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# A Disputed Contract: IHC Caland in Burma

Frank G.A. de Bakker and Frank den Hond

**Abstract** IHC Caland designed, built and operated material, ships and complete systems for offshore oil and gas, dredging and shipping industries. The relatively strong economic growth in Southeast Asia offered opportunities for IHC Caland and other specialised suppliers. In the summer of 1998, an IHC Caland subsidiary contracted for an offshore project in Burma's territorial waters. The order was for several hundreds of millions euros, hence of considerable interest to the company. The contract led to public stir because it involved work in a country controversial for its human rights situation. Many human rights, environmental and union organisations expressed their outrage and tried to move IHC Caland to cancel the contract. A controversy was born. It took IHC Caland long resisted the claims made by the NGOs. It maintained that the morality of commercial agents is limited to abiding with all legal laws and regulations. It therefore argued that it had not committed any moral wrong and was allowed to do business with the Burma government.

In the summer of 1998, an IHC Caland subsidiary contracted for an offshore project in Burma's territorial waters.<sup>1</sup> The order was for several hundreds of millions euros, hence of considerable interest to the company. The contract led to public stir because it involved work in a country controversial

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<sup>1</sup> This chapter uses the name "Burma". The military government has since changed the country's name to Myanmar, but dissidents continue to use Burma; (Myanmar) or Myanmar (Burma). We chose Burma for ease of reading.

for its human rights situation. Many human rights, environmental and trade union organisations expressed their outrage and tried to move IHC Caland to cancel the contract. A controversy was born. At the time of the contract Burma seemed to have become inextricably associated with the name “IHC Caland”. Finally, in the summer of 2003, the Dutch Trade Union Federation (FNV) and the Christian Trade Union Federation (CNV) reached a compromise with IHC Caland regarding its operations in Burma. Nevertheless, the two trade unions and other players in the controversy stressed that they preferred to see the company leave Burma.

Before discussing the company’s motives and the responses to them, we will first present a brief description of the situation in Burma and of the company in question. After that we will devote a few sections to the course of the controversy, focussing explicitly on the various arguments presented by the parties to the conflict and to compromise ultimately achieved.<sup>2</sup>

## **The Situation in Burma**

Burma is situated in Southeast Asia. The country borders on India, Bangladesh, China, Thailand and Laos. It is home to more than 52 million people divided over 135 different population groups. The country is rich in natural resources and has a long history. The Union of Burma gained its independence from Great Britain in 1948. The country was governed as a Western-style parliamentary democracy (Zarni 2000). Although after the Second World War Burma was considered one of the non-aligned countries with the best chances for development and growth, by 1987 it had become the UN’s “least developed country”. In the interval, General Ne Win had put aside the civilian government (1962) after which (1974) the country was transformed into a socialist, one-party state under the Burma Socialist Programme Party (BSPP). Ne Win sealed the country off hermetically from the outside world; the Burmese population was as good as forbidden to travel abroad and visas for foreigners were either refused or restricted to a brief period. Ne Win stayed in power for 26 years, partly as the result of

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<sup>2</sup> This chapter uses newspaper articles, press releases, annual reports and other documents to sketch developments relating to IHC Caland’s operations in Burma. In addition, we used conversations with Peter Ras, coordinator of Burma Centrum Nederland (BCN) and Jeremy Woodrum, a campaign leader in the US Campaign for Burma. We improved the factual accounts in the text using IHC Caland’s and BCN’s comments to earlier versions of this chapter. To aid readability, in this chapter we did not refer to each individual newspaper article. A fully annotated version of this chapter can be requested from the authors.

a highly centralised economic policy, military might and extreme repression by military intelligence and other services (Spit 1995).

Social and political unrest grew in the spring of 1988 and culminated in massive strikes that summer. Protestors demanded economic and democratic reforms. The army crushed the rebellion by force (Ferrara 2003). After the summer, Ne Win withdrew and there was a partial change of government. The new government proclaimed martial law and adopted a new name: State Law and Order Restoration Council (SLORC). Summer saw the birth of a liberation movement, the National League for Democracy (NLD). Aung San Suu Kyi, daughter of one of the heroes of the struggle for independence against the British, returned from abroad to become leader of the NLD. In 1989 the military regime changed the country's name to the Union of Myanmar and opened the country to foreign investment in an attempt to deregulate the Burmese economy and attract more foreign currency. But the authoritarian stranglehold on the population did not diminish (Zarni 2000). Amnesty International (AI), Human Rights Watch (HRW) and other organisations regularly drew attention to the military regime's many flagrant and systematic human rights violations that were aimed especially against ethnic minorities.

In 1990, SLORC organised free elections in which several parties participated. The NLD, led by Aung San Suu Kyi, who had been placed under house arrest well before 1989, gained 62% of the votes, good for more than 80% of the parliamentary seats. However, the SLORC refused to acknowledge the NLD's victory. In 1991, Suu Kyi was awarded the Nobel Peace Prize for her years of non-violent struggle. She was released from house arrest in 1995, but it was reimposed from 2000 to 2002. She was arrested once again in 2003 and held in secret detention for more than 3 months before being returned to house arrest. The house arrest continues today (2010), this in clear violation of international and Burmese law.

## **Calls for a Boycott**

Although the events in 1988 and 1989 received relatively little attention in the Western media, groups of activists in Burma, Thailand and the United States exchanged information, maintained a political lobby and worked for democracy. From this grew several online list servers with news on Burma. The best known is BurmaNet, set up in 1994 with support from the Open Society Institute. The first calls for a boycott were heard in the early 1990s:

By the time BurmaNet was created, there was already a small number of individuals, primarily in the United States, Thailand, and Canada, who were advocating consumer boycotts and were engaged in shareholder, campus and community activism against foreign investors with economic interests in Burma (Zarni 2000: 76).

In September 1995, the Free Burma Coalition (FBC) was established at the University of Wisconsin at Madison in the USA.<sup>3</sup> The organisation was established to combine, streamline and give strength to thus far uncoordinated information and protest actions. FBC used internet and other channels to disseminate its views widely (Danitz & Strobel 1999). Its most important objectives were:

(1) to end foreign investment in Burma under the current military dictatorship through economic activism and (2) to build a genuinely grassroots international Free Burma movement in support of Burma's freedom struggle (Zarni 2000: 78).

Suu Kyi adopted the call for a boycott. From the mid 1990s, she regularly called upon foreign companies to withdraw from Burma.<sup>4</sup> Her appeal gained worldwide attention. Thanks to the FBC and others a dozen multinational companies decided over a relatively brief period to withdraw from Burma. In the US, nearly 20 communities and the Commonwealth of Massachusetts adopted regulations that deterred or forbid companies from having anything to do with Burma. In May 1997, US President Clinton prohibited new investment in Burma. The campaign's impact probably benefitted from the momentum that accompanied the release of Suu Kyi in 1995, 2 months before the FBC was established (Zarni 2000).

FBC and other organisations saw investment in and trade with Burma as support for the military regime. Because foreign companies could only invest in the company through the military junta, part of the yield would accrue to the junta directly or indirectly through taxes. The junta could use these resources to strengthen its position. On IHC Caland's contract, *Burma Centrum Nederland* (Dutch Burma Centre BCN) noted:

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<sup>3</sup> There are similar specialised protest groups in other countries (<http://www.freeburma.org>, last viewed on 20th February 2010).

<sup>4</sup> See the French website *Info-Birmanie* (<http://www.info-birmanie.org/birmanie/rep.htm>, last viewed on 9 December 2004) or Suu Kyi's interview for the European Parliament in which she says "Now is not yet the time for investment. It is more important that there is the right social and political climate which will ensure the right structural changes that are necessary for good economic recovery and sustained development. Until then I think investment is too early". (<http://www.tni.org/archives/vervest/burma.htm>, last viewed on 9 December 2004).

IHC Caland paid taxes to the Burmese junta through various channels, including local taxes, income tax for its own staff and tax on operational costs. In doing so the company supported the actions of the Burmese military regime.<sup>5</sup>

Most protest groups chose an approach that focused on the political and humanitarian situation in the country. Protest groups explained companies' economic activities as political acts.

Partly in response to Aung San Suu Kyi's call, many protest groups and organisations – often united in coalitions – put companies around the world under pressure not to invest in Burma or to halt their operations in that country (Shaw 2004; Spar & La Mure 2003; Vergouw & den Hond 2000). Persistent criticism from protest groups led a few dozen companies to decide to withdraw from the country. They include Heineken (June 1996), Interbrew (October 1996), Philips Electronics (November 1996), PepsiCo (January 1997), Hewlett-Packard (November 1996) and Ericsson (September 1998).<sup>6</sup> Other companies had left Burma earlier. Among them were Levi-Strauss (June 1992), PetroCanada (November 1992) and Amoco (March 1994). The companies offered differing explanations for their actions. Some pointed directly or indirectly to protest threats, others spoke of a shift in priorities. Examples are: preventing reputational loss (Levi-Strauss) or pressure from local groups like the Chicago Coalition for a Democratic Burma and the Coalition for Corporate Withdrawal from Burma. Sometimes, companies invoked the protest groups' arguments. Levi-Strauss, for instance, stated in 1992 that

under current circumstances, it is not possible to do business in Myanmar without directly supporting the military government and its pervasive violations of human rights.<sup>7</sup>

In the Netherlands, too, the 1990s witnessed protests against new investment in Burma. Heineken's decision to withdraw from the construction of a new brewery and to halt exports to Burma was partly due to protests and the threat of a consumer boycott in the Netherlands and the US (Vergouw & Den Hond 2000). Furthermore, in 1997, the Dutch Labour Party (PvdA), the Dutch Socialist Party (SP), the European Parliament Green Party, and the Dutch trade unions FNV and CNV signed an appeal to the business community to

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<sup>5</sup> <http://www.xs4all.nl/~bcn/campagne-ihc.html>, last viewed on 26 November 2004.

<sup>6</sup> For a survey of companies that have left Burma, see the Canadian Friends of Burma (CFOB) website (<http://www.cfob.org/CorpComplicity/CorpComplicity.shtml>) and *The Irrawaddy Online* (vol. 12, no. 9) (<http://www.irrawaddy.org/aviewer.asp?a=457&z=14>, both last viewed on 14 December 2004).

<sup>7</sup> See <http://perc.ca/PEN/1994-03/s-freeman.html>, last viewed on 2 March 2005.

withdraw from Burma. So, the commotion around IHC Caland's contract did not fall out of the blue. Still, the company seemed surprised at the vehemence of the criticism, as we will see further on. This controversy lasted longer than the protests against Heineken's presence in Burma. One important reason can be that IHC Caland could not be hard hit by a consumer boycott. It supplied the offshore oil and gas industry, rather than the consumer market (Vergouw & den Hond 2000).

## IHC Caland

IHC Caland NV was the public holding company of a group of companies that "design and supply tools, ships, complete systems and services to the offshore oil, dredging, shipping and undersea mining industries around the world".<sup>8</sup> IHC stands for *Industriële Handels Combinatie* or Industrial Trade Combine. The company was founded on a cooperation agreement that several Dutch shipyards entered into in 1943. This agreement was concluded in the expectation that together they would be able to accept large orders from Billiton when the Second World War was over. The companies in the combine merged in 1965. The merger was first of all a financial merger, in which the participating companies continued to operate under their own names, but organisational cooperation gradually increased and more companies were added. Finally, the various subsidiaries joined together to form IHC Caland holding company. The company has been listed since 1965 and has been part of the AEX index since 2003.

At the close of 2003, the company was good 4,100 jobs; its six subsidiaries operated in 29 countries. At that time its activities were spread over its offshore oil and gas operations and dredger-shipbuilding divisions. In its 2003 annual report, IHC Caland claimed to be worldwide market leader in most of its niche markets. Tables 7.1, 7.2, and 7.3 show that offshore operations are more systematically profitable than shipbuilding. For that reason, the company announced in August 2003 that it was examining several options for splitting the concern. Shipbuilding operations could be sold, or they could be floated in a separate company. In 2004 IHC Caland split its shipbuilding from its dredging operations. In 2005, after the sale of its shipbuilding operations, IHC Caland continued operating under the name SBM N.V., already in use for its offshore division.

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<sup>8</sup> IHC Caland. Press release, 5 August 2004 ([www.ihccaland.nl/html/News/05aug04.htm](http://www.ihccaland.nl/html/News/05aug04.htm), last viewed on 1 December 2004).

**Table 7.1** Nett annual turnover, in millions

	1996	1997	1998	1998	1999	2000	2001	2002	2003
Nett turnover				Euro					USD
Dredging and Shipbuilding	305	367	337	336	679	555	653	566	569
Off-shore	387	261	311	311	550	273	312	364	1.280
Total	692	628	648	647	1.229	828	965	930	1.849

Source: Annual Reports IHC Caland 1993–2003

**Table 7.2** Annual profit in millions

	1996	1997	1998	1998	1999	2000	2001	2002	2003
Profit				Euro					USD
Dredging and Shipbuilding	12.4	13.2	30.3	30.3	34.9	32.3	20.7	-50.0	-81.7
Off-shore	30.9	54.7	55.1	55.0	56.2	71.8	97.6	130.0	148.8
Total	43.3	67.9	85.4	82.7	85.7	99.7	113.8	74.8	64.4

The contribution of the Holding are taken into account in the total profit calculations. The contribution of the holding company to total results is not mentioned separately in [Table 7.2](#) but is included in the total result.

Source: Annual Reports IHC Caland)

**Table 7.3** Annual total number of employees, per 31 December

	1996	1997	1998	1999	2000	2001	2002	2003
Dredging and Shipbuilding	n.a.	2.066	2.130	2.589	2.706	2.789	2.775	2.289
Off-shore	n.a.	779	809	890	855	1.237	1.542	1.838
Total	2.004	2.845	2.939	3.479	3.561	4.026	4.338	4.148

The employees of the Holding are included in the totals.

The number of employees working for the holding company is not mentioned separately in [Table 7.3](#) but is included in the total number of employees.

Source: Annual Reports IHC Caland

## The Contract

On 13 July 1998, IHC Caland announced that its Swiss subsidiary SBM Production Contractors signed a contract with Premier Petroleum Myanmar Ltd., a British-Burmese joint venture that is partly owned by British Premier

Oil. The contract was for the construction, lease and maintenance of a floating storage and off-loading system (FSO) for development of the Yetagun gas field, 180 km off the coast of southern Burma in the Andaman Sea. FSO systems are moored permanently above or near offshore oil and gas fields to receive and temporarily store oil and gas for transfer to tankers for transport to purchasers. High prices make oil and gas extraction in deeper waters profitable, so the demand for such capital-intensive systems was expected to increase as oil prices rise. The installation was planned to be in operation by the end of 1999. The immense contract was intended to run for 15 years and would reach several hundred million euros. In a first response to this, and a few other orders in Vietnam and China, Dutch financial newspaper *Het Financieele Dagblad* wrote:

The Asian crisis seems to have had little impact on IHC Caland (new-build dredging ships and oil platforms). (*Het Financieele Dagblad* 1998a)

Premier Oil acquired the gas field from US company Texaco because this company could no longer operate it after the US government forbade new investment in Burma in May 1997.<sup>9</sup> Officially, Texaco withdrew after an asset review, but it is generally assumed that political pressure in the US and a desire to polish the company's image were important factors (Knott 1997). Other partners in the operation of the field were Malaysian Petronas, Japanese Nippon Oil, Thai PTT-EP and the Burmese government-owned company MOGE (Myanmar Oil and Gas Enterprises).

## Commotion

Because it involved economic activities in Burma, the contract elicited a storm of protest in the media. Burma Centrum Nederland (Dutch Burma Centre BCN), Amnesty International, XminY Solidarity Fund, Novib (Oxfam Netherlands), and the trade unions FNV and CNV expressed surprise and outrage at the delivery because it indirectly supported the military junta's oppression of the Burmese people. Foreign currency from the Yetagun project would be an important buttress for Burma's weak economy and so, claimed BCN's spokesman, European money would be perpetuating the Burmese regime.

The income ends up with the generals, not the population. (NRC Handelsblad 1998a)

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<sup>9</sup> This boycott struck several US oil companies; Spar & La Mure (2003) described the conflict between Unocal and the US Free Burma Coalition. See also *Trouw* (1998).

Moreover, protest groups pointed out that other companies were just leaving Burma. In addition, Friends of the Earth Netherlands drew attention to alleged problems with the installation of the adjoining land-based infrastructure. A pipeline, some 60 km long was being laid right through the tropical rain forest. The construction of the pipeline would have an adverse effect on biodiversity; villages would be forced to move and the construction would use forced labour.<sup>10</sup> IHC Caland repeatedly stated that it dealt only with off-shore infrastructure and not with whatever may be taking place on land. IHC Caland's CEO noted repeatedly:

We are far away at sea. (Het Financieele Dagblad 1998b)

BCN – one of the main Dutch players in the protest against the presence of IHC Caland in Burma – is a foundation whose goal is to inform Dutch society on developments in Burma and to instigate and coordinate activities that promote democracy and sustainable development in Burma. In addition, the centre seeks to contribute to a constructive dialogue between the various factions in Burma.<sup>11</sup>

After various trade unions, development and environmental organisations set up regular discussions on the situation in Burma, BCN was established in the early 1990s to satisfy the need for systematic action in response to the Burmese opposition's call to support all activities that would benefit democracy in Burma. With financial support from Novib and the Open Society Institute, BCN set up and coordinated activities intended to promote democracy and sustainable development in Burma. To achieve these goals, BCN zealously advocated democracy and human rights; it informed the public about the situation in Burma via consumer campaigns; it tried to exert pressure via campaigns against European companies; and it lobbied the European Union and the Dutch government to adopt economic sanctions against Burma.

Other important players were Friends of the Earth Netherlands (Milieudefensie), the trade unions FNV and CNV, XminY Solidarity Fund and the Dutch Socialist Party (SP). Most of these organisations were

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<sup>10</sup> Friends of the Earth Netherlands, "IHC Caland doet nog steeds zaken met Birma" (<http://www.milieudefensie.nl/earthalarm/alarm77birma.htm>, last viewed on 9 December 2004). See also *The Independent* (2000). Similar discussions were held earlier about laying a gas pipeline for another large gas field, the Yadana field; see *The Financial Post* (1996).

<sup>11</sup> Burma Centrum Nederland (<http://www.xs4all.nl/~bcn/>, last viewed on 26 November 2004).

co-founders of BCN and as such aware of and involved in BCN's activities. But they also sought individual publicity in some campaigns. These organisations are BCN's main support base.

The storm also raged in political circles. A majority of the members of the House of Representatives indicated that the government should set guidelines that hinder companies from doing business with controversial regimes. The European Parliament had scheduled a debate on Burma for the same week that the order was announced. The leader of the Dutch Christian Democratic Party (CDA) stated in Brussels that "Respectable companies no longer invest in Burma". (NRC Handelsblad 1998b). But just at that moment France vetoed a European prohibition against investment in Burma.

Jan-Diederick Bax, then CEO at IHC Caland, said he did not understand the vehement commotion around the contract. He stated in *Het Financieele Dagblad* that gas extraction took place far off the Burmese coast so that the company had nothing to do with internal political problems.

We're not doing anything illegal. Neither the Dutch government nor the Lower House has forbidden investment in Myanmar. So why shouldn't we do it? (Het Financieele Dagblad 1998b)

At the same time, Bax said that the decision would have been different had it involved inland investment in Burma. He called the contract a normal business agreement, one floating storage site like many that IHC Caland operates.

We have nine such installations in Brazil, Congo, Vietnam and elsewhere. As of next year there will be one in Myanmar. (Het Financieele Dagblad 1998b)

After that, Bax invoked the fierce competition in the industry as argument. If he did not carry out the contract, Bax would fail to do his duty as CEO, i.e. to earn money for the company's shareholders. The company repeated these arguments regularly.

IHC Caland's deal remained prominent in the news. On 17 July 1998, in an interview in *Het Financieele Dagblad*, Bax reported that Dutch banks did not want to finance this specific contract because they considered the political risk too high. Moreover, they claimed to be afraid that such financing could harm their interests in the US because of its 1997 prohibition against new investment. In the same interview, Bax said that he was overwhelmed by all the commotion around the order.

We have to see everything in its correct proportions. What good will it do me to start acting proud here in Schiedam. That would have no impact at all. Someone else would just step in and do the project. (Het Financieele Dagblad 1998c)

In a discussion with two PvdA Representatives and a director of FNV, Bax indicated several days later that he was willing to talk about the company's setting up its own code of conduct. He stressed, however, that this code would not address the issue of with which countries IHC Caland may do business; as far as he was concerned the company would follow the Dutch government's guidelines. (Het Financieele Dagblad 1998d)

On 4 August 1998, the trade unions, BCN, XminY Solidarity Fund and Novib met with IHC Caland's management. The discussion proved fruitless. BCN wanted the order cancelled but that was out of the question for IHC Caland.

They repeated their position, we ours,

according to Bax, who had already spoken with PvdA MPs and was scheduled to meet with Amnesty International.

No one may have a say about whether we accept or reject an order, but we are willing to discuss a code of conduct on human rights. We do not infringe these. (NRC Handelsblad 1998c)

After these meetings, BCN, speaking for itself and XminY, announced in an op-ed article in the 8 August issue of *Het Financieele Dagblad* that a range of actions would be undertaken. The groups wanted to approach IHC Caland's employees via the unions as well as contacting the board of directors, the council of supervisors and the larger shareholders. In addition, the groups planned to purchase one share in IHC Caland to obtain a right to address the shareholders' meeting. They also made preparations for public protests. Later that month, the Dutch government announced in a letter responding to various questions from MPs that it would investigate possible economic sanctions against Burma. Such sanctions would have to be imposed as part of a broader European campaign.

When IHC Caland announced its mid-year figures on 24 August 1998, BCN held a protest action at the entrance to IHC Caland's headquarters in Schiedam. Three bloodied "victims" of the regime in Burma lay there. Because this protest action had been announced in advance, the meeting drew much media attention. During the meeting, Bax stressed that he was unable and unwilling to withdraw from a contract that had already been signed, even when the Dutch government should announce a boycott.

If we break this contract, we will get a bad reputation. We do not do such things. (Het Parool 1998)

During the same meeting, Bax said he received no comment on the contract from the company:

I didn't hear a word of concern from a single employee, shareholder or supervisor. They understand how we work (Het Parool 1998)

At the same time, Bax also stated that the situation would be different if IHC Caland's operations were to require dealing with the public.

Like Heineken, then matters would be different. But we work business-to-business. And in our network it's just not an issue. (Het Financieele Dagblad 1998e)

A month later, the Dutch government indicated in response to MPs questions that it disapproved of IHC Caland's investment in Burma but that there were no juridical grounds for taking steps against individual companies at that time.

At that point the controversy disappeared from the media, although "the IHC-Burma question" was cited regularly in relation to investment. On 7 October 1998, for instance, the company had a meeting with the Dutch Association of Investors for Sustainable Development (VBDO) on the risks to investors of investing in Burma. Other publications on sustainable investment and discussions on corporate social responsibility generally often referred to IHC Caland's disputed contract in Burma.

### *Toward a Code of Conduct*

In April 1999, Bax announced that IHC Caland was working on a code of conduct but that it would probably not be presented at the next shareholders' meeting. Drafting a code is labour intensive, Bax noted. ABP pension fund, owner of a few percent of the share capital demanded that the company draft such a code. The Dutch ABN-AMRO Fund also let it be known that it was not happy with the contract in Burma. Nevertheless, Bax stressed that none of the major shareholders disinvested in the company after it accepted the order from Burma. Just before the annual meeting, it was announced that IHC Caland would, indeed, not be presenting a code of conduct on human rights. CEO Bax said that he preferred to wait for draft texts from the EU or the Ministry of Economic Affairs. During the shareholders' meeting, ABP appeared willing to give the company more time. Bax resigned as CEO during this annual meeting. Aad de Ruyter took his place.

Chairman of the supervisory board Langman announced on behalf of IHC Caland that the company would present a code of conduct that same year. However, Langman added that the company did not intend to act differently in similar circumstances unless it would risk government sanctions:

If we should again find ourselves in such a situation, we would again accept the order. We work in many countries that infringe human rights. We do not think that we should act more circumspect when the government does not forbid investment in these countries. (Het Financieele Dagblad 1999)

After the meeting, an ABP director said he was satisfied with the promise:

We prefer that they take their time for this difficult task than that they make hasty decisions. (De Telegraaf 1999)

However, a policy officer at FNV wrote in June 1999:

IHC Caland is using its willingness to develop a code to stave off discussion on investing in Burma and on being an accessory to serious human rights violations (van Wezel 1999: 58).

Directly related to ABP's concern, CNV chairman Terpstra referred a few months later to pension funds' social responsibility; he presented an investment code for pension fund managers containing guidelines for how pension funds should handle their social responsibility. This code is based in part on International Labour Organisation (ILO) guidelines. The two trade unions have seats on the boards of many pension funds, including ABP.

## *A Second Contract and a Code*

By the end of 1999, IHC Caland was again in discredit when it became known that the company had accepted a second order from Burma. Although this was a much smaller order – for delivery of a dredging ship – again commotion arose. In response to parliamentary questions to the Minister of Foreign Affairs, the new CEO De Ruyter said that the board of IHC Caland had never spent as much time discussing any other order as it did this one. However, there were no international rules; for that reason IHC Caland again requested a clear governmental guideline. BCN also rejected this order, since the ship would be purchased directly by the military regime which could then improve the country's infrastructure. IHC Caland objected that a dredging ship could not be used to infringe human rights. At the same time, De Ruyter said that the promised code of conduct was nearly finished.

On a political level discussions were held on the desirability of a code of conduct. The employers association VNO-NCW opposed a national scheme because international discussions on responsible business conduct were then ongoing in the EU; they were intended to culminate in agreements. At the same time the labour party (PvdA) worked on a private member's bill that would have companies demonstrate accountability and responsibility in

their annual reports. All these discussions regularly refer to IHC Caland's controversial contract in Burma.

In May 2000, right before IHC Caland's annual meeting, ABN-AMRO, one of the largest Dutch banks, announced that it had closed the office that it had maintained in Burma since 1995 and sold its shares in IHC Caland. Although the bank denied that this was intended to express a moral judgment, it did refer in a letter to BCN to IHC Caland's investment in Burma. In the same period, Gerrit Ybema (of D66, a liberal Dutch political party), then state secretary for economic affairs, said that he wanted to discourage irresponsible social conduct on the part of the business community by withholding export and investment grants.

IHC Caland's code of conduct was officially presented at a shareholders' meeting held on 26 May 2000. Responses were mixed. The ABP pension fund pointed out that the code did not repair the reputational damage associated with investment in Burma. The pension fund wanted to reassess its ownership of IHC Caland shares. A few months later, the FNV trade union demanded in a policy document that pension funds would engage in socially responsible investment. In this regard, the trade union also raised the issue of ABP's investment in IHC Caland. In March 2001 it became known that ABP did, indeed, sell its participation in IHC Caland in 2000 because of the company's investments in Burma; toward the end of 2001 a group of large European pension funds warned companies operating in Burma that they should carefully weigh the risks of such activities. Dutch pension fund PGGM was one of that warning letter's signatories. Together, the signatories represented a large percentage of the capital, which added weight to their warning.

## **Escalation and “a Different Tone”**

De Ruyter resigned as CEO at the shareholders' meeting held 26 May 2000; it is rumoured that this was due to a difference of opinion on the company's strategic direction. Sjef van Dooremalen succeeded him. When Van Dooremalen, in his turn, left in August 2004, *Het Financieele Dagblad* reported that he had played an important role in discussions on IHC Caland's activities in Burma; this was not so much the result of a new direction for the company, but

because he adopted a different tone from his predecessors, Van Dooremalen was able to blunt the edge of the conflict. (Het Financieele Dagblad [2004a](#))

However, an escalation had preceded this “different tone”.

In June 2000, ministers of OECD member countries agreed on a revision of the *Guidelines for Multinational Enterprises*. These guidelines are a collection of voluntary rules of behaviour for multinational companies. OECD member states drafted a first version in 1976 as part of the *OECD Declaration and Decisions on International Investment and Multinational Enterprises*. The guidelines contain recommendations relating to labour relations, consumer protection and combating bribery, but also on human rights and environmental protection. The Dutch government recommended the OECD guidelines to the business community and planned to use these guidelines as criteria in allocating grants. Responses were mixed. Employer's organisation VNO-NCW is not at all interested in national agreements because in their view only international agreements could guarantee that Dutch companies would be able to compete on a level playing field, while various NGOs preferred to see the guidelines made universally binding on the entire business community. According to van Luijk (2000), however, the new OECD guidelines were a major step forward toward doing international business responsibly. One element in the OECD agreement is the chance to submit a complaint to a national contact point (NCP). There are no sanctions attached to this complaints procedure beyond the publication of whatever contraventions may occur, although unions and other stakeholders hope that an NCP decision will provide grounds for legal action. At the end of 2001, FNV and CNV trade unions announced that they had submitted a complaint to the NCP that summer against IHC Caland on the grounds that the company contributed to the prolongation of the military regime in Burma. The complaints procedure would be rounded off in the summer of 2004.

2002 was a turbulent year in the controversy; pressure on IHC Caland increased. In early 2002, another large company left Burma partly as a result of actions by BCN, Novib, the Clean Clothes Campaign (CCC) and trade union FNV. Triumph, a large Swiss lingerie producer left Burma

because of the public discussion in Europe. (NRC Handelsblad 2002)

In a new series of actions, BCN called upon 89 Dutch provinces, municipalities and companies not to award contracts for dredging ports to IHC Caland, stressing that IHC Caland is one of the last Dutch companies still involved in economic activities in Burma. In April 2002, Friends of the Earth Netherlands sprayed IHC Caland's headquarters with 6,000 l of (ecological) dredged mud to draw attention to

the filthy business that this company does. (Rotterdams Dagblad 2002)

Van Dooremalen responded in an interview with the Dutch daily *De Telegraaf* at the end of March 2002. In the interview, he said that the military regime in Burma was no good, but that it was a governmental duty to demand accountability for this, especially on the part of the EU. He repeated the position that IHC Caland had long held. Still, IHC Caland slowly started to change its attitude. When it published its annual figures a few days later, Van Dooremalen announced that the company would accept no new orders in Burma, although it would not break its current contracts. Van Dooremalen said that this decision was reached at the urgent request of then state secretary of Economic Affairs, Gerrit Ybema (D66 party). BCN spoke of an empty gesture because the current contracts would be served out. In a later letter in *Het Financieele Dagblad* BCN's coordinator pointed out that the state secretary had not caused this "modest 'shift in the right direction' but that increasing social pressure had". (*Het Financieele Dagblad* 2002).

Despite this change of direction, the protests did not stop. For instance, Friends of the Earth Netherlands presented the results of a study on IHC Caland's financial flows; it showed that over the previous years, five Dutch financial institutions had supported IHC Caland with large long-term loans.<sup>12</sup> The presence of one of these institutions, NIB Capital, was striking because NIB is owned by ABP and PGGM pension funds that had earlier spoken critically about IHC Caland.<sup>13</sup> In May 2002, BCN responded to the report by Friends of the Earth by calling on these banks to stop extending loans to IHC Caland; in June 2002 BCN campaigned during IHC Caland's annual meeting to draw attention to Burma's being the world's largest opium producer and to the Burmese government's involvement in drugs trade via whitewashing drugs money through state-owned companies. The message to shareholders was:

IHC Caland not only helps keep the military regime in power, it also helps the Burmese junta whitewash drugs money (BCN undated)

In September 2002, British oil company Premier Oil announced it would leave Burma and transfer its holdings there to Malaysian Petronas. Premier

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<sup>12</sup> The banks in question are ABN-AMRO, ING, Fortis, Rabobank and NIB Capital. See also Friends of the Earth Netherlands, "Bagger Rapport Birma" ([http://www.milieudefensie.nl/globalisering/publicaties/Bagger\\_Rapport\\_Birma\\_deel\\_voor\\_website.pdf](http://www.milieudefensie.nl/globalisering/publicaties/Bagger_Rapport_Birma_deel_voor_website.pdf), last viewed on 26 November 2004).

<sup>13</sup> An ABP spokesman responded with surprise, but as a shareholder he was unfamiliar with the loan from NIB Capital. The subject would be treated in ABP's next meeting with NIB Capital. (*Algemeen Dagblad* 2002)

Oil stated that it was a purely commercial decision, but British and international pressure groups certainly saw the departure as the result of their campaigns. Dutch pressure groups also saw Premier Oil's departure as a good occasion for IHC Caland to withdraw from Burma; after all, its contracting partner had now left. IHC Caland's Van Dooremalen announced that there was little reason for the company to change its stance toward Burma. A contract is a contract and breaking a contract would be expensive and could damage the company's reputation.

On 11 December 2002, BCN and Friends of the Earth Netherlands issued the following press release:

many civil society organisations and most of the Dutch House of Representatives urgently request five banks to halt their support for offshore company IHC Caland.<sup>14</sup>

The call received support from a broad range of organisations and several companies, varying from BCN and Friends of the Earth Netherlands to Pax Christi, XminY Solidarity Fund and several political parties.<sup>15</sup> In addition, the ASN Bank, which took a different stand from the rest of the Dutch banking community also signed the call. In February 2003, the five banks to whom the call was addressed agreed not to finance any more of IHC Caland's Burmese projects. However, the banks did not comply with the call's request to put pressure on IHC Caland to terminate its contract in Burma. ABN-AMRO wrote that it does not normally provide information on its contacts with customers, but that it would make an exception in this case, given the gravity of the situation. In a detailed explanation, the bank noted that it respected IHC Caland's decision to serve out its contract, but it would not finance any contracts in Burma. Van Dooremalen responded by saying that ICH Caland's Burmese operations were financed by Japanese

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<sup>14</sup> BCN and Friends of the Earth Netherlands press release, 11 December 2002. Civil society organisations and parliamentary parties asked the banks to cut off financial support for IHC Caland (<http://www.milieudedefensie.nl/persber/globalisering/021211.htm>, last viewed on 26 November 2004).

<sup>15</sup> BCN, Vereniging Milieudedefensie, Novib, de Stichting Interkerkelijk Organisatie voor Ontwikkelingssamenwerking (ICCO), Humanistisch Overleg Mensenrechten (HOM), Both Ends, the International Union for Conservation of Nature and Natural Resources (IUCN), Greenpeace, Justitia et Pax, Multatuli Travel, Body Shop, Pax Christi, Interkerkelijk Vredesberaad (IKV), Transnational Institute (TNI), Stichting Onderzoek Multinationale Ondernemingen (SOMO), XminY Solidarity Fund, Evert Vermeer Stichting, several parliamentary parties (CDA, VVD, PvdA, GroenLinks, D66, SP and ChristenUnie) and ASN Bank all signed the appeal (<http://www.milieudedefensie.nl/persber/globalisering/021211.htm>, last viewed on 26 November 2004).

banks but, given that the company had already decided not to accept any new orders from Burma, he thought the banks' announcement superfluous.

Campaigns continued in early 2003. In January 2003, the Socialist Party (SP) organised an action around an informal meeting of IHC Caland shareholders at Sliedrecht shipyard. Because SP and BCN each held one share of IHC Caland, two protesters also had access to the meeting where they posed critical questions. BCN and Friends of the Earth Netherlands again protested during the presentations of IHC Caland's figures and at its meetings. Once again an appeal was launched to IHC Caland's principal bankers to have them demand that IHC Caland terminate its operations in Burma. Speaking for the company, Van Dooremalen repeated that the company would not accept any new assignments in Burma but that it would serve out its current contracts and in doing so would follow OECD guidelines. A few weeks later, Van Dooremalen announced that this new stance toward Burma had cost the company a six-million-euro contract for the construction of three dredging ships. The order went to a Chinese company.

### ***Toward a Solution?***

In the summer of 2003, IHC Caland announced that it wanted to address the human rights situation in Burma by speaking regularly to the Burmese ambassador in London (there is no Burmese embassy in the Netherlands). Calling the ambassador to account is a conscious act, flowing from a desire to comply with OECD guidelines and from talks with Dutch trade unions, BCN and Friends of the Earth Netherlands. In talks with the ambassador held on 11 June 2003, the management of IHC Caland and a representative of the trade union expressed their concern about the human rights violations in Burma, especially forced labour, and requested that their concern be passed on to the Burmese government. In the same press release, IHC Caland announced that it would ask the Malaysian oil company Petronas, which had become the new principal after Premier Oil's departure, to comply with OECD guidelines when working in Burma.

A year later, in July 2004, the trade unions' complaint, lodged in 2001 with the National Contact Point for Corporate Social Responsibility, was formally completed. FNV and CNV trade unions and IHC Caland reached a compromise on the company's economic involvement in Burma. The trade unions would check in a year's time whether the company's operations in Burma complied sufficiently with the OECD guidelines. Although the trade unions still thought that IHC Caland should withdraw from Burma, a policy staffer at FNV said that the union

had to moderate its demands because the OECD guidelines did not offer sufficient grounds for it to demand that the company leave. (Rotterdams Dagblad 2004)

Referring to the NCP's hearing of the complaint, NGO representatives nevertheless wondered how effective OECD guidelines were, when there was no control over Dutch multinationals' compliance with these guidelines. Moreover, they point out that the OECD guidelines applied only to investments and not to trade relations and that, in addition, the guidelines were not enforceable. For these reasons they argued for making them less voluntary (Het Financieele Dagblad 2004b).<sup>16</sup>

## **Epilogue: Dialogue or Sanctions?**

Meanwhile, the situation in Burma remains controversial and the call for pressure and sanctions continues. In May 2002, Suu Kyi was released from house arrest. On that occasion she stated that the NLD still opposed foreign investments, aid and tourism to Myanmar as long as the military held power; she said she hoped that dialogue with the regime on national reconciliation could now resume. In the spring of 2003, the military regime again tightened its control over Burma; in May 2003 Suu Kyi was again placed under house arrest.

After this deterioration in the situation in Burma, the Bush government decided at the end of August 2003 to impose additional economic sanctions, in part as response to the expanded lobbying by the US Campaign for Burma (USCB) and with agreement of the government in exile. The "Burmese Freedom and Democracy Act" prohibits imports from Burma, freezes the assets of the Burmese government in the US, denies entry to the US to SPDC (the State Peace and Development Council, SLORC's successor) members and offers general support to those working for freedom, democracy and peace in Burma. Congress must reconfirm the act annually. In September 2004, the European Parliament also adopted proposals for heavier sanctions against Burma because the country did not do enough to respect human rights. This measure ensured that European companies could no longer do business with Burmese state-owned companies. One important condition to which companies and political leaders regularly referred seems to have been

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<sup>16</sup> This is an op-ed article written by a staff-member at the Centre for Research on Multinational Corporations (SOMO) and a staff member at Irene, an international organisation monitoring the strategies of international companies and employees' rights.

met. Shortly after the European decision in November 2004, the Dutch parliament adopted a motion calling for sanctions and political pressure. That motion called on the government to work for further EU measures such as prohibiting investment, prohibiting the import of teak wood, and to try to have the human rights situation in Burma placed on the agenda of the UN Security Council.

It is hardly possible to predict what turn campaigns against Western companies operating in Burma will take. Arguments presented in this discussion concentrate on weighing economy and market regulation against arguments of political morality (fostering democracy, respecting human rights). Sometimes other voices can be heard; the advantages and disadvantages of boycotts and investment in Burma have been discussed in other publications (e.g. White 2004) and newspaper articles (Financial Times 2004a).<sup>17</sup> Since the summer of 2003, the US Free Burma Coalition (FBC) seems to have chosen for a radically different course. In articles on its website, the organisation notes that it is no longer convinced that Western sanctions and isolating Burma are an effective way to stimulate democracy. FBC now argues for greater cooperation and openness. The background of the publications on the FBC website is not known. Jeremy Woodrum, current USCB campaign leader and former FBC staff member, explained in a telephone conversation on 4 February 2005 that the FBC imploded in 2003 after an internal conflict; all but one of the staff members left FBC and set up the USCB in September 2003 to continue their activities. Since then, FBC has fallen still. Woodrum notes that since that time the Burma movement no longer takes the FBC seriously.

In response to the question what BCN thought of the FBC's changed position, the BCN answered that the legitimacy of their pro-sanction position would dissolve were the Burmese population to turn unanimously against sanctions, but there are no indications that this will happen. BCN has had insufficient contact with FBC to be able to explain its apparent change of course, but it also says that there are still many Burma groups that do support the pro-sanction position,<sup>18</sup> among these are the USCB as is apparent from its leaders' letters to newspapers (Financial Times 2004b). The government in exile also continues to favour sanctions. Protests against companies operating in Burma seem not to have been suspended yet. In addition, at the end of 2004, there was a power struggle

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<sup>17</sup> Similar discussions about the announcement of US sanctions took place in Dutch media in the summer of 2003.

<sup>18</sup> BCN oral communication from coordinator P. Ras (12 January 2005).

within the Burmese regime which resulted in a stronger position for the hardliners. The situation in Burma remains controversial and Western companies operating in that country continue to run the risk of being called to account.

All things considered, the Dutch parties grew closer together in 2003. IHC Caland visited the Burmese ambassador in London to discuss the human rights situation in Burma while BCN and Friends of the Earth Netherlands suspended their campaigns in anticipation of IHC Caland's next steps. The trade unions FNV and CNV will check whether the company's operations in Burma comply sufficiently with the OECD guidelines. As far as Dutch protest groups are concerned, whether IHC Caland's compromise has really warded off all commotion on its presence in Burma will depend on whether the company rides out its current course and continues to call the Burmese government and its business partners in the Yetagun project to order for their part in the human rights situation.

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