freedom? That is what it signifies.

Who can forget the pictures of the fall of the Berlin Wall, as nation after nation of Eastern Europe threw off the shackles of communism for freedom? The American flags flying over our embassies in the countries behind the Iron Curtain held the hopes and dreams of those subjugated under communism.

Spreading freedom is uniquely our American creed. In our history, we have seen freedom triumph over our colonial forerunners, over the slave holders, over the Fascists and over the dictators.

To narrow the Bill of Rights, even in the name of the flag and patriotism, constricts freedom and would reverse the 200-year American experiment with freedom that has made our Nation the envy of the world.

Let us not give flag-burners—the miscreants who hate America and the freedom we cherish—more attention than they deserve. Do not let these few scoundrels with nothing better to do than burn our flag chase freedom from the shores of America.

I urge adoption of my statutory alternative to punish those who desecrate the flag, rather than a constitutional amendment that strikes at the heart of our most cherished freedoms.

So, Mr. President, in all likelihood, we will be voting on this amendment sometime either Monday or Tuesday, depending on whether a unanimous-consent agreement is entered into. I hope that the amendment will be given serious consideration by the Senate as an alternative approach which clearly would meet constitutional standards to amending the Constitution.

Mr. President, on another matter, I ask unanimous consent to proceed as in morning business.

The PRESIDING OFFICER (Mr. INHOFE). Without objection, it is so ordered.

BURMA

Mr. McCONNELL. Mr. President, last week, in yet another remarkable act of courage, Daw Aung San Suu Kyi announced her party, the National League for Democracy, will not participate in the constitutional convention called by the State Law and Order Restoration Council, SLORC.

As many who have followed Burma in recent years know, remaining true to the people who elected her and the NLD in 1990, Suu Kyi declared,

A country which is drawing up a constitution that will decide the future of the state should have the confidence of the people.

a standard SLORC clearly does not and cannot meet.

In fact, SLORC has already stacked the constitutional deck against the

NLD and Suu Kyi. Convention participants have been forced to accept guidelines that will preserve a leading role for the military in Burma's political life and would exclude anyone married to a foreigner from assuming the office of president. As we all know, this would prevent Suu Kyi from assuming the position she was elected in 1990 to fulfill since she is married to a British scholar.

Mr. President, at the end of my comments, I will insert two articles which appeared on November 30 in the Washington Post and the New York Times regarding the current situation in Burma—there is no question that the decision to boycott has increased the level of tension in Rangoon. SLORC has now charged Suu Kyi and her supporters as engaging in confrontational politics, but, as Suu Kyi is quick to point out:

What they have termed confrontational is that we have asked for dialogue, which we want in order to prevent confrontation. To silence the views of people whose opinions are different by putting them in prison is far more confrontational.

Let me assure my colleagues that Suu Kyi's understanding of the deteriorating situation in Burma is not a lonely minority view. Last week the United Nations, once again, took up the question of Burma's political and human rights record. Once again, the Special Rapporteur, Dr. Yokota, issued a report which few may actually read, but it is a powerful voice for the thousands and thousands of Burmese citizens who continue to suffer at the hands of SLORC.

Let me briefly tick off the observations made in the report.

In describing the constitutional convention, Dr. Yokota noted that in spite of his efforts to meet privately with political leaders who still planned to participate in the process, SLORC would only permit visits supervised by SLORC officials. He stated in unequivocal terms, the National Convention "is not heading toward restoration of democracy."

While the Special Rapporteur welcomed the release of Suu Kyi and three other senior officials, he criticized the continued imprisonment of several hundred political prisoners and the complex array of security laws allowing SLORC sweeping powers of arbitrary arrest and detention—authority that they continue to use—I might argue abuse—weekly.

Yokota also condemned the severity of court sentences without regard to fair trials, access to defense lawyers or any consideration of proportionality between offense and punishment. After sentencing, he drew attention to the fact that conditions in prisons are impossible to monitor because SLORC continues to stonewall the International Red Cross Committee and its request for access to detention sites.

In his March 1995 report, Dr. Yokota confirmed that military officials have carried out arbitrary killings, rape,

torture, forced portage, forced labor, forced relocation, and confiscation of private property—each and every act a violation of international law. In this month's report he indicates that the pattern continues and as before, takes place most frequently in border areas where the Army is engaged in military operations or where regional development projects are taking place. He added:

Many of the victims of such atrocious acts belong to ethnic national populations, especially women, peasants, daily wage earners and other peaceful civilians who do not have enough money to avoid mistreatment by bribing officials.

Dr. Yokota paints a grim portrait of Burma today—a picture which stands at odds with the one the international business community would have us see.

A few months ago, in my office, I listened as the chairman of a large American oil company eager to do business with SLORC denounced as rumors and gossip the idea that the SLORC was engaged in any forced relocations related to his project. I respectfully suggest this month's U.N. report rises above the gossip standard.

Mr. President, I share the concerns raised by the U.N. Rapporteur. Let me stress to my colleagues that he is not reporting on a situation that has changed for the better since Suu Kyi's release, but one which is growing progressively worse.

Mr. President, I have taken the time to come to the floor to discuss these events because I am deeply disturbed by twin developments—a major campaign by American companies to enhance the political legitimacy of SLORC even as SLORC attempts to crush the fledgling democracy movement inside Burma.

In recent weeks, many United States businesses have engaged in an aggressive campaign to persuade the public that SLORC is worth doing business with because like Vietnam and China, Burma can be improved through economic engagement.

I think it is important to draw a key distinction. Unlike China and Vietnam, Burma held legitimate elections and chose a leader, Aung San Suu Kyi. The elections by all accounts were free, fair, and 7 million people made their views absolutely clear.

I must confess, I was appalled by a recent study produced by the National Bureau for Asian Research which suggested these results were essentially irrelevant. The report said, Suu Kyi was:

Obviously sincere, but it remains to be seen how successful she will be in her attempts and whether her supporters are helping her attain a position of leadership.

Insult was added to injury when the report stated:

Even assuming the time may come when she does have a say in how the country is governed, it is an open question of how well equipped she is for such responsibilities, and to what extent she would be able to rely on experienced technocrats and administrators.

These assertions are outrageously offensive. To imply she is incapable of

leading her nation offends every citizen who voted for her and more importantly stands in stark contrast to her record. Suu Kyi has conducted herself with dignity and courage uncommon in this century.

The Burmese people voted—they, like Suu Kyi, have earned our respect and support. The fact that the results were rejected by a handful of ruthless, self-serving generals does not undermine the validity of the elections or the outcome.

When recently pressed by a representative of the U.N. Secretary General to engage in a dialog with Suu Kyi, SLORC officials dismissed the request point out, Suu Kyi was now:

An ordinary citizen, that in 1990 there were as many as 230 political parties with which it would be impossible to establish dialogue and it would thus not be even handed to single out any one of them.

Well, she is the one they elected.

Two hundred and thirty political parties did not carry the elections—the National League for Democracy and Suu Kyi did. She has earned the right to negotiate a timetable for the restoration of democracy for her people. It is her right and our obligation as the beacon of democracy to support that effort.

To make the argument that the United States should resign itself to dealing with SLORC to bring about change, compromises the very core of beliefs that define our history and guide this Nation.

We do not yield to vicious dictators—we do not abandon those who strain against the barbed wire shackles of repression.

It absolutely sickens me that any respectable academic organization—for that matter any American company—would suggest that economic opportunity and political expediency should impel the United States to accept SLORC as the representatives of the Burmese people.

It is not just the campaign that is being waged here at home to enhance SLORC's political credentials that has brought me to the floor of the Senate. I am also concerned about recent events in Burma.

Not only has SLORC repeatedly and publicly rejected Suu Kyi's call for a dialog on national reconciliation, last week a senior official threatened to annihilate anyone who attempted to endanger the military's rule. This week, the noose tightened a little more and Suu Kyi was directly threatened. The official military newspaper called Suu Kyi a traitor who should be annihilated.

Rhetoric has been matched by an increased willingness to restrict Suu Kyi's role. In October, the National Democracy League voted to reinstate Suu Kyi as General Secretary along with a slate of other officials. In yet another effort to work peacefully with SLORC, the NLD submitted the leadership list to the junta for approval.

SLORC rejected the results as illegal and refused to recognize Suu Kyi's po-

sition. Is it any wonder her party has decided they cannot participate in the constitutional convention process?

Last week—like every week since her release—thousands of people gathered outside Suu Kyi's home to listen to her speak. Each Saturday and Sunday spontaneous crowds have made the pilgrimage to her compound and left inspired by her courage, her confidence, and her commitment to their freedom and future. It is a crowd described in the U.N. report and in news accounts as large and peaceful with a sense of purpose and discipline.

Unfortunately, 2 weeks ago, there was a sharp change in the SLORC's tolerance for these gatherings. In an apparent attempt to restrict access to Suu Kyi, police began to erect barricades around her home. I understand three young student supporters were arrested when they tried to intervene. According to Dr. Yokota's report, corroborated by newspaper stories, the three were charged and sentenced 2 days later to 2 years imprisonment.

These arrests were followed by another ominous development. When the NLD announced it would not participate in the constitutional convention, the party's senior officials woke up to find their homes surrounded by armed soldiers.

Democracy activists are not suffering in Burma alone. Last week nine members of the New Era newspaper staff were detained in Thailand. The New Era is an underground newspaper with wide circulation inside Burma—apparently being caught with a copy results in immediate arrest. Bowing to pressure from SLORC, in anticipation of an upcoming visit by a senior junta official, Khin Nyunt, Thai officials apparently have detained the New Era journalists—including a 71-year-old editor and his 65-year-old wife.

Reports from activists inside and outside Burma suggest a broad crack down on democratic activists is imminent. I hope this is not true and urge the administration to make clear United States opposition to any such actions. However, the evidence suggests there is credible reason to be concerned.

It is clear that the fledgling democracy movement in Burma is under siege. I find the words of Suu Kyi's fellow democrat, NLD Vice Chairman U Tin O, chilling. On Wednesday night, after the boycott announcement, six soldiers surrounded his home and another soldier now follows him everywhere.

A political prisoner for years, the 68-year-old vice chairman said with a wan smile, "We have no worries at all. I have been in prison before. They can detain me, do whatever they want. This is not a democratic country. We have to face some costs for the legitimate rights of a democracy."

It is my hope he, Suu Kyi and the NLD will not bear the costs alone or for long.

Mr. President, in the near future the United Nations will take up a resolution regarding Burma. I have been advised that the United Nations will, once again, condemn the human rights and political situation in clear and compelling terms. I commend Ambassador Albright for her efforts to assure our support for Suu Kyi and democracy in Burma are spelled out in the resolution.

However, for more than a year the administration has argued Burma and SLORC has a choice—they must immediately improve their human rights record and move promptly to open the political process or they will face further international isolation. I agree, but my definition of prompt and immediate seems to differ with theirs.

I think we have given SLORC ample time to make a decision. Given recent events, it is clear they have no intention to relax their ruthless grip on power.

So in conjunction with the U.N. resolution it is my intention to introduce bipartisan sanctions legislation. I encourage my colleagues to support this effort as I see no other way to support Suu Kyi and the restoration of democracy in Burma.

There is no question that sanctions and further isolation of SLORC is an initiative she supports. Indeed, once again this week Suu Kyi denounced the increase in foreign investment and urged companies to wait until democracy has been restored before bringing business to Burma.

Mr. President, I ask unanimous consent that the article, which included her remarks, be printed in the RECORD and that the Yokota report and Amnesty International report on the current situation be printed along with that.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Nov. 30, 1995]
BURMESE OPPOSITION TO BOYCOTT JUNTA'S
CONVENTION
(By Philip Shenon)

RANGOON, BURMA.—Defying the military government, Aung San Suu Kyi, the Burmese opposition leader, announced Wednesday that her political party would boycott a military-run convention to draw up a new constitution for Burma.

The move was Mrs. Suu Kyi's most direct challenge to the junta since she was freed in July after spending nearly six years under house arrest.

"The people of Burma are very united in thinking that the national convention is not heading toward democracy," the Nobel Peace Prize winner said in announcing the boycott. "I do not think there is as yet any evidence that the people of Burma support this national convention."

In a letter delivered Tuesday, the party informed the government of its decision to boycott the convention, which reopened this week after a seven-month recess, in protest over the junta's refusal to open negotiations with the party over Burma's political future.

In a response published Wednesday in a government-run newspaper, the junta accused the leaders of the party, the National

League for Democracy, of trying to disrupt the national convention in hopes of replacing it "with a convention they would be able to dominate as they like."

The party's decision to boycott the constitutional convention was "totally forsaking and going against the national interests," the military statement warned.

The government also deployed uniformed soldiers to the homes of three senior party members. The soldiers allowed residents of the houses to come and go, but foreign diplomats reported widespread rumors that a wing of Insein Prison, the local penitentiary used to hold political prisoners, had been cleared out in recent days to make space for many of Mrs. Suu Kyi's followers.

The boycott by Mrs. Suu Kyi and her party removes any veneer of legitimacy from the convention, which was organized by the military two years ago to enshrine its political role in the Burmese government.

The junta, which calls itself the State Law and Order Restoration Council, has refused to honor the results of elections in 1990 won overwhelmingly by the National League for Democracy. Mrs. Suu Kyi, the Oxford-educated daughter of Burma's independence hero, Gen. Aung San, was under house arrest at the time of the voting.

Since her release in July, Mrs. Suu Kyi has called repeatedly for negotiations with the junta, saying she is anxious to avoid any possibility of a repetition of the violence that occurred in 1988, when thousands of her supporters were gunned down in a military crackdown that led to her house arrest the next year.

"We do not want to call the people onto the streets, and we have no intention of calling the people into the streets," she said at a news conference Wednesday in her lakeside garden. "We have always said that we are prepared to have dialogue at any time."

But the generals have not responded to her pleas, pushing ahead instead with a stage-managed constitutional convention in which delegates, mostly handpicked by the military, are drafting a constitution that guarantees the military a permanent role in Burmese politics.

As a result of her boycott, the 86 seats allotted to the National League for Democracy were empty in the convention hall Wednesday, the second day of the current session.

"The authorities did not at any time show any willingness to talk to the National League for Democracy as the winning party of the 1990 elections," Mrs. Suu Kyi said. "They keep saying that the national convention is a substitute for dialogue. I do not think they can say that any longer."

Plainclothes soldiers have been stationed outside Mrs. Suu Kyi's house since her release—and at her request, which is seen by diplomats as a clever move since it allows Mrs. Suu Kyi to blame the military if a public disturbance outside her home should get out of hand.

But there was no request by the party for the uniformed soldiers who suddenly appeared outside the homes of three of her senior party colleagues on Tuesday night, hours after the National League for Democracy informed the government of its boycott.

Western diplomats said they feared that the junta might try to arrest some of the party's senior members on charges of inciting public disorder because of the boycott.

The party's vice chairman and one of its founders, U Tin Oo, said in an interview that six uniformed soldiers had appeared outside his home Tuesday night, and that he had been tailed by another soldier as he traveled through the city Wednesday.

"But we have no worries at all," he insisted with a confident smile. "I have been in prison before. They can detain me, do what-

ever they want. This is not a democratic country. We have to face some costs for the restoration of the legitimate rights of a democracy."

[From the Washington Post, Nov. 30, 1995]
BURMESE OPPOSITION LEADER SNUBS JUNTA'S
CONSTITUTION TALKS
(By Doug Fine)

RANGOON, BURMA.—Using the backdrop of a government-sponsored constitutional convention as a forum for stepping up opposition to the country's military rules, Nobel Prize-winning opposition leader Aung San Suu Kyi said today that Burma is not headed on the path of democracy.

Four and half months after her release from house arrest by the ruling State Law and Order Restoration Council, Aung San Suu Kyi addresses increasingly large crowds each weekend afternoon from the gate of her home near Rangoon University.

But in a news conference and talk today at her fenced-in compound, she revealed that her National League for Democracy, which overwhelmingly won elections in 1990 that the military refused to recognize, has notified government officials that the party would not participate in the constitutional deliberations. The military government hopes the convention will legitimize its rule by forging an "enduring state constitution."

Insisting that the military first open a dialogue with her party, which it has refused to do, Aung San Suu Kyi said, "A country which is drawing up a constitution that will decide the future of a state should have the confidence of the people."

Her party's boycott has resulted in a palpable increase in tension in Rangoon. Party leaders discovered security forces stationed outside their homes when they awoke today, a day after the convention opened.

Despite the tense atmosphere and the chaotic presence at her house of dozens of convention delegates barred from attending the convention, Aung San Suu Kyi took time to outline her views on democracy, the goal of her political movement, which has taken on new life since her release.

"With 7 million votes for the party in 1990," she said, "the views of the people are very clear. They want a constitution that will defend their basic rights."

Despite considerable corruption and a thriving black market, Aung San Suu Kyi insisted that Burma is adequately prepared for democracy and maintained that its absence is responsible for the corruption.

"This country was a democracy once from independence in 1948 until a 1962 military coup, and our situation then was very much better than it is now," she said. "The Burmese people are disciplined and receptive if you explain what is wanted of them and why."

Aung San Suu Kyi was placed under house arrest in 1989, a year after the military instituted a crackdown on her supporters that resulted in thousands of deaths. Many of her associates are still in prison. She won the Nobel Peace Prize in 1991 for her democracy campaign. Since her release from confinement in July, she has repeatedly called for reconciliation and dialogue among democratic forces, ethnic groups and her military foes.

Reponding to the military's charges that her party's methods are confrontational, Aung San Suu Kyi reacted angrily. "What they have termed 'confrontational' is that we have asked for a dialogue, which we want in order to prevent confrontation. To silence the views of people whose opinions are different by putting them in prison is far more confrontational."

Yet the move to boycott the constitutional convention is likely to be viewed as a provocation by the regime, which observers said

could widen the gulf between government and opposition. The regime says Burma will become a multi-party democracy after the new constitution is drafted, but it has not provided a timetable.

Aung San Suu Kyi, however, said the boycott was necessary. "They won't even talk to us," she said with a laugh. "How could the gulf be widened? It can only be narrowed."

As for the military's intentions in convening the constitutional convention, one Western embassy official, reflecting a widely held view, said, "The path which seems to be one chosen would lead to the drafting of a constitution which calls for transition that ensures civilian rule on the front end, with continued real authority being held indefinitely by the military."

One of the guidelines for the proposed constitution guarantees a "leading role" for the military in politics, and another bans anyone married to a foreigner from assuming the office of president. Aung San Suu Kyi is married to Michael Aris, a British academic.

She has continued to talk of compromise. "We have always said we want to talk over our differences to find an answer that's acceptable to everyone," she said. "We have never closed any doors and are open to any discussions which might result in what's best for Burma's people."

Aung San Suu Kyi insists that her party has no timetable for transition to democracy, and she avoids being locked into any one scenario by saying that the situation is so prone to change.

But Burma is very much at a crossroads now. After years of sealed borders and international ostracism, the government is actively seeking investment, tourism and political legitimacy.

Aung San Suu Kyi, who has been outspoken in urging foreign investors to "jolly well wait" before bringing business into the country, said, "Luxury hotels do not mean a developed Burma."

Her photogenic presence, Oxford education, revered lineage—her father was the hero of Burma's independence—and her absence from Burma during the 1970s and '80s, which distanced her from factional infighting within the democrats' diverse coalition, make her a magnet for Burma's discontented.

Encounters in Burma's remote interior confirm her widespread support. A shop owner in Yaungwe, in Shan State, made sure the coast was clear and proudly showed off a T-shirt picturing Aung San Suu Kyi with her quote, "Fear is a habit. I am not afraid," on the back. A Buddhist monk in Mandalay, flipping through an English guidebook, came across her photo and exclaimed, "Do you know who this is? Do you? This is our national heroine."

STATEMENT OF MR. YOZO YOKOTA, SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN MYANMAR TO THE FIFTIETH SESSION OF THE GENERAL ASSEMBLY

Mr. President, I am here before you for the fourth time since the creation of my mandate by the Commission on Human Rights in March 1992. And, for the fourth time, I have the duty to bring to your attention any progress made toward the restoration of democracy and protection of human rights in Myanmar.

Mr. President, in the interim report which is brought before your Assembly, I provided on the basis of the information received a summary of allegations reported to have occurred in Myanmar during this last year. This include; summary executions, arbitrary detention, torture and forced labour. On purpose, I did not draw any conclusions or recommendations in my interim report. To do

so, I found it necessary, in accordance with Commission on Human Rights and General Assembly resolutions, to establish or continue direct contact with the Government and people of Myanmar in order to verify the information received and to analyze its content. To my regret, however, such direct contacts in the form of a visit to Myanmar and Thailand were not possible before the deadline for the submission of the interim report.

Mr. President, at the invitation of the Government of Myanmar by a letter of the Minister for Foreign Affairs dated 28 September 1995, I undertook a visit to the Union of Myanmar from 8 to 17 October 1995. From 17 to 20 October 1995, I visited and met with some Myanmar ethnic minorities in Thailand, along the Thai/Myanmar border, to ascertain the situation of human rights within Myanmar for these ethnic minorities namely: Karenni, Shan and Karen.

While in Yangon, my office, accommodation and local transport were provided by the UNDP Office in Myanmar, to which I wish to express my deep gratitude.

Mr. President, I wish to note with special gratitude that the Government of Myanmar facilitated the visit, including the travel within Myanmar to Kachin State in Myitkyina and Eastern Shan State in Kyaingtone and to Myitkina and Insein prisons, and extended me many courtesies.

During this visit, I was received by a number of high-level government officials including Lieutenant General Khin Nyunt, Secretary One of the State Law and Order Restoration Council (SLORC), the Deputy Minister of Foreign Affairs, the Chief Justice, the Minister for Information, the Minister for National Planning and Economic Development, the Minister for Home Affairs and other high level authorities.

During my stay in Yangon, I also had the opportunity to meet twice with Daw Jung San Suu Kyi at her private home. Former NLD Chairmen U Kyi Maung and U Tin Oo, the actual Chairman and other NLD representatives were also present.

During these meetings, I enjoyed a frank, open and lengthy exchange of views which touched upon most issues of concern for restoration of democracy and respect of human rights in Myanmar. I was informed about the new composition of the Executive Committee of the National League for Democracy which is as follow: U Aung Shwe as Chairman; U Kyi Maung and U Tin Oo as Deputy Chairmen, Daw Aung San Suu Kyi as General-Secretary and U Lwin as Secretary.

According to NLD leaders only peace, public order and dialogue may lead to democratization. Therefore, as a mature political party, NLD does not want to return to the situation which was prevailing in 1988 or to act in vengeance. As a responsible political party, NLD is able to control its supporters. Their only aim is to promote a genuine dialogue with the Government of Myanmar.

While in Myanmar, I also had the opportunity to see the representatives of the three political parties participating in the National Convention, namely, the Union Kayene League, the National League for Democracy and the National Unity Party. In spite of my strong and repeated requests to meet with them in private at my office in the UNDP compound in Yangon. I regret to say that, this year again, the meetings with these political leaders were arranged to take place at a Government guest house. The location and atmosphere were not conducive to a free and unencumbered exchange of views.

With regard to the detention of political prisoners, I must express my disappointment that this year, despite a formal written request before going to Myanmar and despite my repeated requests while in Myanmar, I was not permitted to see any such prisoner neither in Insein prison nor in Myitkina Jail.

With regard to the National Convention. I was not able to observe its meetings because it was not in session when I visited Myanmar this time. However, information from reliable sources indicates that it is not heading towards restoration of democracy. I am particularly disappointed to learn that the Government has not yet distributed the Myanmar language version of the Universal Declaration of Human Rights to all delegates to the National Convention.

At the completion of my visit to Myanmar, I proceeded from 17 to 20 October 1995, to Thailand, to visit displaced persons from Myanmar in the area of Mae Hong Son and Mae Sariang, where, I established or continued contact with the people of Myanmar living in camps. Let me also take this opportunity to express my deep gratitude to the Government of Thailand who facilitated my visit to the camps.

Mr. President, I now wish to summarize my observations on the human rights situation in Myanmar on the basis of the allegations received, my recent visit to that country and Thailand and of the information received from various sources, including the Government officials and people of Myanmar, staff members of the United Nations and other specialised agencies, staff members of active human rights and humanitarian non-governmental organizations, foreign government officials, journalists, scholars and students.

Since there has been no time to study carefully the information and documents collected during my visits to Myanmar and Thailand, these observations will have to be still preliminary in nature. The full account of my findings, observations and recommendations will be reflected in my final report to the Commission on Human Rights, which I intend to submit at the beginning of next year.

PRELIMINARY OBSERVATIONS

First of all, there are some developments which may lead to improvements in human rights situation in that country.

a. The Government of Myanmar continued to release political prisoners in 1995 although the exact number could not be verified. I was particularly pleased to note that among these released detainees were two prominent political party leaders from the National League for Democracy, U Kyi Maung and U Tin Oo, the latter of whom I met in Insein Prison in 1993 and 1994.

I have also welcomed with great satisfaction the announcement, made on 10 July 1995, that restrictions on Daw Aung San Suu Kyi were lifted by the Government of Myanmar and that she has been released. I am particularly pleased to note that she was released without conditions and is now free to meet with people and free to travel within the country.

b. Since the release of Daw Aung San Suu Kyi, a crowd of two to three thousand people is gathering every weekend, Saturdays and Sundays, outside the gate of her residence to hear what Daw Aung San Suu Kyi and other leaders say. During my visit to Myanmar, I witnessed personally one of these gatherings. The atmosphere was peaceful and the crowd of supporters were disciplined. To my knowledge none of these meetings had disorder. To my knowledge none of the supporters was threatened or arrested for having attended such meetings.

Yet, I have to state that last week, on Saturday 18 November among the crowd which gathered that day to listen to Daw Aung San Suu Kyi's speech, I have been informed by reliable sources that three NLD members were arrested for having intervened with the police who was erecting barricades in front of her house. According to the information

received, the three persons were charged with assaulting a police officer and were reportedly sentenced two days later to two years imprisonment. Although I have no details of the trial proceedings, it would appear that the accused could not possibly mount an effective defense with regard to the legal and factual basis for the arrest and incarceration in such a short period of time.

c. Cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR) is continuing and more than 190,000 Myanmar refugees out of estimated total of about 250,000 have so far been repatriated from neighbouring Bangladesh.

d. The Government is expanding cooperation with various other United Nations bodies and specialised agencies such as UNDP, UNICEF and UNDCP. Year after year, the work of the humanitarian non-governmental organizations is slowly expanding. Now, these organisations are allowed to implement programmes outside Yangon and able to reach out grass-root people who suffer from shortage or lack of food, safe water, medicine, medical care and proper education.

e. In cities like Yangon, Myitkyina and Kyaningtone, I observed that there were visible signs of relaxation of tension in the life of the people. It seems that people generally enjoy normal life. There were many consumer goods in market places where many shoppers crowded. Physical developments in the construction or improvement of roads, bridges, buildings and railways are taking place throughout the country and in some border areas. However, just as last year, I was informed that only a small portion of the population enjoy the improved life and the majority who were poor rather suffered from higher prices of basic necessity goods such as rice and medicine.

f. On the particular question of forced labour, I was informed during my recent mission to Myanmar that the SLORC had issued a "secret directive" to discourage the practice of forced labour. I am hopeful that this directive would be implemented rigorously.

g. As Special Rapporteur, I welcome the signature of several cease-fire agreements between the Government of Myanmar and different ethnic minorities. This is without doubt a positive step towards peace. Needless to say, such agreements should be faithfully respected by both parties.

Mr. President, in spite of these developments, I have the duty to state that there are still many restrictions on fundamental freedoms and serious violations of human rights continuing in Myanmar.

a. As mentioned above, I welcome the recent release of a number of political prisoners. However, I remain concerned about the fact that there are still more than several hundred persons imprisoned or detained for reasons of political activities. I am also concerned about the prevalence of a complex array of security laws which allow the Government sweeping powers of arbitrary arrest and detention. These laws include the 1950 Emergency Provisions Act, the 1975 State Protection Law, the 1962 Printers and Publishers Registration Law, the 1923 Official Secrets Act and the 1908 Unlawful Association Act.

Various articles in these laws continue to be used in combination to prosecute a number of individuals who were exercising their rights to freedom of expression and association. The combination of charges under these laws included ones such as writing and distributing what were described as "illegal leaflets, spreading false information injurious to the state" and "contact with illegal organisations". I understand that due to such laws and other SLORC orders, the activities of the political parties, particularly the NLD, are severely restricted.

b. Severe court sentences for some political leaders have been reported and confirmed. Information from reliable sources indicates that there are problems in the field of the administration of justice with regard to fair trials, free access to defense lawyers, proportionality between the acts committed and the punishment applied and time for careful examination of the case by courts.

c. The non-acceptance by Myanmar of ICRC's customary procedures for visits for places of detention is a negative step towards amelioration of their conditions.

d. There are still cases of torture, arbitrary killings, rapes, and confiscation of private property according to testimony and evidence acquired by me. They seem to be taking place most frequently in border areas by military soldiers in the course of military operations, forced relocations and development projects. Many of the victims of such atrocious acts belong to ethnic national populations, especially women, peasants, daily wage earners and other peaceful civilians who do not have enough money to avoid mistreatment by bribing.

e. I am gravely concerned at the continued reports of forced portering, forced labour, forced relocation which are still occurring in border areas where the Army is engaged in military operations or where "regional development projects" are taking place.

PRELIMINARY RECOMMENDATIONS

a. As Special Rapporteur, I urge the Government of Myanmar to sign and ratify the Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, the Optional Protocol to the Covenant on Civil and Political Rights, as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination against Women.

b. The Government of Myanmar should comply with the obligations under the International Labour Organization (ILO) Convention No. 29 prohibiting the practice of forced portering and other forced labour.

c. Myanmar law should be brought into line with accepted international standards regarding protection of the physical integrity rights. Among these international standards are the right to life, prohibition of torture, providing humane conditions for all persons under detention and insurance of the minimum standards of judicial guarantees.

d. The Government of Myanmar should take steps to facilitate and guarantee enjoyment of the freedoms of opinions, expression and association, in particular by decriminalizing the expression of oppositional views, relinquishing government control over the media and literary and artistic community, and permitting the formation of independently organized trade unions.

e. All persons including elected political representatives, students, workers, peasants, monks and others arrested or detained under martial law after the 1988 and 1990 demonstrations or as a result of the National Convention, should be tried by a properly constituted and independent civilian court in an open and internationally accessible judicial process. If found guilty in such judicial proceedings, they should be given a just sentence; alternatively, they should be immediately released and the Government refrain from all acts of intimidation, threats or reprisals against them or their families.

f. As Special Rapporteur, I recommend the Government of Myanmar to repeal or amend as appropriate the relevant provisions which at present prevent the ICRC from carrying out its humanitarian activities as regards the prison visits. In this regard, I encourage the Government of Myanmar, in a spirit of humanitarian goodwill, to re-invite the pres-

ence in Myanmar of the International Committee of the Red Cross in order to carry out their purely humanitarian tasks.

g. The Government of Myanmar should publicize the "secret directive" which discourage the practice of forced labour. This will indicate and the will of the Government of Myanmar to effectively prohibit and suppress forced labour. Moreover, wide dissemination of the existence of the directive would promote awareness that forced labour is neither condoned nor tolerated.

h. The Government of Myanmar should without delay resume its dialogue with Daw Aung San Suu Kyi.

i. As Special Rapporteur, I call upon the Government of Myanmar to resolve peacefully its difficulties with ethnic minorities and to take all appropriate measures to ensure respect for human rights and humanitarian obligations in the situation of armed conflicts between the Myanmar Army and the armed ethnic groups.

j. The Government of Myanmar should distribute copies of the Universal Declaration of Human Rights in Myanmar language to all delegates to National Convention which is to be reconvened tomorrow, 28 November 1995. Such action would indicate to the international community the willingness of the Government to bring the relevant provisions of the domestic laws, in particular the new Constitution to be eventually enacted into conformity with international human rights standards.

Mr. President, I have analyzed these allegations and have made some recommendations strictly in terms of the international human rights obligations which Myanmar has freely undertaken. I am particularly thinking of the fact that Myanmar is a Member of the United Nations and is therefore bound to respect the human rights standards emanating from the United Nations Charter. I believe the Government of Myanmar should, and has the ability, to fulfill in good faith the obligations it has assumed.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The Senate continued with the consideration of the joint resolution.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I come to the floor to speak on Senate Joint Resolution 31, the proposed resolution that would present to the States the opportunity to amend the U.S. Constitution for the 20th time. It is a very straightforward, simple proposal that I believe is not necessary and would, indeed, create an environment that would produce, potentially, the opposite of that which we seek to produce, or at least, as I hear, proponents of this amendment are seeking to produce—and that is, that our people have at least one symbol that they respect, that we have a unifying symbol, which is our flag, and that the flag creates, as a consequence of our reverence for it, a sense of national purpose, at least in that one instance.

This proposal, Mr. President, I believe, is well intended in that regard. If I were to identify the thing that troubles me the most about our country today, it is the question of whether or not we are developing the kind of personal character that is needed for the