



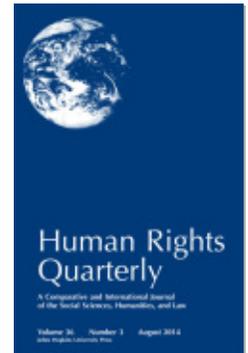
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Engaging a Pariah: Human Rights Training In Burma/Myanmar

David Kinley*
Trevor Wilson**

ABSTRACT

The people of Burma/Myanmar have suffered for two generations under military dictatorships. Their economy, legal and social orders, cultural diversity, and political freedoms have all steadily declined during that time. The country's human rights record is considered by many to be one of the worst world-wide. In the West, responses have ranged from diplomatic condemnation, to the imposition of economic sanctions, and to the withdrawal of aid and international cooperation. Countries in the region, on the other hand, have been typically less robust, more accepting of assertions of sovereign rights and concerned to promote engagement and dialogue rather than isolation and punishment. Neither approach appears to have had any discernable impact on the attitude of Myanmar's military government or on the plight of its people. Aung San Suu Kyi remains under house

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arrest, her pro-democracy party banned, and its members persecuted; the rule of law is non-existent, and the once flourishing economy is in terminal decline. New strategies to break the impasse are now being contemplated in both the West (more conditional engagement) and the East (more stringent conditionality). This article analyzes a controversial Australian human rights initiative that ran in Myanmar from 2000 to 2003, which might be considered a forerunner to these new “third way” approaches. The article describes the objectives, nature, composition and implementation of the program; it assesses its advantages and disadvantages, its risks and potential, and explores some of the criticisms and praise the program engendered. It also provides a detailed backdrop against which one might draw some tentative lessons in terms of the protection and promotion of human rights in both the specific context of Myanmar, and also, by implication, in the global community’s approach to intransigent, pariah states.

I. INTRODUCTION

Australia’s human rights training program for government officials in Burma/Myanmar,¹ which ran from 2000 to 2003, was an innovative, albeit modest, attempt to address the widespread abuses of human rights that have marked Myanmar’s military governments since they took power nearly fifty years ago in late 1958.² No full account of this program has ever been published before. The program’s structure and content was simple; it comprised of a series of workshops for Myanmar government officials on international and domestic human rights topics to be conducted in-country by human rights specialists on an intensive basis and used sets of printed materials and

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1. Throughout the article we generally adopt the UN approach of referring to the state as “Myanmar,” though “Burma” is also used, especially where organizations (such as the Australian Department of Foreign Affairs and Trade (DFAT)) themselves prefer the term.
 2. First, by way of a “caretaker government” from 1958–1960 and thereafter, until the present day, under various guises and titles. There is a huge body of documentation and literature on the struggle for democracy and respect for human rights throughout this period. In addition to those sources cited throughout this article (especially, Steinberg, *infra* note 32), other noteworthy accounts include: AUNG SAN SUU KYI, *FREEDOM FROM FEAR* 167–272 (Penguin Books 1995)(1991); Josef Silverstein, *Burma’s Struggle for Democracy: The Army against the People*, in *THE MILITARY AND DEMOCRACY IN ASIA AND THE PACIFIC* 69–87 (R.J. May & V. Selochan eds., 1998); CHRISTINA FINK, *LIVING SILENCE: BURMA UNDER MILITARY RULE* (2001). See also *Human Rights Yearbooks on Burma*, produced since 1994 by the National Coalition Government of the Union of Burma, available at <http://www.ncgub.net>, as well as the annual country reports and special reports produced by Amnesty International, available at <http://www.amnesty.org>; Human Rights Watch, available at <http://www.hrw.org>. For more general commentary and analysis on Myanmar, see Free Burma Coalition, available at <http://www.freeburmacoalition.org>; the daily updated survey and “clippings service” of stories from news services worldwide at BurmaNet, available at <http://www.burmanet.org>.

readings gathered from sources outside the country that related directly or indirectly to the human rights problems existing in Myanmar. The program had a relatively short lifespan, and any assessment of it must take account of this. The Australian government suspended it in June 2003³ after the 30 May 2003 Depayin incident, in which pro-government groups, coordinated by the government, attacked opposition leader Daw Aung San Suu Kyi and her NLD supporters.⁴ In the months that followed it was hoped that more propitious circumstances might develop and allow the program to be resumed. However, it was eventually discontinued because of the non-conducive political situation that prevailed after 2003.

This article, which is written from the perspective of two people who were intimately involved in the project, seeks to describe, explain, and reflect upon the initiative from its conception through its delivery and to its precipitate conclusion. In terms of the deployment of our discussion, we have chosen an inductive approach. We try to explain and analyze the details of the program, and, from those particulars, lay the foundation for drawing out more general principles. While we do indeed make our own conclusions and offer certain opinions as to ways forward, we expect that others will draw both additional and different conclusions based on what they read here.

The article is essentially divided into three principal parts. The first provides an account of the origins, rationale, and political context of the initiative. The second focuses on the actual implementation of the program—its nature and form—and the practicalities of its delivery. Finally, the third part addresses the benefits of and problems with the program, as well as drawing out some of the lessons learned. It also seeks to place the whole experience within the context of the latest developments within Myanmar and also within the framework of the international community's shifting attitudes as to what can and should be done about the continuing and unacceptable level of human rights abuses in Myanmar.

II. ORIGINS OF THE PROGRAM

A. The Diplomatic Antecedents

The idea for the initiative arose out of regular conversations that the Australian Foreign Minister, Alexander Downer, had at the ASEAN-plus Ministerial

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3. Kimina Lyall, *Downer Limits Response to Suu Kyi's Detention*, AUSTRALIAN, 6 June 2003, at 9.
 4. On which incident see, Amnesty International, *Myanmar: Justice on Trial*, AI Index ASA 16/019/2003, 30 July 2003, available at <http://www.amnesty.org/library/index/en-gasa160192003>.

Meetings since the mid-1990s with his Myanmar counterparts, first U Ohn Kyaw and subsequently U Win Aung. The actual program was the result of long negotiations with the Myanmar government during 1999, carried out by the then Australian Ambassador, Lyndall McLean. During these talks, Australia explicitly set out what it sought from the program, namely an opportunity to expose government officials and others to Myanmar's human rights obligations under international law.⁵

It was possible to undertake such an initiative at that time because the Myanmar military leadership itself was disposed to give this and several other unprecedented proposals the green light. In particular, then Secretary One of the State Peace and Development Council (SPDC) General Khin Nyunt, personally initiated around this time a number of moves by the military regime that allowed it, it seems, in order to test the environment for change. These moves included, internationally, the resumption of activity in Myanmar by the International Committee of the Red Cross (ICRC) in 1999; the acceptance of a new Special Envoy of the UN Secretary-General in 2000; the acceptance of a new UN Special Rapporteur for Human Rights in 2001; the commencement of a dialogue on forced labor with the International Labor Organization (ILO) in 2000, and the acceptance of a Japanese-proposed program on structural adjustment of the economy in 2000. Domestically, in 1999 Khin Nyunt also personally instigated the launch of the privately owned, English language newspaper, the *Myanmar Times*, which significantly improved the flow of information available to the people of Myanmar.⁶

It was within this context that the Australian human rights training concept was developed. It was one of a number of areas in which the Australian government was endeavoring to engage with the Myanmar government. Other proposals included the assignment of an Australian Federal Police counter-narcotics officer to the Australian Embassy in Rangoon, allowing Myanmar officials to attend an ASEAN Regional Forum meeting on regional security in Australia for the first time, and high-level Australian attendance at an Interpol Meeting in Rangoon in 1999, a meeting that was boycotted by several other Western countries.

These proposals had, as a starting point, a belief that certain quarters in the Myanmar bureaucracy exhibited sufficient interest in cooperating under international law to make organizing such a program feasible. In particular, the Myanmar Police Force and parts of the Ministry of Home Affairs had

5. In fact, the notion of states' obligations under international law was a key feature of the workshops, and this was made explicit in the use of the term in the some of the official workshop titles.

6. A useful summary of developments can be found in the annual survey of Asian affairs in *Asian Survey*. Specifically for this period, see Donald M. Seekins, *Burma in 1999: A Slim Hope*, 40 *ASIAN SURVEY* 16 (2000); Tin Maung Maung Than, *Myanmar (Burma) in 2000: More of the Same?*, 41 *ASIAN SURVEY* 148 (2001); Tin Maung Maung Than, *Burma/Myanmar in 2001: A Year of Waiting*, 42 *ASIAN SURVEY* 115 (2002); Allen L. Clark, *Burma in 2002: A Year Of Transition*, 43 *ASIAN SURVEY* 127 (2003).

already been exposed to international normative principles through their participation in international law enforcement cooperation, especially international narcotics control programs, as well as through their involvement in the efforts carried on inside Myanmar by the ICRC, which had been designed to encourage better behavior by the civilian law enforcement agencies (the police, the prison officers, and local administration officials, all of whom came under the Ministry of Home Affairs). These were organizations and officials whose responsibilities directly affected human rights in Myanmar.⁷

Human rights training was discussed initially in rather general terms, for example during the 1997 visit of John Dauth,⁸ a specially appointed high-level envoy of the Foreign Minister, and in greater detail during a number of planning visits by Australian officials in 1998 and 1999. These visits took place at a time when high-level visits from Western governments were exceptionally rare. They were followed up by an exploratory visit by the then Australian Human Rights Commissioner, Chris Sidoti, in August 1999 amidst considerable publicity. During one of the official Australian visits (by Department of Foreign Affairs and Trade (DFAT) First Assistant Secretary for Southeast Asia, Nick Warner) Daw Aung San Suu Kyi, the General Secretary of the leading opposition party, the National League for Democracy (NLD), was also consulted about the human rights training proposal. In addition, groups in the Australian community with an interest in Myanmar were consulted by DFAT before and after the workshops started.

Finally, in elucidating the diplomatic penumbra that enveloped the program, it is necessary to relate something of the manner and form of the program's publicity. In the early stages, both governments were especially conscious of how each portrayed the program in the media (though with very obvious differences in their respective capacities to do anything about the reception of such publicity). For the Australians, this meant, in practice, that the government made a number of public statements in Australia in the standard manner⁹ but refrained from publicity in Rangoon. However, the Australians abandoned this restrictiveness relatively quickly, and in October 2000 with the agreement of the Myanmar authorities, the *Myanmar Times*

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7. For a notably laudatory discussion of the ICRC's work thus far in Myanmar (from a former political prisoner), see Khin Zaw Win, *Impoverishment as Freedom: An Orwellian Double-Speak*, Nov. 2005, available at <http://www.freeburmacoalition.org/khinzawwin.htm>.
 8. At the time, Mr. Dauth was Deputy Secretary of DFAT. He later served as Australia's Ambassador to the United Nations in New York from 2000–05 when he was again involved in Myanmar issues.
 9. In addition, both Chris Sidoti and David Kinley gave numerous media interviews, both nationally and internationally, in their capacities as consultants and trainers in the program. They also corresponded and met privately with many Burmese activists and opposition groups and bodies in Australia, Myanmar, and elsewhere, including Daw Aung San Suu Kyi and other representatives from the National League for Democracy, the National Council of the Union of Burma, representatives from the National Coalition Government of the Union of Burma (the "Government in Exile"), the Democratic Alliance

carried a prominent interview with Chris Sidoti, which was the first publicity given to the workshops inside the country.¹⁰ A few weeks later, the *Myanmar Times* carried a speech given by the Australian Foreign Minister, Alexander Downer, in Australia, in which he explained his rationale for undertaking this human rights training initiative.¹¹ Interestingly, there was relatively little censorship of either article, according to *Myanmar Times* staff at the time. By the end of the first phase of the program in late 2002, the Myanmar side—which had begun by insisting that no publicity be given to the program inside Myanmar—was preparing press releases for their own official media.¹² Aside from the concerns that this amounted to the Myanmar government exploiting the program for its own propaganda, this action certainly added to the transparency of the program. This was important given that human rights had so long been something of a taboo subject. Subsequently, the Australian Broadcasting Commission was permitted to film—but not record—the workshops.¹³

B. THE KEY FORCES THAT SHAPED THE INITIATIVE

1. The Australian Government's Motivation

The central objective of the program from the Australian government's perspective was to provide training in human rights law to officials and lawyers in the relevant government agencies and quasi-civil society organizations (including the Myanmar Bar Council), who together would constitute the

of Burma, the Shan Women's Action Network, the Human Rights Education Institute of Burma (Chiang Mai, Thailand), and the Burmese Lawyers' Council, in Bangkok. During the preparation of Phase 2 of the program, the consultants also met with the Shalom Foundation and the United Nationalities Alliance, which comprised representatives from a number of ethnic groups including the Shan, Mon, Kachin, Rakhine, Karen, and Karenni peoples.

10. *Spreading the Right Word*, MYANMAR TIMES, 30 Oct. 2000, at 7.

11. *Australian minister defends "unique" foreign policy approach (edited extracts from Mr. Downer's speech at the opening of the Castan Centre for Human Rights Law)*, MYANMAR TIMES, 4 Dec. 2000, at 6.

12. See, e.g., *Workshop on Human Rights and Responsibilities Opened*, NEW LIGHT OF MYANMAR, 23 July 2002, available at [http://www.myanmar.gov.mm/NLM-2002/enIm/July23.htm#\(5\)](http://www.myanmar.gov.mm/NLM-2002/enIm/July23.htm#(5)); with respect to reporting on workshops run by the Myanmar Human Rights Committee itself, see *Workshop on Women's Human Rights Held*, NEW LIGHT OF MYANMAR, 8 Jan. 2003, available at http://mission.itu.ch/MISSIONS/Myanmar/03nIm/n030108.htm#Workshop_on_Womens_Human_Rights_held_. This reporting by the official press was factual, if minimal, and without comment, but it was quite accurate and did not seek to inject any bias.

13. See *Australia Sponsors Human Rights Workshops in Burma* (Australian Broadcasting Corp. television broadcast, 16 Aug. 2001), transcript available at <http://www.abc.net.au/7.30/content/2001/s347795.htm>.

embryonic administration of any future human rights implementation and monitoring system. Australian policy-makers believed that one way to achieve this particular goal was to expose Myanmar officials to the experiences of their Asian counterparts through the Asia Pacific Forum on National Human Rights Institutions, a meeting of existing or prospective Human Rights Commissions in Asia, which Myanmar officials attended regularly from 2000. The goal of building capacity for the eventual formation of a human rights watch-dog body in Myanmar became a subsidiary, but nevertheless important, element of the program. The Myanmar government canvassed the idea in negotiations beforehand,¹⁴ indicating that it wished to set up a Human Rights Committee consistent with the UN adopted Paris Principles that set out operating guidelines for such bodies.¹⁵ This was an unexpected step for a country that was being accused on all sides of widespread human rights abuses. It was likely that this decision was influenced by the example of the Indonesian Human Rights Commission,¹⁶ as, at that time, the Myanmar government still tended to see Indonesia as a political model.

2. *The Bilateral Political Context of the Program*

From the outset, the Australian government endeavored to ensure that the initiative would reinforce Australia's wider policy objectives. This was true in relation to Myanmar, especially its voiced concerns over human rights abuses in the country.¹⁷ It was also important that the initiative was not inconsistent with domestic and international perceptions of its support for the UN human rights conventions, particularly since Australia's attitude to these conventions was coming increasingly under attack.¹⁸ While the Aus-

14. During negotiations undertaken in Rangoon Aug. 1999.

15. The Paris Principles were developed by the OECD and adopted by the U.N. in 1993. See National Institutions for the Promotion and Protection of Human Rights, G.A. Res. 48/134, U.N. GAOR, 48th Sess., U.N. Doc. A/48/49 (20 Dec. 1993). For the text of the Principles, see the Annex to OHCHR, *Fact Sheet No.19, National Institutions for the Promotion and Promotion of Human Rights* (Apr. 1993), available at <http://www.unhcr.ch/html/menu6/2/fs19.htm#annex>.

16. See *infra* note 41.

17. See Les Luck, Item 9: The Question of the Violations of Human Rights and Fundamental Freedoms Anywhere in the World (20 Mar.–28 Apr. 2000), available at http://www.dfat.gov.au/hr/hr_violation.html; Hon. Alexander Downer, Making a Real Difference to Human Rights, Address Before the Castan Centre for Human Rights Law (20 Nov. 2000), available at http://www.dfat.gov.au/media/speeches/foreign/2000/001120_hr.html; Alexander Downer, Human Rights in Australia's Foreign Policy, Address at Consultations between the Department of Foreign Affairs and Trade and Non-Governmental Organizations on Human Rights (30 July 2002), available at http://www.dfat.gov.au/hr/speeches/960730_downer_dfat_ngo.html. See generally Australian Department of Foreign Affairs, Burma Country Brief (Jan. 2007), available at http://www.dfat.gov.au/geo/burma/burma_brief.html.

18. See David Kinley & Penny Martin, *International Human Rights Law at Home: Addressing the Politics of Denial*, 26 MELB. U. L. REV. 466–77 (2002); Hillary Charlesworth, Madelaine Chiam, Devika Hovell & George Williams, *Deep Anxieties: Australia and the International Legal Order*, 23 SYDNEY L. REV. 423, 433–34, 436 (2003).

tralian government did not want the program to be seen by the Myanmar government as simply providing another opportunity for Australia to criticize Myanmar for its violations of international human rights principles, it was necessary to ensure that the program would not shy away from relevant human rights issues. Consequently, the Australian government made attempts to design the program in such a way as to outline some steps that Myanmar needed to take in order to observe their obligations under the human rights conventions to which it was a party, and also, more generally, to articulate why protecting and promoting international human rights standards was in Myanmar's best interests.

The program was feasible in terms of Australia's foreign policy, because, according to the government, its objectives were long-term and self-consciously limited. The government took care to claim only that the workshops might be expected to extend awareness of human rights issues within the country's bureaucracy and not that they would necessarily bring about immediate improvements in Myanmar's human rights situation. It was in this vein that Australia's Foreign Minister, Alexander Downer, proclaimed that Australia harbored "no illusions about the difficulty of promoting change in Burma."¹⁹

At the broadest political level, the launching of the program was essentially a matter of establishing mutual trust. Crucial factors in the process of securing Myanmar government agreement to the proposal included dispatching a high-level, respected and independent consultant to engage in technical discussions about the type of training to be provided. It was also crucial that the government be absolutely transparent, reasonable, and focused about the content and format of the workshops, which included making known to the Myanmar government the content of the teaching materials in advance.²⁰ In order to secure the prior agreement of the Myanmar leadership to the content of the human rights training, the exercise was pitched in terms of the universally accepted human rights instruments, namely the Universal Declaration on Human Rights, and the separate hu-

19. Press Release, Alexander Downer, Minister of Foreign Affairs, Australian Government to Continue Human Rights Training in Burma (25 May 2001), available at http://www.ausaid.gov.au/media/release.cfm?BC=Media&ID=8637_899_6425_6920_5972 (this media release is fairly typical). Similarly, in a speech he gave for the Castan Centre for Human Rights Law, Downer stated "I would be the last to inflate the prospects of turning around the very poor situation in Burma." Downer, Making a Real Difference to Human Rights, *supra* note 17.

20. Press Release, Chris Sidoit (sic), Human Rights Commissioner, Reporting on Visit to Myanmar (Burma) (5 Aug. 1999), available at http://www.hreoc.gov.au/media_releases/1999/99_31.html (issued on Sidoit's return to Australia reporting on his discussions with the Myanmar government and with the National League for Democracy Vice Chairman Tin Oo). See also InternationalReports.net, Human Rights Training Takes Off in Myanmar, available at <http://www.internationalreports.net/asiapacific/myanmar/2003/humanrights.html>.

man rights conventions ratified by Myanmar: that is, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW; ratified in 1997) and the Convention on the Rights of the Child (CRC; ratified in 1991).²¹ The program thereby avoided canvassing human rights in terms that might have been perceived as purely Western, in order to facilitate as much participation as possible in the debate over the nature and implications of universal human rights in different political, social, and economic settings. An immediate, practical objective of the initiative, therefore, was to help Myanmar improve its understanding of and reporting to the CEDAW and CRC Committees, although it was not easy to set and agree on measurable targets for this. In addition, the content of the program included other UN conventions that Myanmar might reasonably be expected to ratify and had indicated some interest in (in particular, the International Covenant on Economic Social and Cultural Rights (ICESCR)).

Australia's consciousness of the Myanmar government's hyper-sensitivity to the topic of human rights in general, and to the management of the program in particular, was a key factor in launching the program and then keeping it on track. Therefore an important diplomatic objective for Australia from the outset was to try to ensure that senior levels of the Myanmar government were reasonably comfortable with the concept and conduct of this unprecedented initiative. In the end, the Australian government received approval to proceed, with only one explicit restriction placed on the training subject-matter. The restriction concerned the use of certain recent ILO materials relating to Myanmar. This restriction arose out of events occurring at the very time of the program's commencement. Specifically, in June 2000, the ILO Governing Body considered proposals to adopt measures against Myanmar. Subsequently, the restriction was lifted and issues of forced labor became a constant feature of discussions and debates in all future workshops.

III. IMPLEMENTING THE PROGRAM

Notwithstanding the overall restrictive circumstances prevailing in Myanmar, the Australian government commissioned a feasibility study in April 2000.²²

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21. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (1980) (*entered into force* 3 Sept. 1981), 1249 U.N.T.S. 13, *reprinted in* 19 I.L.M. 33 (1980) [hereinafter CEDAW]; Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* 2 Sept. 1990), *reprinted in* 28 I.L.M. 1448 (1989) [hereinafter Rights of the Child].
 22. The two week mission, which was conducted by Kate Eastman and an AusAid officer, included extensive consultations with three ministries—namely, Home Affairs, Foreign Affairs and the Attorney-General's Office.

As a result, later that year a team of international human rights lawyers were engaged to develop and deliver a program of human rights and international law workshops to selected government officials.²³

In this section of the article we discuss the implementation of the initiative and endeavor. First, we set out some considerations that influenced the consultants' decision to join the program in the first place.²⁴ Second, we detail the scope and substance of Phase 1 of the program (as it was in fact instituted). Third, we highlight the particular place that the neophyte Myanmar Human Rights Commission took, both as a concept and, eventually, as a political body, within (and alongside) the implementation of the program.

A. The Consultants' Perspectives on Human Rights Engagement

We have chosen to include an account of the consultants' own thinking, principally in order to emphasize the different forces that led them to pursue such a program with such a regime, as compared to the concerns that we identified above as motivating the Australian government. We also believe that this part of the discussion highlights some of the broader moral and practical dilemmas that are faced to greater or lesser extents by all human rights, teachers, activists, and advocates.

In general terms, the rationale of the cohort of trainers engaged in the program²⁵ was based on four interrelated factors.²⁶

23. The team was convened under the auspices of the Castan Centre for Human Rights Law, Monash University and was led by Professor David Kinley, the then Director of the Castan Centre. The program was conducted under the auspices of AusAID, the Australian Agency for International Development, and administered by Monash International. See *infra* note 25.

24. To be sure, there was a surreal element to undertaking such a program in a country where the admonitory caveats that:

The People's Desires [are:]

- * Oppose those relying on external elements, acting as stooges, holding negative views;
- * Oppose those trying to jeopardize stability of the State and progress of the nation;
- * Oppose foreign nations interfering in internal affairs of the State;
- * Crush all internal and external destructive elements as the common enemy

appear on billboards throughout the country and frequently on the pages of the official national daily newspaper, *The New Light of Myanmar*. This sense of surrealism abated somewhat after one's initiation, but it never really disappeared.

25. Throughout the two and half years of the program four trainers were used: Kate Eastman, Sarah Joseph, David Kinley, and Chris Sidoti.

26. See the consultants' accounts provided to, and considered by, the Australian Parliament's Joint Standing Committee on Foreign Affairs, Defense, and Trade in its inquiry into and report on Australia's involvement in human rights and good governance education. The Parliament of the Commonwealth of Australia, *Human Rights and Good Governance Education in the Asia Pacific Region*, ¶ 3.253–4 (24 June 2004), available at <http://www.aph.gov.au/house/committee/jfadt/hrgoodgov/report.htm>.

First, there was both an individual and collective conviction that meaningful engagement in respect of human rights disputes was exceptionally important. All of the trainers believed, and do believe, that engagement can be an effective way to advocate and manage change in the face of recalcitrance. The trainers did not then, nor do they now, consider it to be the only way. However, in certain circumstances, engagement can be an effective alternative to disengagement, especially where the latter strategy is not yielding the desired results.

Second, in terms of professional vocation, all the trainers were, and are, both human rights educators and lawyers.²⁷ Thus, as regards the former, engagement by way of teaching—teaching human rights in particular—is a central part of what they each do. Engagement in the form of instruction in human rights and human rights law provides a forum within which one can explain, discuss, and promote knowledge and understanding of human rights. This is particularly useful in engaging those with whom one disagrees. In this respect, the dilemmas and moral choices before the trainers should not be underestimated, but, like other academics who have worked in Myanmar, the trainers concluded that there was a need for what the program had to offer that they, in running the program, could help to satisfy.²⁸ Further, because the trainers were lawyers, they placed emphasis on the role and the rule of law as an important (though not alone sufficient) vehicle for the implementation, promotion, and protection of human rights, both at the broad level of social and political order, as well as at the level of day to day practice.

Third, drawing on both of the above, the consultants had a degree of empathy with the phenomenological proposition that opening lines of communication with a “pariah state” on human rights issues, which took the form of workshops that encourage debate and discussion (and not just instruction), is to take the first step on the path to what Risse and Sikkink categorize as the “the socialization of international human rights norms.”²⁹ That is, by entering into discourse on human rights, renegade governments, despite themselves, become entangled in a process of internalization of human rights norms that starts with dismissal and denial and progresses through various stages of defense, distinction, and assimilation.³⁰ At least one way in

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27. All the above trainers are legally trained and either full-time or part-time university academics.
 28. As Craig Reynolds puts it in his reflections upon very similar dilemmas regarding his own experience of academic engagement in the country—there is “a hunger for scholarly exchange that I believe the international community must try to satisfy”. Craig J. Reynolds, *The Ethics of Academic Engagement with Burma*, in *BURMA/MYANMAR: STRONG REGIME, WEAK STATE* 123, 135 (Morten Pedersen, Emily Rudland & Ronald May eds., 2000).
 29. Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction*, in *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* 1, 1 (Thomas Risse, Stephen Ropp, & Kathryn Sikkink eds., 1999).
 30. *Id.* In the chapters that comprise the remainder of the book, a number of authors provide empirical studies of how this process is borne out in practice in such countries as Chile, Guatemala, Indonesia, Kenya, Morocco, the Philippines, South Africa, Tunisia, Uganda, and a number of Eastern European states.

which this process is advanced (and even initiated) is through the exposure of officials within government and on the edge of government to the normal practices, problems, and opportunities that human rights practitioners encounter in environments and jurisdictions outside Myanmar. The fact that this exposure also entailed specific and detailed discussions regarding the interests and concerns held by the outside world in the human rights situation in Myanmar—but in a non-threatening, un-prejudiced, discursive environment—added substantially to the impact of the initiative.

Fourth, and more pragmatically, it was the view of all the trainers that even if the objectives of the training program would be very difficult to articulate (let alone meaningfully measure), running such educational workshops was hardly likely to do harm. The prospect raised by some critics that the program would provide grounds for the SPDC to claim that it was now heeding international calls for it to be more conscious and protective of human rights never materialized.³¹ In any case, even if it had, it is scarcely credible that anyone with even the scantest knowledge of modern Myanmar could have taken such a claim seriously, given the modesty of the initiative in the face of the scale of human rights abuses in the country.

As the program progressed another persuasive factor became apparent to the consultants—namely, the opportunity the initiative provided to the participants, as well as their political masters, to make foreign contacts and open channels of ongoing communication, which allowed them to feel comfortable about engaging with foreigners on an ongoing basis. The consultants accomplished this by creating an environment where the Burmese Myanmar participants realized that the international community was interested in what was happening in their country, and that they could have support from the outside to implement human rights into their day to day work. It was apparent that there was no opportunity for them to attend international conferences, read current journals or texts, or be exposed to other forms of public debate. The limited resources available to academics and legal practitioners in Myanmar was a significant issue, so to have someone who could provide even basic reading materials and case law was important.

B. The Scope and Substance of the Program

In all, twelve workshops were run over the three-year period of Phase 1 of the program. Most constituted a general introduction to the international

31. See, e.g., Myint Cho, *Dealing with Burma the Australian Way*, IRRAWADDY (1 Oct. 2002), available at <http://www.irrawaddy.org/aviewer.asp?a=2735&z=27>. See also the views of a prominent Australian figure in the pro-democracy movement, Interview by Tony Jones with Janelle Saffin, Executive Member, Burma Lawyers Council, and Chris Sidoti, Former Human Rights Comm'r, in Austl. (7 Nov. 2000), available at <http://www.abc.net.au/lateline/stories/s209527.htm>.

human rights regimes, the standards they set, and the obligations that they impose, although some specifically focused on women's rights and on the rights of children. Each workshop had approximately twenty-five participants (comprising roughly one-third women), who were principally middle-ranking civil servants. Initially, they were drawn only from the Rangoon offices of the Ministries of Home Affairs and of Foreign Affairs, and the Office of the Attorney-General, but after the first round of workshops, participants from across the country and from other ministries. Those ministries included labor, education, immigration, and the Department of Social Welfare, as well as judges and court administrators from the Supreme Court, police officers, prison officers, university professors and social workers. There were also representatives from a number of so-called civil society organizations,³² including the Myanmar Women's Affairs Committee, Myanmar Maternal and Child Welfare Association, the Myanmar Red Cross Society, the Myanmar Medical Association, the Myanmar Bar Association, the Myanmar Chamber of Commerce and Industry, and the arch-propagandist United Solidarity Development Association. All participants were chosen by the relevant participating agency, whether this was the government itself or a government-supported civil society organization.

The one governmental agency notably absent was the military. This omission was the result of a deliberate strategic decision on the part of the Australian government, reflecting its concern to avoid a repeat of the politically embarrassing Australian involvement in training the military in Indonesia.³³ (This had previously been criticized by the Australian government, then in opposition, when the TNI was strongly implicated in human rights atrocities that accompanied East Timor's struggle for independence). Exclusion of the military was not, therefore, due to any particular principled opposition to offering human rights training to the Myanmar military.³⁴

32. Though invariably referred to as NGOs, these organizations are in fact arms of the state, having little or no independence from the government. For analysis of the history and dimensions of the destruction of civil society in Myanmar see David Steinberg, *BURMA: THE STATE OF MYANMAR* 98–122 (2001).

33. Then the ABRI (Angkatan Bersenjata Republik Indonesia), now the TNI (Tentara Nasional Indonesia).

34. Interestingly, Burmese opposition groups (namely both the NLD and the NCUB) suggested to the authors on a number of occasions the need to revise this exclusion of the military on the basis that it was the military that was (and is) responsible for most human rights abuses, not the bureaucracy. Furthermore, the military were included in similar human rights training workshops in Myanmar that were conducted by Premier Oil (a British corporation which at that time had significant commercial interests in Myanmar) in 2001 and 2002. David Kinley was part of the team of trainers who conducted these workshops. See *The Business and Human Rights Management Report: A Study of Eight Companies and Their Approaches to Human Rights Policy and Management System Development*, ETHICAL CORP., Nov. 2004, at 62–64; Carl Mortished, *Premier Oils the Wheels of Change in Burma*, *THE TIMES* (UK), 2 Mar. 2001, at 33.

Typically, the workshops took place over four days; most were conducted in Rangoon, but two were held in Mandalay and one in Taunggyi, the capital of Shan state. The consultants compiled books of reading materials for each workshop. The contents ranged across a broad spectrum of rights issues including civil and political rights, such as freedom of expression, political thought, association, and movement, the freedoms from torture and from forced labor, and the rights to privacy, non-discrimination, and to a fair trial, as well as economic and social rights, such as to education, housing, health, welfare, food, and water. The materials were drawn from a wide range of sources including the UN, the ILO, ASEAN, the ICRC and human rights NGOs (both international—such as Amnesty International and Human Rights Watch, as well as local—such as a coalition of Burmese women’s organizations on the Thai-Burma border),³⁵ media reports, academic commentary, and official Myanmar sources (including, for example, the Child Law). Certain translated materials were also used—namely, the Universal Declaration on Human Rights (translated by the Sydney-based Burmese Action Group) and the Australian government, Department of Foreign Affairs and Trade’s *Human Rights Manual*.³⁶ None of these materials had been freely available before in Myanmar and certainly had never been disseminated with the government’s explicit approval.³⁷ Participants were not only expected to read and discuss the materials, but they also were allowed to retain them and take extra copies for their colleagues.

The trainers designed the workshops to be interactive and discursive rather than in the style of formal lectures. They encouraged the participants to make comments and voice opinions about the reading materials and human rights issues before them. The trainers asked questions, set group and individual exercises, and conducted role-plays (usually featuring the roles of the UN, the Myanmar government, and an international human rights NGO discussing some hypothetical human rights problem). At all times the workshops adopted an approach that stressed the importance of debate and, thereby, the contestability of policy and law,³⁸ even where it was plain that the subject matter was highly controversial or that there were significant

35. A “Shadow” Report critically assessing Myanmar’s record in protecting the rights covered by CEDAW, prepared by the Women’s League of Burma was submitted to the UN Committee on the Elimination of All Forms of Discrimination Against Women in 2000, at the same time as the government of Myanmar submitted its report to the same UN Committee.

36. DEPT. OF FOREIGN AFFAIRS AND TRADE, HUMAN RIGHTS MANUAL 2004, available at http://www.dfat.gov.au/hr/hr_manual_2004/index.html.

37. This was, and still is, especially significant given the extremely limited access in Myanmar both to the Internet itself and to sites on the Internet.

38. The degree to which the legal system, and especially the independence of judiciary, has been compromised was and is a particular problem; see Myint Zan, *Judicial Independence in Burma Since Independence: Constitutional History, Actual Practice and Future Prospects*, 4 S. CROSS U. L. REV. 19 (2000).

differences of opinion (or both), for example, with such issues as forced labor and freedoms of speech, movement, and association. The participants discussed and analyzed reports submitted by Myanmar to the UN Committees on the Elimination of All Forms of Discrimination Against Women and on the Rights of the Child together with the Committees' respective (critical) Concluding Observations.³⁹ Case studies involving claims of human rights abuses in other countries in the region (for example, Cambodia, China, Indonesia, the Philippines, Singapore, Thailand and Vietnam), including those states' responses to such claims, were also used in the workshops.

C. The Myanmar Human Rights Commission

As indicated above, an important ancillary aspect of the program was a commitment to help build capacity for the establishment of a Human Rights Commission. On the Myanmar government's part, this was only possible because of its then professed readiness to take steps towards the establishment of an independent Human Rights Commission in accordance with the UN-endorsed "Paris Principles."⁴⁰ It was clear that any progress in this direction would occur in gradual stages, the first of which was the establishment of the government's own committee. It was also clear that, under the political conditions prevailing in Myanmar, it would not be possible to establish an independent commission immediately. However, experiences in countries such as Indonesia and, to a lesser extent Malaysia,⁴¹ have shown that it is important to take the first step, even if the initial mechanism is imperfect, and to build confidence in the mechanism as it evolves.

39. *Initial reports of States parties: Myanmar*, U.N. ESCOR, Comm. on Rts. of the Child, addendum, U.N. Doc. CRC/C/8/Add.9 (1995); *Initial reports of States parties: Myanmar*, U.N. ESCOR, Comm. for Elim. of Discrim. against Women, U.N. Doc. CEDAW/C/MMR/1 (1999). See <http://www.ohchr.org> for details. Indeed, one set of workshops conducted in 2002 focused exclusively on the Myanmar government's preparations for the submission of its second periodic report to Committee on the Rights of the Child. The workshops were conducted with personnel from the Department for Social Welfare, who were responsible for drafting the report. Professor Daw Khin Aye Win, Chair of the Myanmar National Committee for Women's Affairs (which had responsibility for preparing Myanmar's CEDAW reports), met frequently with the consultants and attended two of the workshops in the program.

40. See Paris Principles, *supra* note 15.

41. Both countries have a human rights commission: Komnas Ham in Indonesia (established in 1993) and SUHAKAM in Malaysia (established in 1999). Despite the considerable international and domestic skepticism over the intentions behind the creation of both commissions, both were to confound their initial critics by growing into small but prominent institutions within the polity of the two countries, albeit more so in Indonesia than Malaysia. See also, Monika Talwar, *Indonesia's National Human Rights Commission: A Step in the Right Direction?*, Hum. Rts. Brief, (1997), available at <http://www.wcl.american.edu/hrbriefs/v4i2/index42.htm>; Amanda Whiting, *Situating Suhakam: National Rights Debates and Malaysia's National Human Rights Commission*, 39 STAN. J. INT'L L. 59 (2003), respectively.

Somewhat surprisingly, the Myanmar government not only set up a government-run Human Rights Committee as a first step, but also established a series of sub-committees to deal with specific aspects of human rights, although it is not clear that these sub-committees met regularly or produced any effective policy initiatives, which is a common problem in Myanmar.⁴² Over the course of the program, the Myanmar authorities invited the Australian human rights consultants to brief members of the Human Rights Committee on several occasions (at Deputy Minister level). They also gradually carved out a substantive role for the Committee: as the coordinating body for the Australian and other internationally sourced human rights training programs; as the sponsor of a series of Myanmar government-run human rights training programs; and as the host and main liaison point for the UN Special Rapporteur on Human Rights, Professor Pinheiro. Professor Pinheiro subsequently acknowledged the assistance of the Committee, whose members he met regularly on his visits to Myanmar.⁴³

Supplementary to these activities, the Australian government sponsored a number of Myanmar officials to undergo short-term human rights training abroad, primarily in Australia. Selected Myanmar officials were also funded to visit other Asian countries, such as Indonesia, India, and the Philippines, to observe the operations of existing Human Rights Commissions.⁴⁴ With Australian help, Myanmar government representatives attended meetings of the Asia-Pacific Forum of National Human Rights Institutions as observers.⁴⁵ The core objectives of these various actions were, first, to demonstrate to the Myanmar government that other Asian countries also faced similar problems in dealing with human rights, second, to show what kinds of approaches were being adopted by their neighbors, and third, to allow the Myanmar representatives to bench-mark themselves against the practices of other countries in their region.

42. Certainly, one must be wary of exaggerating the importance of such an initiative, but it cannot be rejected out of hand, as some argued. See, e.g., Khin Maung Win of the Burma Lawyers' Council, who dismissed the Commission (sic) as "a joke" on the grounds that (a) there are many human rights abuses in Myanmar; and (b) the SPDC must first change its attitude and behavior towards the people of Myanmar; these are precisely the grounds that support arguments for the establishment of a human rights body, at least, as a first step. Khin Maung Win, *Burma Human Rights Body is Not All that is Needed*, 6 LEGAL ISSUES ON BURMA J. 16 (2000), available at http://www.blc-burma.org/activity_pub_liob.html#liob6.

43. *Report of the Special Rapporteur, Mr. Paulo Sergio Pinheiro, Submitted Pursuant to Commission on Human Rights Resolution 2002/67*, U.N. ESCOR, Comm'n. on Hum. Rts., 59th Sess., Agenda Item 9, U.N. Doc. E/CN.4/2003/41 (2002).

44. Funding was also provided for Myanmar judges to attend judicial training seminars overseas. See Naw Seng, *Australia to Assist Judges*, THE IRRAWADDY, 11 June 2002, available at <http://www.irrawaddy.org/viewer.asp?a=2345&z=22>.

45. For general information on these forums, see <http://www.asiapacificforum.net>.

IV. EVALUATING THE PROGRAM

No detailed public report or evaluation of the program exists in Australia. This is mainly because the program was suspended in June 2003. However, in 2004 AusAID released a largely factual Summary of Phase 1 of the program. It did not contain any qualitative assessment and was not, and did not purport to be, a full evaluation of the program.⁴⁶ Official characterizations of the program's progress or impact were few, aside from various press releases and public statements made by the Australian Foreign Minister (including one substantive speech on the issue),⁴⁷ and a number of comments and remarks made by DFAT and AusAID officials before Senate Estimates Committee hearings.⁴⁸ The only other public assessments of the program were the various media reports following interviews with the consultants and a number of conference papers delivered by the consultants.⁴⁹

At the conclusion of the program's first phase, the Australian government believed that the program had successfully met its admittedly limited objectives and that it should be continued. In October 2002, following his controversial visit to Rangoon the previous month,⁵⁰ Foreign Minister Alexander Downer was evidently sufficiently confident to announce that "our human rights initiative is to be expanded. Beginning early next year [2003], Australia will undertake a three-year program in Myanmar focused on practi-

46. AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT, HUMAN RIGHTS IN BURMA, SUMMARY OF PHASE 1 (2004), available at <http://www.aisaid.gov.au/publications>. The Report was prepared by the Castan Centre for Human Rights Law, Monash University.

47. Alexander Downer, Minister for Foreign Affairs, Making a Real Difference to Human Rights, Address at the Castan Centre for Human Rights Law, Melbourne (20 Nov. 2000), available at http://www.dfat.gov.au/media/speeches/foreign/2000/001120_hr.html.

48. For example, after the first year of the program, a senior AusAID official told the Committee

It was assessed that the courses had met their objectives and exposed people to human rights standards and principles. They had succeeded in raising awareness and stimulating discussion and debate. On the basis of that, no significant changes are proposed. We are looking at extending the exposure of people to those very same principles and protocols.

Richard Moore, AusAID, Address Before the Senate Foreign Affairs, Defence and Trade Legislation Committee (6 June 2001), in OFFICIAL COMMITTEE HANSARD, at 360.

49. The following papers were presented: David Kinley, Human Rights Workshops in Burma, Burma/Myanmar Update 2002, Presented at Australian National University (14 Feb. 2002); David Kinley, Human Rights Engagement, The Struggle for Democracy in Burma: Policy Options for Australia, Presented at the Asialink Forum, University of Melbourne (8 May 2003); David Kinley, Supping with the Devil: Promoting Human Rights in Problem Places, Presented at the Fulbright Symposium on Human Rights Education and Peace, University of Melbourne (23 June 2005); Kate Eastman, Human Rights Education and Rogue States—Burma and Afghanistan, Presented at the Australia and New Zealand International Law Association Conference, Wellington, New Zealand (July 2003)(all papers on file with author Kinley).

50. See Chris Johnson, *Gesture, Not Reform, Seen from Downer Myanmar Trip*, REUTERS NEWS, 30 Sept. 2002; Editorial, *No One Should Indulge Burma's Generals*, THE AGE, 3 Sept. 2003.

cal approaches to human rights issues and the rights of women and children in particular.”⁵¹ By May 2003, the Australian government was ready to roll out Phase 2 of the program, which was generally to involve the expansion of the content, format, and geographic scope of Phase 1 of the program, as well as employing such specific initiatives as engaging a high-level legal specialist, governance, and human rights experts from other countries in the region and the exploration of particular policy options through a series of “discussion papers.” Arrangements for Phase 2 had been negotiated with the Myanmar government and the consultants had undertaken a scoping mission to Myanmar where they met with a number of key ministries in the government. They also met with the NLD and a coalition of ethnic groups, foreshadowing the expanded content of Phase 2. The principal structural vehicle by which this more ambitious objective—of focusing broadly on the inter-relationship between the protection of human rights and democratization—would be achieved was the development of six so-called “specialist human rights streams.”⁵²

More than anything else, the advanced preparations for Phase 2 clearly indicated that, at that stage, the whole program was being judged favorably, both by the Myanmar authorities and the Australian government, including the co-author as Ambassador. However, the second phase of the program was never implemented. The Australian government halted the program following the Myanmar government orchestrated crack-down on the NLD during and after the Depayin incident on 30 May 2003.

To the extent that the first phase of the program had a beneficial impact, it can be said at least that it did prompt the Myanmar government to recognize publicly the nature of its obligations under international human rights laws, both to its own people and to the international community. In the very act of undertaking the program, the Myanmar government was acknowledging its obligations under international conventions, and this was made increasingly public in pre-prepared statements made at the workshops by the then Minister for Home Affairs, Colonel Tin Hlaing, who was Chairman of the Human Rights Committee.⁵³ It was not, in our opinion, merely a public relations exercise, if only because it necessitated exposing more than 250 Myanmar nationals, participating in the workshops, to relatively lengthy and open-ended discussions about Myanmar’s existing obligations,

51. Press Release, The Hon. Alexander Downer, Burma Visit (3. Oct. 2002), available at http://www.foreignminister.gov.au/releases/2002/fa144_02.html. The Press Release is unequivocally optimistic about the future of the program.

52. These were: 1) Judges and Law Officers; 2) Law Enforcement; 3) Children; 4) People Movement (including trafficking); 5) University/Academic Liaison; 6) Conflict Management.

53. These statements were not published, nor were texts provided to participants—who took notes—but copies were provided to the Australian Embassy. (On file with authors).

including exposure to the international and domestic claims that these obligations were not being met. However flawed or incomplete Myanmar's observance of the conventions to which it had adhered, there were plainly certain Myanmar officials who were strongly committed to improving the country's performance. Although it is not possible to point to any immediate or independent evidence of the initiative having profound impact on the state of human rights in Myanmar, anecdotal reports were received of one prison officer making improvements to prison conditions after attending the workshops.⁵⁴

Feedback from participants produced some of the most striking results. At the outset, participants said they were amazed that they were being encouraged by their government to discuss (and with foreigners) issues which, previously, people would have been sent to prison for even mentioning. Soon, participants realized that they were also being encouraged to take what they had learnt back to their workplaces in order to spread the message further. Most of the participants relished the opportunity provided by the workshops to engage in discussion on these topics and were enthusiastic contributors to the exercise. The opening speeches by the Minister for Home Affairs at each workshop⁵⁵ specifically urged participants to do these things, and these speeches too became increasingly positive and pro-active.

Overwhelmingly, workshop participants responded very positively to what was, for them, in every case, a new and untried experience. Members of the Australian team described the training in Myanmar as often more rewarding and potentially more effective than similar programs they had undertaken in other countries in Asia,⁵⁶ principally because the program was, for Myanmar, so novel.

In a more general sense, partly because it happened at an early stage of what appeared to be greater willingness to engage on the part of the Myanmar leadership, the program provided some impetus for further positive developments, particularly in relation to the activities of the UN and other international organizations in Myanmar. Both UN Special Envoy Razali and Special Rapporteur Pinheiro drew encouragement from the program for their own activities. Razali's first visit as Special Envoy came in June 2000,⁵⁷ shortly after the first workshops, and the Myanmar leadership's readiness in April 2001 to accept visits by Pinheiro was somewhat influenced by the fact

54. Comments in confidence from a source with direct knowledge of the prison.

55. All of which were witnessed by one or other or both of the authors, as recorded in the Reports submitted to the Australian Agency for International Development by the Castan Centre of Human Rights Law and Monash International following each set of workshops.

56. For example, Bangladesh, China, Indonesia, Thailand, and Vietnam.

57. Specifically, from 29 June to 3 July 2000. He undertook his second mission from 9–12 Oct. 2000, see *Report of the Secretary-General on the Situation of human rights in Myanmar*, U.N. GAOR, 55th Sess., Agenda Item 114(c), U.N. Doc. A/55/509 (2000).

that the workshops were by then well under way. Both Razali and Pinheiro displayed considerable interest in the progress of the program from its inception, were briefed on it periodically, and both found it useful to associate themselves with it, either by listening in on a workshop in Razali's case or by referring to it in reports in Pinheiro's case.

A. Strengthening the Program's Agenda

All those involved in the Australian program sought to maintain a fairly flexible approach to the handling and content of each series of workshops and thereby to be the best place to exploit opportunities to promote the subject matter of the workshops. The trainers and the Australian Embassy always pushed the boundaries in terms of content, format, and target groups, and were able, for example, to distribute freely to workshop participants Resolutions of both the UN General Assembly's Third Committee and the UN Commission on Human Rights that were critical of Myanmar's human rights record.⁵⁸ To the best of our knowledge, this was the first time such a document had been distributed with government approval. Trainers encouraged and participants embraced (sometimes with notable enthusiasm) open discussion of sensitive subjects such as forced labor, child soldiers, a 2002 report documenting allegations of the systematic rape of Shan women by the military,⁵⁹ torture, fair trial, and free speech.

The inclusion in the workshops of certain civil society groups that were more than mere government front agencies was something that was pressed for from the outset. In response, the Myanmar authorities permitted some representatives of non-political ethnic groups such as the Intha, Pa-O, and Rakhine to participate in later workshops. However, neither the NLD, nor any of the truly independent ethnic minority political organizations were invited, though the former, unlike the latter, did not necessarily want to participate (depending on whom you spoke to). The workshops were also extended to regional centers⁶⁰ because human rights abuses were occurring more in the regions than in the capital but were not expanded as far as the

58. Since their 48th Session in 1992, the Commission on Human Rights has passed a resolution annually on the Situation of human rights in Myanmar. *Situation of Human Rights in Myanmar*, C.H.R. Res. 1992/58, U.N. ESCOR, Comm/n on Hum. Rts., 48th Sess. (1992), available at <http://ap.ohchr.org/documents/mainrec.aspx>. Similarly, the General Assembly has passed a resolution every year since their 46th Session in 1991. *Situation in Myanmar*, G.A. Res. 46/132, U.N. GAOR, 46th Sess. (1991), available at <http://www.un.org/documents/resga.htm>.

59. SHAN HUMAN RIGHTS FOUNDATION AND SHAN WOMEN'S ACTION NETWORK, LICENSE TO RAPE: THE BURMESE MILITARY'S REGIME'S USE OF SEXUAL VIOLENCE IN THE ONGOING WAR IN THE SHAN STATE (May 2002), available at <http://www.shanland.org/resources/bookspub/humanrights/LtoR/>. See further, *infra* note 88.

60. Mandalay and Taunggyi.

Australian government would have liked. A wider roll-out of the program would have occurred with more time, as the expansion of workshops to other centers was envisaged in the still-born Phase 2 of the program. It is also significant that during and after the Australian program, the Myanmar government itself replicated the workshops in some more distant regional centers—for example, Mawlamyaing, Myitkina, Sittwe—without the involvement of Australian or other foreign consultants. Although these programs could not be independently assessed as to their quality or effectiveness, this nevertheless showed a level of commitment to human rights training beyond simple propaganda or publicity advantage for the regime. Generally speaking, the initial guarded suspicion with which the Myanmar government treated the initiative eased to the extent that relevant UN agencies⁶¹ were invited to formal opening ceremonies for the workshops. In one set of workshops concerning the rights of children, presentations by UNICEF staff and Save The Children (UK) were officially included in the workshop program, as well as a representative from Eden Handicap Service Centre, a local and independent children's disability organization.⁶²

As with so many programs of this type, the opportunities for extracurricular engagement with the Myanmar counterparts, in less formal (though still official) semi-social occasions, were numerous and provided at least as much potential leverage as the workshops themselves. In these circumstances, Australian government officials and the consultants frequently reiterated and explained the concerns of the international community regarding the human rights situation in Myanmar. These points were made not only to the Myanmar participants and government officials involved in running the program, but also other Myanmar citizens and organizations interested in the workshops, such as journalists, lawyers, and political representatives. This included stressing not only the principled basis of the international human rights regime, but also its dynamic interplay with the *Realpolitik* of international relations as the backdrop to criticism that all nations to varying degrees attract in respect of their human rights records. The fact that Myanmar was, and is, subject to especially heavy censure did not make it unique, but equally, that fact alone did not provide it with any excuse for its behavior.

The program returned to the theme, time and time again, that if Myanmar addressed the concerns of the international community, then it not only had to engage with its critics, but it also had to either repair its human rights

61. For example UNICEF, UNDP, UNHCR, and ICRC.

62. These workshops were run with the officials from the Department of Social Welfare, amongst whose responsibilities was included the compilation of Myanmar's periodic reports of the country's compliance with the UN Convention on the Rights of the Child to the UN Committee on the Rights of the Child; see *Pinheiro urges Australia to Continue Funding for the Human Rights Workshops*, THE MYANMAR TIMES, 4 Nov. 2002, at 3.

breaches or produce credible evidence that the accusations were groundless. Simple stone-walling might appear an attractive short-term response, but it was unsustainable in the long term. To this end, both the Australian Embassy in Rangoon and the training team continually urged the Myanmar government to broaden its international engagement on human rights matters by being more open to seeking technical assistance from UN human rights bodies⁶³ and considering accession to other key human rights instruments, such as the International Convention on Economic, Social and Cultural Rights (ICESCR).

The fact that the bilateral understandings upon which the program was based were entirely unconditional also left open the door for Australia to respond appropriately to any adverse human rights developments that occurred over the period of the program. Thus, for example, when Aung San Suu Kyi was, once again, placed under *de facto* house arrest from September 2000 to May 2002, the Australian government continued to protest exactly as it had in the past.

One guiding principle developed and adopted throughout the course of the initiative was to try to make the conduct of this workshop program as normal as possible, despite its potentially provocative content. The Australian team did not modify the content of the program or the approach to its delivery because of the difficult political situation in Myanmar or because of any concern that the program might be threatened or discontinued. Furthermore, the team did not seek to soften its treatment of human rights problems just because they were sensitive or controversial. Although it must be said that when such highly charged topics as forced labor, freedom of expression, fair trials, or free elections were raised, the responses by participants ranged from (occasionally) silence to (more usually) animated debate (which usually centered on the credibility of Myanmar's accusers more than any arguments rebutting the accusations), and, most revealingly, disquiet over the situation in Myanmar, or even quiescence with certain allegations. A central, if not explicit, objective of the Australian team was to incorporate into the program all of the important human rights issues relevant to Myanmar's situation. To be sure, the Myanmar government coordinators of the program clearly realized what was happening in the workshops, but they never sought to make any inappropriate requests for changes to format or content. Senior Ministers received daily summary reports compiled by the consultants outlining what topics were covered in each workshop. They were also briefed more generally on the conduct in and progress of the workshops.

63. Such as the office of the Secretary-General, the Committee on the Rights of the Child, and the Committee for the Elimination of All Forms of Discrimination Against Women, to which it already submits periodic reports.

Ultimately, all involved in the program understood that Myanmar's human rights record would have to show some signs of improvement during the course of the program. Anything less would make the Australian government's and the consultants' involvement to the program untenable, as eventually proved to be the case. That said, no concrete key performance indicators defining the nature of that human rights improvement existed, and it would have been extremely difficult, if not unrealistic, to have tried to devise any at that stage of the project. It might also be said that it was not then evident that the existence of more specific desired outcomes would have made an appreciable difference.⁶⁴ Undoubtedly, there was a combination of reasons why more obvious or measurable improvements did not occur, which included, specifically, the unfinished character of the program, and more generally, the inability of those in the Myanmar leadership who favored reform to prevail over the deep-seated intransigence of the more conservative elements of the Myanmar government.

B. Ongoing Consultation on Engagement

Throughout the program, Australian government officials, both in Canberra and Rangoon, consulted widely with international agencies, other countries, and non-governmental individuals and groups in Myanmar. Although it was never articulated, it would likely have been impossible to pursue such a controversial program without undertaking consultations with the people whom it was ultimately intended to benefit. A powerful argument for doing so was the knowledge that the Myanmar government itself was unlikely to have engaged in any consultations of this kind. These facts notwithstanding, the Australian government was at the time being criticized by many other governments, organizations, and individuals outside Myanmar for undertaking such a program with the Junta.⁶⁵ Nonetheless, these critics—both NGOs

64. The International Crisis Group, which contributed significantly to debates over strategies and policy options that might be adopted by the international community in respect of Myanmar, took the same view in respect of its recommendations to try to create "a positive environment for change" in the country. International Crisis Group, *Myanmar: Sanctions, Engagement or Another Way Forward?*, 26 Apr. 2004, at iii, available at http://www.crisisgroup.org/library/documents/asia/burma_myanmar/078_myanmar_sanctions_engagement_or_another_way_web.pdf.

65. See, e.g., Ye Htut, *Australia Takes the Wrong Road to Rangoon*, 6 LEGAL ISSUES ON BURMA J. 19 (2000), available at http://www.blc-burma.org/activity_pub_liob.html#liob6; Tim O'Connor, AID/WATCH Condemns Australian Government Support for Brutal Burmese Dictatorship, 20 Dec. 2002, available at http://www.aidwatch.org.au/index.php?current=47&display=aw00241&display_item=1; Craig Skehan, *Australian Rights Lawyers under Fire on Burma*, THE AGE, 6 Sept. 2000; *Shan Woman: Australia's Human Rights Trainings for Burma Do Little to Stop Violations of Human Rights*, SHAN HERALD AGENCY FOR NEWS, 15 Dec. 2002, available at http://www.shanland.org/articles/humanrights/2002/shan_woman.

and foreign governments—were especially interested in being briefed on the progress of the program and accepted offers of regular briefings on the program to keep themselves informed. For some, this even meant attending Australia-based workshops mirroring those undertaken in Myanmar and delivered by one of the program's trainers. The consultants themselves also continuously engaged in consultation with a variety of interested groups about the program throughout its duration.⁶⁶

In particular, Australian representatives consulted the NLD and Aung San Suu Kyi regularly about the program and sought their views on it. Aung San Suu Kyi and NLD spokesmen repeatedly, though not always consistently, took the view, publicly and in private, that the workshops were ill-timed, misguided, and “a waste of money.”⁶⁷ However, Aung San Suu Kyi was almost alone among the Myanmar people contacted in the course of these consultations in opposing the program,⁶⁸ and even she admitted in 2001 that she had a “positive” discussion about it with Chris Sidoti, one of the members of the Australian training team.⁶⁹ Indeed, at that time—when she was not under house arrest and there were some other positive signs

htm/ view; Kalinga Senevirante, *Australians Debate Myanmar Policy*, *ASIA TIMES*, 11 Oct. 2002; Geoff Thompson, *Australia Hosts Human Rights Workshop in Burma*, Radio Broadcast from Australia Broadcasting Corp. (16 Aug. 2001) (transcript available at <http://www.abc.net.au/pm/stories/s347802.htm>); Press Release, Australian Council for International Development, *NGOs Sceptical of Benefits of Human Rights Aid to Burma* (20 Apr. 2000), available at http://www.acfid.asn.au/pubs/2000_releases/20_April_00_Burma.htm. See also Cho, *supra* note 31; Interview by Tony Jones, *supra* note 31. The initiative was also subject to statements, questions, and debate in the Australian Senate. See, e.g., Bob Brown, *Senate Parliamentary Debates of Commonwealth of Australia* (28 June 2000), in *OFFICIAL COMMITTEE HANSARD*, at 15875; Marise Payne, *Senate Parliamentary Debates of Commonwealth of Australia* (6 Mar. 2003), in *OFFICIAL COMMITTEE HANSARD*, at 9357; Kerry Nettle, *Senate Parliamentary Debates of Commonwealth of Australia* (7 Mar. 2003), in *OFFICIAL COMMITTEE HANSARD*, at 10330. For a more detailed and sympathetic consideration of the initiative by the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade, see generally the Australian Parliament's Joint Standing Committee on Foreign Affairs, *supra* note 26.

66. Chris Sidoti conducted several such workshops in Sydney under the auspices of the Burmese Community Association between 2001 and 2003.
67. See Interview with Mark Baker, Singapore-based Southeast Asia correspondent of the *Sydney Morning Herald*, in Burma in Oct. 2002. Baker visited Rangoon to cover Foreign Minister Downer's visit and was one of the few Australian journalists to interview Aung San Suu Kyi directly. Mark Baker, *Downer Faces Burma's Tyrants*, *SYDNEY MORNING HERALD*, 5 Oct. 2002, available at <http://www.theage.com/au/articles/2002/10/04/1033538774051.html>.
68. Her stance was the principal basis upon which many in the expatriate Burmese community mounted a well-organized, if at times monocular, campaign against the program.
69. *Suu Kyi Warming to Rights Seminars*, *SYDNEY MORNING HERALD*, 20 Feb. 2001 (reporting comments by Sidoti). In fact, this degree of flexibility complemented Aung San Suu Kyi's generally pragmatic attitude to dealing with the military regime, in which compromise was a key element where “both sides give as well as take.” See *Talking Point with Aung San Suu Kyi*, *BBC NEWS ONLINE*, 14 Feb. 2003, (transcript available at http://news.bbc.co.uk/1/hi/talking_point/forum/2542971.stm).

coming from the Myanmar government⁷⁰—it seemed very likely that the Australian government would persist with the program, at least in the near future, and Aung San Suu Kyi made certain constructive suggestions as to how the program might be improved. One of these suggestions held that the workshops should include members of the military because they were the major perpetrators of human rights abuses in Myanmar.⁷¹

Other NLD leaders at one point expressed interest in participating in the program, on the reasonable grounds that, given their situation, they would benefit greatly from a better understanding of international human rights law and would otherwise miss out on what workshop participants were being told. For a short time, the possibility of the NLD participating in the program became a lively discussion point with the Myanmar government, but in the end the Myanmar authorities could not bring themselves to allow ordinary Myanmar citizens to participate alongside the NLD in what was, after all, a government-to-government program such as this. They had not accorded such status to the NLD in any other comparable situation and did not seem disposed to do so on this occasion. As is often the case for the Myanmar government, when faced with an unpalatable decision, they tended to say “the time was not ripe” for the NLD to be included in this or any parallel program, but stopped short of rejecting it outright.

The Australian Embassy in Rangoon also informally consulted other (nongovernmental) groups and individuals inside Myanmar itself about whether or not such human rights training was desirable. Those consulted included representatives of other political parties, ethnic groups, business people, educators, lawyers, monks, and journalists. Almost all of these people strongly supported what the Australian government was doing; many wanted to participate themselves, and most believed the training would make some contribution to improving the human rights situation inside the country.⁷² All these briefings proved important in breaking down some of the skepticism about the program.

C. Assessing the Beneficial Impact of the Program

Australia’s program was the first bilateral program that consciously sought to work with the Myanmar government on such issues rather than just “pointing the finger” and criticizing Myanmar from afar. Even its critics widely

70. Such as an easing of tension in the government’s relationship with the International Labor Organization, which led to the latter establishing an office in Myanmar in 2002.

71. This was under serious consideration at the time of the program’s curtailment and would probably have been a feature of Phase 2 of the program had it proceeded.

72. Trevor Wilson, personal recollections.

acknowledged it as such.⁷³ Although the active phase of the program only extended over two and a half years, it did yield some discernable positive outcomes, a number of which might reasonably be expected to have some sustainable, long-term impact. These include:

- (1) the impact on individual workshop participants, particularly on their understanding of the nature, purpose and potential of human rights laws. Such impact at the individual level was especially important in respect of those present in every workshop who might be called “sleepers”—namely, individuals whose discontent with the current regime was barely disguised in conversations with us, but whose chosen strategy was to sit it out from within, rather than openly resist from without;
- (2) at an institutional level, increased awareness and recognition of Myanmar’s human rights obligations among Myanmar government agencies and key local organizations;
- (3) acknowledgment of Myanmar’s human rights obligations in education (Yangon University international law curriculum, high school text books) and training (standard Police College training, Civil Service Training Institute, Defence Services Academy courses);⁷⁴
- (4) subsequent indications of the Myanmar government’s readiness to improve conditions for protection of human rights by improving official performance in areas such as people trafficking, HIV/AIDS-affected drug addicts, refugee management, child rights and juvenile justice;⁷⁵
- (5) extension of human rights training by the Myanmar government on its own initiative into other geographic areas and with other groups not previously covered in the Australian program, using translations of Australian teaching materials.⁷⁶

An underlying question regarding any assessment of the program’s positive or negative impacts was: why did the military regime agree to

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73. See, e.g., *Interim Report of the Special Rapporteur of the Commission on Human Rights, The Situation of Human Rights in Myanmar*, U.N. ESCOR, Comm’n on Hum. Rts., 57th Sess., ¶ 16, U.N. Doc. A/57/290 (2002), (Special Rapporteur declares that the human rights workshops “should continue”); *Situation of Human Rights in Myanmar*, G.A. Res. 57/231, U.N. GAOR, 57th Sess., ¶ 1(e), U.N. Doc. A/57/231 (2003), which states that it “[w]elcomes . . . the dissemination of human rights standards for public officials and some non-governmental organizations and ethnic groups through the convening of a series of human rights workshops.”
 74. Communications to Trevor Wilson by officials from the relevant Myanmar Ministries and agencies.
 75. Programs in these areas were launched over the period 2001–2004 by AusAID. See *Aid Activities in Burma*, available at www.usaid.gov.au; UNHCR, available at <http://www.unhcr.org/cgi-bin/texis/vtx/country?iso=mmr>; UNICEF, available at <http://www.unicef.org/myanmar/>; IDE, available at <http://www.ide.org.org/SectionIndex.asp?SectionID=116>, and attributed privately (in conversations with Trevor Wilson) by these organizations to the breakthrough achieved by the Australian program. See public reports on the web sites of the respective organizations.
 76. Information provided to Trevor Wilson by Myanmar officials organizing the training, who indicated that officials from economic and infrastructure ministries as well as a few from Military Intelligence participated in these subsequent workshops.

initiate the program in the first place? In truth, the answer to this question was not entirely apparent. While arguing that it was only to improve the regime's public image is easy, if this was the case it would not have been necessary for the Myanmar authorities to have undertaken the program as systematically or seriously as it was. Alternatively, it might be argued that far from seeing the program in such a Machiavellian light, the regime was very largely indifferent to the whole enterprise, though this does not explain why it would engage in its own separate unpublicized human rights training program. Perhaps the program is best understood within the context of a series of other relatively small but nonetheless liberalizing policy shifts that were introduced around the same time, including the change of policy on forced labor, the opening of an ILO office in Rangoon, the more extensive cooperation with UN special envoys than at any other time in recent history, and finally, the release of Aung San Suu Kyi from house arrest in May 2002. Looking at all these developments together, the regime's agreement to the Australian initiative appears to make some sense, as does the government's approach to the actual conduct of the program.

With regard to the specific initiative of the establishment of the Human Rights Committee, any movement towards regularizing its role might be regarded as modest progress. Professor Pinheiro, as Special Rapporteur, publicly recognized the Committee in his 2002 report to the UN General Assembly. In one of the most detailed accounts of the generally low-public-profile Human Rights Committee's activities, he noted that "capacity-building through a series of successive workshops was appreciated by the government and benefitted, *inter alia*, the research activities of the HRC [Human Rights Committee]." Pinheiro went on to say he "commends all these initiatives aimed at building human rights capacity for government officials and the intention to establish a national human rights institution within the framework of the Paris Principles," to which he added the important rider that "another basic requirement for the promotion and protection of human rights is the freedom to organize, participate in and express oneself through autonomous civil society organizations."⁷⁷

The Myanmar Human Rights Committee still exists, although it has not been active since the turbulent political changes in Myanmar in late 2004, which removed from office some of the highest level sponsors of

77. *Report of the Special Rapporteur of the Commission on Human Rights on The Situation of Human Rights in Myanmar*, U.N. ESCOR, Comm'n on Hum. Rts., ¶¶ 22–23, U.N. Doc. E/CN.4/2002/45 (2002) (in accordance with Commission resolution 2001/15). See also *Interim Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar*, U.N. ESCOR, Comm'n on Hum. Rts., 58th Sess., U.N. Doc. A/58/219 (2003); *Situation of Human Rights in Myanmar*, C.H.R. Res. 2003/12, U.N. ESCOR, Comm'n Hum. Rts., 59th Sess., Agenda Item 9, U.N. Doc. E/CN.4/2003/L.36 (2003).

the Australian human rights training program, including most significantly, General Khin Nyunt⁷⁸ and Colonel Tin Hlaing, the Minister for Home Affairs. Nevertheless, as recently as early 2005, the Committee has been allocated an office, separate from any Ministry, from which to operate, and Myanmar government advisors worked on a new membership for the Committee that was expected to be formally approved in due course.⁷⁹

A further positive consequence of the Australian initiative was that other organizations soon began sponsoring their own human rights training programs in Myanmar, which complemented those being undertaken by the Australian government. These included programs conducted by the British oil company, Premier Oil, which then had significant business interests in the country, for government officials from Ministries with which it had dealings (principally, the Ministries for Energy, Labor, and the Myanmar Oil and Gas Enterprise), as well as some members of the military.⁸⁰ The Swiss-based, Institut International Des Droits De L'Enfant (IDE) conducted seminars on the Convention on the Rights of the Child with the Ministry of Social Welfare in 2001 and 2002. Also, significantly, from 2002, as mentioned above, the Myanmar government began its own training human rights training programs in other regional centers, such as Sittwe, Myitkyina, and Mawlamyaing, based on the Australian model and using the same course materials in translated form, albeit without any publicity.

The Australian program was a relatively small step in the overall scheme, but it is important to remember that it broke the ice in terms of such topics being dealt with directly in a government-to-government program. As Surin Pitsuwan, Thailand's Foreign Minister at the time, reportedly said in express reference to the workshops, "engagement . . . offers the opportunity to create alternatives . . . even if it means dealing with unattractive people."⁸¹ In the climate of a relatively open attitude to engagement (upon which the workshops both fed and to which they contributed), other organizations and agencies were able to undertake other human rights related initiatives that were not possible before,⁸² including a first-ever visit to the country by a

78. By then, the Prime Minister, but who held the post of Secretary One during the time of the program.

79. Trevor Wilson's conversation with Myanmar government advisor, March 2005.

80. *The Business and Human Rights Management Report: A Study of Eight Companies and Their Approaches to Human Rights Policy and Management System Development*, *supra* note 34, at 56–64; Mortished, *Premier Oils the Wheels of Change in Burma*, *supra* note 34.

81. Greg Sheridan, *Engaging Burma is "Best Way,"* THE AUSTRALIAN, 21 Dec. 2000, at 6. The article goes on to note: "Dr Surin is regarded as one of the most outspoken democracy advocates in any southeast Asian government . . . [and] has been harshly critical of the Burmese regime."

82. In 2002–2003, UNHCR for the first time conducted workshops for Myanmar government agencies involved in managing displaced ethnic communities, using the Australian government workshops as a model. In 2004, UNICEF began a juvenile justice program

delegation from Amnesty International in 2003.⁸³ After the Australian program began, and thanks mainly to more systematic efforts by other organizations such as the ICRC, UNHCR, UNICEF, and the ILO in particular, human rights workers observed and independently reported on some attempts to improve human rights in specific areas, such as prisons, child protection, and forced labor,⁸⁴ which although far from comprehensive and patchily successful, were nevertheless noteworthy.

Also of parallel relevance to the addressing of human rights problems in the country has been the historic out of court settlement reached between the American oil corporation Unocal and a group of Burmese individuals and organizations in December 2004, which ended protracted litigation between the parties concerning allegations of Unocal's complicity in human rights abuses perpetrated by the Myanmar government during the building of a gas pipeline in Myanmar in the mid-1990s.⁸⁵ Although the precise details of the settlement remain confidential, the amount is believed to be substantial and the ends to which the funds will be put include the development of "programs to improve living conditions, health care, and education and protect the rights of people from the pipeline region."⁸⁶ Therefore, considerable potential exists for some substantial human rights benefits to flow from the settlement, although subsequent delays in the execution of its terms mean that it is still not clear what those benefits will be in actuality.⁸⁷

D. Assessing the Problems with the Program

First and foremost, the program simply did not run for long enough. The nature of educative, mind-set changing programs such as these human rights workshops is that they are not short term, but long term projects, in respect of both their duration and impact.

with Myanmar government agencies and others, which is acknowledged as a direct successor to the Australian workshops and which took up subjects that were proposed under the suspended Phase 2 of the original Australian program.

83. See Larry Jagan, *Rangoon Welcomes Amnesty*, BANGKOK POST, 1 Feb. 2003, available at <http://www.burmalibrary.org/TinKyi/archives/2003-02/msg00000.html>.
84. See, e.g., Reports of the United Nations Special Rapporteur on Human Rights to the Commission on Human Rights, Paulo Sergio Pinheiro, available at <http://www.ohchr.org/english/countries/mm>. See also Int'l Comm. of the Red Cross, Annual Report 2003, 145–47 (2004); Int'l Comm. of the Red Cross, Annual Report 2004, 152–55 (2005), available at <http://www.icrc.org/eng>.
85. See Rachel Chambers, *The Unocal Settlement: Implications for the Developing Law on Corporate Complicity in Human Rights Abuses*, 13 HUM. RTS. BRIEF 14 (2005), available at <http://www.wcl.american.edu/hrbrief/13/unocal.pdf?rd=1>.
86. See Press Release, Unocal, Settlement of Unocal case, December 2004 (13 Dec. 2004); Daphne Eviatar, *A Big Win for Human Rights*, THE NATION, 9 May 2005, available at <http://www.thenation.com/doc/20050509/eviatar>.
87. Clive Parker, *Wrangle Prolongs Allocation of Unocal Payout*, THE IRRAWADDY, 17 Aug. 2005.

A second undeniable problem for the program was the hard evidence that while in some respects Myanmar's human rights performance did improve, generally human rights abuses continued at an unacceptable level on a fairly wide scale. Indeed, the period was marked by some highly adverse reports on both Myanmar's current and historical performance record—most notably the 2002 Shan Rape Report.⁸⁸

A further difficulty the program faced was that ultimately, its fate was inextricably linked to the political fate of those in the Myanmar leadership most closely associated with it, namely General Khin Nyunt and his close associate, Home Affairs Minister Tin Hlaing. While the immediate cause of the program's suspension was the attack on Aung San Suu Kyi in May 2003, the program may not have survived the demise of Khin Nyunt and Tin Hlaing the following year. There is little doubt that its survival depended directly on the ability of those who sponsored it to maintain their political ascendancy. In the end, the discontinuation of the Australian human rights training program also demonstrated one of the ever-present risks associated with undertaking such exercises in Myanmar, namely that the fragile political basis on which such activities are undertaken tended to make it easy for them to fall by the wayside. While this might be true for the human rights initiative, Australia subsequently pursued other direct government-to-government projects with the Myanmar government, some of which are clearly in related areas, such as human trafficking.⁸⁹

Perhaps the most intractable of all the difficulties that the program faced, however, emanated from the phenomenon that so many human rights abuses occur in the country when it is not, for instance, embroiled in civil war or popular uprisings, and that the international community has been so singularly unsuccessful in combating their continued occurrence. Ultimately, the program was confronted by the apparent imperturbability of the top echelons of the regime itself, the SPDC. Despite having some meaningful dealings at a Ministerial level (and with the officers below), as

88. See LICENSE TO RAPE, *supra* note 59. The principal contentions of the report were that rape and other forms of sexual violence were being used systematically, and with apparent high level approval, as instruments of oppression against Shan women in particular and the Shan people generally. The report was distinctive in its comprehensive coverage, depth of analysis, and provision of empirical data. The report appears to have struck a chord with the government for after the expected initial outright denials, it then, unusually, instituted an inquiry into the allegations made in the report. No doubt this had something to do with the significant exposure that the report received in the international media, which was leveraged further by a number of statements made in the US Congress and by the US State Department in June and July 2002. However, following its (unsurprising) conclusion that the allegations were "groundless and malicious," the inquiry was widely condemned as a sham. See The Shan Women's Action Network, *A Mockery of Justice: The SPDC's Investigation into the "License to Rape" Report*, 24 Sept. 2002, available at http://www.shanland.org/resources/bookspub/humanrights/A_mockery.htm.

89. See the entry on the Australian Agency for International Development Activities provided by [humantrafficking.org](http://www.humantrafficking.org), available at <http://www.humantrafficking.org/organizations/3>.

the experiences and reflections related in this article bear out, in Myanmar the ministers are not constitutive of the ruling administration, but are rather subjugated to a superior, military, ruling authority (i.e., the SPDC). As such, the Australian program's limited interaction with higher levels of the SPDC itself meant that, in large measure, the impact—both positive and negative—of the program in terms of human rights awareness or understanding at the SPDC level was effectively beyond our capacity to measure conclusively. As we have said already, we are not aware of evidence of the program having any significant negative results, but equally we cannot identify more tangible ways in which the program beneficially affected those who really do have the power in Myanmar to effect or resist change.

Certainly, the events in Myanmar that precipitated the suspension of the program and those events that have occurred subsequently, testify to the hard-line, impermeable, and unpredictable nature of the Junta. Specifically, the nature of the Depayin incident and the response of the SPDC to it convinced both the Australian government and the Australian trainers that the program could not continue. Further, the Myanmar government's many subsequent retrograde actions⁹⁰—including the flawed National Convention with no seat at the table for the main lawful political parties and the lack of other visible progress on the so-called roadmap to democracy;⁹¹ the continued detention of Aung San Suu Kyi and other political leaders;⁹² the unchanging pattern of forced labor use by the authorities;⁹³ the continued detention of more than 1,100 political prisoners despite some significant releases of prisoners in recent times;⁹⁴ and finally, the regime's growing inscrutability and unpredictability, as demonstrated by the manner of the shifting of the seat of government from Rangoon to Pyinmana in November 2005,⁹⁵ only add to the authors' personal convictions that the program could not be meaningfully revived in the current circumstances.

90. See generally Security Council Report, *Update Report No. 4 on Myanmar*, 15 Dec. 2005, available at http://www.securitycouncilreport.org/atf/cf/{65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/Update%20Report%2015%20December%202005_Myanmar.pdf.

91. See Press Release, United Nations Information Service, Secretary-General Express Concern at exclusion of Political Groups from Myanmar National Convention (21 Feb. 2005), available at <http://www.unis.unvienna.org/unis/pressrels/2005/sgsm9726.html>.

92. The State Protection Law permits the Executive, by way of "restrictive order," (Art. 10) to detain those "desiring to cause subversive acts" (Art. 1). The legislation further expressly provides for the granting of "prior approval" to detain a person for up to three years without any provision for judicial review of the merits or legality of the detention (Art. 14). State Protection Law, 1975, No.3 (Myanmar).

93. *Developments Concerning the Question of the Observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, International Labor Office, 294th Sess., Agenda Item 6, G.B.294/6/2 (2005), available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb294/pdf/gb-6-2.pdf>.

94. *Note by the Secretary-General on the Situation of Human Rights in Myanmar*, U.N. GAOR, 60th Sess., Agenda Item 73(c), U.N. Doc. A/60/221 (2005).

95. See *Hiding in Shame?*, Asian Analysis, Jan. 2006, available at <http://www.aseanfocus.com/asiananalysis/article.cfm?articleID=911>.

V. CONCLUSIONS

The Australian human rights program was a very modest, but novel (even bold) initiative that sought to do what so many other strategies—from full economic sanctions to non-interference—have failed to achieve, namely, the improvement of the practical framework for human rights protection in Myanmar. The controversy surrounding the program did not emanate from its stated object, but rather from the chosen *modus operandi*. It certainly did not succeed where others have failed, but equally, it did not conspicuously fail. As we have made clear, the program's good effects may only manifest themselves at some future time, in circumstances different from those that prevail presently in Myanmar. Only to that degree can the program be seen as providing some indication of an alternative approach to dealing with the military regime, between the two extremes of ostracism and business as usual.

All that said, it was, and still is, our belief that engagement in the manner of the Australian initiative, and with such a country as Myanmar, is a worthwhile enterprise. Clearly, it is not one that provides redress for all of Myanmar's human rights abuses, but nor is outright disengagement a satisfactory solution. Equally, while the United States and some European countries basically maintain their various punitive measures against the Myanmar regime, and neither the World Bank nor the IMF function effectively in the country, many other serious problems in Myanmar—such as widespread poverty, drug and people trafficking, health epidemics, environmental degradation, and security—are not being effectively addressed at all. The continuing political differences between the contrasting approaches of engagement and non-engagement only increase the gap between them over time and enormously complicate any attempts to find a middle path.⁹⁶

The dynamics of a situation such as that which exists in Myanmar are bound to be much more complex than to be susceptible to either approach alone. Ultimately, a variety of approaches is more likely to achieve progress. Certainly, we believe that the prevailing attitude of disengagement in the West (in contrast to that of ASEAN and the other countries in the region), was a key factor in providing the space within which the Australian initiative could be mounted. Perhaps the most telling examples of responsiveness to engagement in Myanmar are those of the HIV/AIDS epidemic and the entrenched practice of forced labor, both of which were once the subject of outright denial by the regime, but after a drawn out and—it has to be acknowledged—difficult process of discussion and persuasion (which was not always successful), both were openly acknowledged by the Myanmar

96. On which point, see David Steinberg, *Burma/Myanmar—The Triumph of the Hardliners*, SOUTH CHINA MORNING POST, 15 Aug. 2003.

government as problems, with some effort being made to ameliorate them.⁹⁷ (The Myanmar government's approach to forced labor has subsequently become decidedly more negative since the political purges at the top of the regime in 2004.)⁹⁸

It is partly in recognition of these modest achievements, and partly a response to the frustration of foreign policy strategies that have consistently failed to yield change, that calls are increasingly being heard in the West, as well as from an increasing number of Burmese, both overseas and inside the country, for the adoption of a more nuanced approach to Myanmar.⁹⁹ Continuing examples of this can be seen in the case of the UN, which maintains offices of a number of its agencies in the country (including the UNDP, UNICEF, WHO, UNODC, and UNAIDS among others), many of which have sought to develop new forward-looking programs—namely, the UN Office of Crime and Drugs successful campaign against opium production and the Food and Agricultural Organization's 2003 agricultural survey. The UN also extended the term of the Special Rapporteur for Human Rights in Myanmar in 2005.¹⁰⁰ In this context, it is certainly no accident that important moves have been made by the EU and the UK to expand the scope of their humanitarian assistance programs beyond what they were before.¹⁰¹ There

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97. With respect of programs aimed at addressing HIV/AIDS in the country, see U.N. Children's Fund Myanmar, Protecting children and women from HIV/AIDS, available at http://www.unicef.org/myanmar/hiv_aids.html; Asian Business Coalition on AIDS, Myanmar Business Coalition on AIDS, available at <http://www.abcon aids.org>. With respect to the historically more problematic and ambiguously successful efforts to stamp out forced labor, see *Developments Concerning the Question of the Observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, International Labor Office, 282nd Sess., Agenda Item 4, GB.282/4 (2001), available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb282/pdf/gb-4.pdf>.
98. For details, see *Developments Concerning the Question of the Observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, *supra* note 93.
99. See, e.g., recent articles by the founder of the Free Burma Coalition, Maung Zarni. Maung Zarni, *Isolating Burma will not help Aung San Suu Kyi*, THE INDEPENDENT (UK), 18 June 2005, available at <http://comment.independent.co.uk/commentators/article226281.ece>; Maung Zarni, *Western Pressure on Burma Isn't Working*, THE INDEPENDENT (UK), 4 Jan. 2006 (in which he expressly advocates "a critical dialogue with the junta at all levels about nation building, including the need to institutionalize international human rights norms"); Editorial, *Rethinking Burma Policy*, THE IRRAWADDY, Aug. 2005, available at <http://www.irrawaddy.org/aviewer.asp?a=4899&z=108>; Amyotheryei U Win Naing, *Burmese People are Ready for Compromise*, THE IRRAWADDY, 17 Aug. 2005, available at <http://www.freeburmacoalition.org/uwinnaing.htm>.
100. *Situation of human rights in Myanmar*, C.H.R. Res. 2005/10, U.N. ESCOR, Comm'n on Hum. Rts., 61st Sess., U.N. Doc. E/CN.4/RES/2005/10 (2005) extended the mandate of the Special Rapporteur by one year. For an assessment of the "strong foundations" built by Pinheiro as the Special Rapporteur for future positive developments in the country, see Joseph Silverstein, *Some Thoughts on the Special Rapporteur Paulo Pinheiro and His 2002 Final Report to the UN Human Rights Commission*, 14 LEGAL ISSUES ON BURMA J. 1 (2003), available at http://www.blc-burma.org/activity_pub_liob.html#liob14.
101. For a clear exposition of the more subtle EU approach, see Hervé Jouanjean, Deputy Director General (External Relations), European Commission, National Reconciliation

seems to be residual hope that more cooperative international approaches might encourage change by reward, whilst maintaining that certain (rather than all) conditions first must be met—what has been called the “hold your noses and state your terms approach.”¹⁰²

That said, in the face of the continuing intransigence of the Myanmar government to implement any appreciable political changes, the international community also shows increasing signs of frustration. Thus, for example, ASEAN has recently loosened its self-imposed stricture not to interfere in the domestic politics of members states by actively calling upon Myanmar both to expedite its process of democratization and to release political detainees.¹⁰³ The UN Security Council itself, after much delay, formally debated the human rights situation in the country in January 2007, though it failed to pass a resolution condemning the Myanmar government on account of vetoes predictably exercised by Russia and China.¹⁰⁴ Perhaps most telling of all, the UN Secretary-General’s Special Envoy, Razali Ismail, finally tendered his resignation in January 2006,¹⁰⁵ after waiting in vain for almost two years

and Foreign Assistance: The Future of the People is our Challenge, Address at the European Union’s Burma Day Conference 2005 (5 Apr. 2005), available at http://europa.eu.int/comm/external_relations/myanmar/intro/. See also Harn Yawngnwe, *An EU Strategy for Burma/Myanmar?* (18 Oct. 2005), available at <http://www.freeburmacoalition.org/eustrategyforburma.htm>, in which he argues that “the EU needs to look at the issue from a different perspective . . . to explore in greater depth to what extent it can work with the people of Burma/Myanmar including the military, and its neighbors to bring about the desired change that will serve both the interests of the EU and that of Burma/Myanmar.”

102. An axiom used in *How to Save It*, THE ECONOMIST, 23 July 2005, at 3. The reports on Myanmar by the International Crisis Group since 2000 have also consistently called for engagement rather than isolation of Myanmar. See International Crisis Group, Myanmar/Burma, available at <http://www.crisisgroup.org/home/index.cfm?id=2958&l=1>.
103. We encouraged Myanmar to expedite the process [of implementing the “Roadmap to Democracy”] and welcomed the invitation by Myanmar to the Foreign Minister of Malaysia in his capacity as Chairman of the ASEAN Standing Committee to visit Myanmar to learn first-hand of the progress. We also called for the release of those placed under detention. The Honourable Dato’ Seri Abdullah Ahmad Badawi, One Vision, One Identity, One Community, Chairman’s Statement of the 11th ASEAN Summit, ¶ 34 (12 Dec. 2005), available at <http://www.aseansec.org/18039.htm>. This follows the one other notable occasion when in 2003, Dr. Mahathir Mohamad, the then Prime Minister of Malaysia, suggested that Myanmar might be expelled from ASEAN if its government’s continued refusal to compromise its hard-line approach was perceived to be damaging ASEAN’s international credibility. The governments of Singapore and the Philippines subsequently voiced similar concerns. See Mark Baker, *ASEAN May Expel Rangoon: Mahathir*, SYDNEY MORNING HERALD, 22 July 2003. ASEAN’s approach to Myanmar continues to be characterized as a “slight hardening.” *The Gathering Mild Rebuke*, ECONOMIST, 2 Sept 2006, at 25.
104. See S.C. Res. 8939, U.N. SCOR, 5619th mtg., U.N. Doc. S/RES/8939 (2007). For text of the Resolution and the debate, see <http://www.un.org/News/Press/docs/2007/sc8939.doc.htm>. South Africa joined China and Russia in voting against the Resolution, and Congo, Indonesia, and Qatar abstained. The Resolution was tabled by the USA and the United Kingdom.
105. See *United Nations Envoy Quits*, BBC NEWS ONLINE, 8 Jan. 2006, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4592842.stm>. Strikingly, one of the strongest points he made

to re-visit Myanmar, and after the current Myanmar leadership undermined most of the undertakings given to him by the former, now sacked, Prime Minister Khin Nyunt.¹⁰⁶

In terms of moving forward, there is one fundamental condition that the whole of the international community now appears to agree upon—namely, that Aung San Suu Kyi and other leaders of the opposition who have been wrongfully detained must be released before any meaningful and substantial constructive dialogue between the various Myanmar parties and effective international engagement might ensue. If and when such circumstances do arise, maybe then we might see the glimmer of some of the small lights lit by the Australian human rights workshops program, and so appreciate its small contribution to what the International Crisis Group's advocates as working "pro-actively with government and society not only on the immediate political issues, but also to expose the weaknesses of the current system, promote alternative policies, and strengthen domestic forces of change [that] might just begin to make some difference."¹⁰⁷

upon resigning (in an interview on the BBC World Service—the same day as the above article) was in response to a question about the possible continuation of economic and political sanctions against Myanmar when he said "No, No, No, No. . . . If you go to Myanmar you'll see sanctions hurt the wrong people"; Television Interview by THE WORLD TODAY with Razali Ismail, 6 Jan. 2006, available at <http://www.freeburmacoalition.org/razali.htm>.

106. See *Report of the Secretary-General on The Situation of Human Rights in Myanmar*, U.N. GAOR, 60th Sess., Agenda Item 9, U.N. Doc. E/CN.4/2004/30 (2004).

107. ICG, *supra* note 64, at iii.