

Bart Gaens

POLITICAL CHANGE IN MYANMAR

FILTERING THE MURKY WATERS
OF “DISCIPLINED DEMOCRACY”



ULKOPOLIITTINEN INSTITUUTTI
UTRIKESPOLITISKA INSTITUTET
THE FINNISH INSTITUTE OF INTERNATIONAL AFFAIRS

Bart Gaens
Researcher
The Finnish Institute of International Affairs

The Finnish Institute of International Affairs
Kruunuvuorenkatu 4
FI-00160 Helsinki
tel. +358 9 432 7000
fax. +358 9 432 7799
www.fii.fi

ISBN: 978-951-769-372-1
ISSN: 1456-1360

The Finnish Institute of International Affairs is an independent research institute that produces high-level research to support political decision-making and public debate both nationally and internationally. The Institute undertakes quality control in editing publications but the responsibility for the views expressed ultimately rests with the authors.

TABLE OF CONTENTS

1. INTRODUCTION	4
2. MYANMAR'S REFORM PROCESS: FROM OUTLAW STATE TO ASEAN CHAIR	6
2.1 Background	6
2.2 The 2003 military road map and the post-2011 reforms	7
3. BOLSTERING "DISCIPLINED DEMOCRACY"	9
3.1 The entrenchment of the military in national politics	9
3.2 The establishment of "disciplined democracy"	10
3.3 The 2008 Constitution	12
4. THE EFFECTS OF WESTERN SANCTIONS	14
4.1 The EU's targeted sanctions	14
4.2 Assessing the EU's "smart" Myanmar policy	18
4.3 A crucial (unintended) outcome: Myanmar buffering Beijing	22
5. CONCLUSION	27
LIST OF ACRONYMS	29

1. INTRODUCTION

In April 2012 the European Union opened a representative office in Yangon, Myanmar¹ and suspended all of its restrictive measures against the country, with the exception of the arms embargo. After easing sanctions, Barack Obama became the first US President in office to visit Yangon in November 2012. The Association of Southeast Asian Nations (ASEAN) agreed to allow Myanmar to take on the rotating Chair of the regional organization in 2014. These examples mark important milestones in Myanmar's reform process and illustrate the growing regional and global recognition of the country's international legitimacy. Compared to just a few years ago when Western powers regarded Myanmar as a pariah state and, in the words of former US Secretary of State Condoleezza Rice, as an "outpost of tyranny"², this illustrates a stunningly rapid process of political transformation. As perhaps the most eye-catching symbol of the reforms, the leader of the political opposition, Aung San Suu Kyi³, after being released from house arrest and allowed to run in the parliamentary by-elections of April 2012, secured a seat in Myanmar's Parliament.

Academic analysts and the global media have tried to pinpoint the catalysts behind the seemingly sudden and rapid transformation of this military dictatorship and authoritarian state. The impact of the Arab Spring has been mentioned as one such driving force. The fear of a bottom-up protest movement of the kind that occurred in the Arab world starting in late 2010 purportedly strengthened the "soft-liner" generals' determination to press forward with the reforms.⁴ Anxiety about street protests such as those in 1988 and 2007 happening again may consequently have had a marginal impact in accelerating the reforms.

Furthermore, the personal role of Thein Sein, Myanmar's reformist-minded President in office since 30 March 2011, who enthusiastically embraced political and economic reforms, has been emphasized.⁵ Together with Aung San Suu Kyi, Thein Sein has become the global personification of the "Myanmar Spring". Replacing Senior General Than Shwe, former chairman of the ruling State Peace and Development Council (SPDC) and Myanmar's dictator for nineteen years, Thein Sein shed his military uniform and, after taking up office as president, quickly came to be seen as "Myanmar's Gorbachev" and

1 In July 1989 the military junta changed the name of the country from "Union of Burma" to "Union of Myanmar". Since October 2010 the country has officially been called "the Republic of the Union of Myanmar". While the UN and many states accepted the name change, the US has consistently used Burma. The European Union has preferred the denomination Burma/Myanmar. This paper will use "Myanmar", except to denote the country before 1989, and will use "Burmese" as an adjective and to refer to the official language. Burman is used to refer to the ethnic group. Both Burma and Myanmar derived from the name of the country's majority ethnic group. Pronounced in Burmese with a different register, Burma (Bamar or Bamah) is the more colloquial form as compared to the more literary Myanmar (Myama).

2 Rice used the term in 2005, referring to Belarus, Cuba, Iran, North Korea and Zimbabwe, in addition to Myanmar.

3 Born in 1945 and nicknamed "the Lady", she is the daughter of Aung San (1911–1947), "the father of modern Burmese independence". See David I. Steinberg (2010), *Burma/Myanmar. What everyone needs to know*, Oxford: Oxford University Press, p. 42.

4 Thomas Carothers (2012), "Is Burma democratizing?", Carnegie Endowment for International Peace, Q&A, April 2, retrieved 20 November 2012, <http://carnegieendowment.org/2012/04/02/is-burma-democratizing>. See also "Pragmatic virtues", *The Economist*, 11 February 2012, and Bill Keller, "The Burmese odd couple", *The New York Times*, 30 September 2012.

5 "Pragmatic virtues", *The Economist*, 11 February 2012, and Hannah Beech, "Inside man", *Time Magazine*, 21 January 2013.

a “champion of reform”. During nearly two years in office, his government released political prisoners, improved freedom of expression and relaxed media censorship, legalized labour unions, and allowed opposition parties to compete in democratically held parliamentary by-elections. Thein Sein’s name even appeared on a few shortlists for Nobel Peace Prize nominees.⁶ According to arguments crediting Thein Sein’s personal role, the resignation of hard-liner Than Shwe, who has been described as one of the world’s least-studied dictators⁷, allowed for a smooth transition to a different generation of military generals and to a new power structure which allowed soft-liners such as Thein Sein to feel secure enough about implementing changes.⁸ Or, more generally, the worry about the lack of legitimacy spurred on the soft-liners in Myanmar’s military-based authoritarian power establishment to initiate political and economic reforms.⁹

Nevertheless, this working paper argues that it is necessary to take into account a longer-term perspective to shed light on Myanmar’s “orchestrated opening” by the military-turned-civilian government. The paper seeks to clarify the underlying causes of and motivations for the shift towards what the military regime has labelled “disciplined democracy”, by focussing on two key catalysts for change. First, and most importantly, the analysis will look at the internal dimension, namely the regime’s motivations to discard their uniforms and “civilianize”, and at the underlying drivers for the ensuing process of reform. The paper will argue that Myanmar’s reforms were the result of a carefully choreographed, long-term process of establishing a strong and legitimate role for the military and civilianized military in a unitary state structure. Second, the paper will explore the external dimension by examining the aspiration to balance an increasingly lopsided foreign presence in Myanmar. The economic importance in Myanmar of countries such as China in particular has been exacerbated by Western sanctions and a policy of isolation. When considering the impact of Western sanctions, the paper will focus on the role that the European Union in particular has played in trying to effect change in Myanmar, through over two decennia of “targeted” restrictive measures and “smart sanctions” against the Burmese regime. The paper will start, however, by providing a concise outline of the recent political reforms.¹⁰

6 See for example Peace Research Institute Oslo (2012), Nobel Peace Prize 2012: PRIO Director’s speculations, Oslo: PRIO, retrieved 21 December 2012, <http://www.prio.no/About/PeacePrize/PRIO-Directors-Speculations-2012/>.

7 Benedict Rogers (2010), *Than Shwe. Unmasking Burma’s tyrant*, Chiang Mai: Silkworm Books, p. 3.

8 Marco Bunte & Clara Portela (2012), “Myanmar: the beginning of reforms and the end of sanctions”, GIGA Focus International no 3, pp. 2-3.

9 Carothers, op.cit.

10 Due to space constraints and the research focus chosen, this working paper will not examine Myanmar’s ethnic tensions in detail, nor will it discuss in full the rule by the pre-1988 junta under General Ne Win.

2. MYANMAR'S REFORM PROCESS: FROM OUTLAW STATE TO ASEAN CHAIR

2.1 Background

Myanmar is a predominantly Buddhist country with approximately 55 million inhabitants. The country is particularly rich in natural resources, including oil, gas, teak, minerals, and gems, and is situated at a strategically important crossing point in Southeast Asia, bordering China, Thailand, India, Laos and Bangladesh. Despite its natural riches, poverty is widespread: Myanmar is the poorest country in Southeast Asia, with over 32% of the population living in poverty¹¹, while the wealth is in the hands of a limited group of military leaders and their business cronies. Health expenditure amounts to only about two per cent of GDP, constituting globally the second to last ranking after North Korea.¹²

Myanmar is ethnically highly heterogeneous, and includes 135 officially recognized ethnic groups divided into eight official “races”, of which the Burman is the largest.¹³ The country has witnessed a high number of ethnic insurgencies against the Burman majority. At present the government has reached ceasefire agreements with several ethnic groups (including the United Wa State Army, UWSA and the Karen National Union, KNU)¹⁴, but fighting, on land as well as through air strikes, continues against the Kachin Independence Army (KIA) in the country’s northern region.

After a period of democratic rule following independence from the British in 1948, Burma came under military rule after a coup in 1962. Under General Ne Win, a seventeen-person strong junta referring to itself as the Revolutionary Council proclaimed the “Burmese Way to Socialism”. Ne Win led the country into a state of isolation, expelling up to 400,000 foreigners and immigrants.¹⁵ He cracked down on communist rebels, engaged in a civil war with several ethnic groups, and institutionalized single-party military rule by the Burmese Socialist Programme Party (BSSP) through a constitution passed in 1974.

In 1988 a relatively minor incident in a local shop, followed by student demonstrations, resulted in a nationwide popular uprising. After crushing the demonstrations taking place on August 8¹⁶, a new junta (the State Law and Order Restoration Council, SLORC) came to power under General Saw Maung. It abolished the constitution, and changed the

11 CIA World Factbook (2012), “Burma”, retrieved on 17 December 2012, <<https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>>.

12 Ibid.

13 The Burman or Bamah group represents an estimated 69% of the population. Other ethnic groups include the Shan (8.5%), the Karen or Kayin (6.2%), the Arakan or Rakhine (4.5%), the Mon (2.4%), the Chin (2.2%), the Kachin (1.4%), and the Kayah (0.4%) (Steinberg, *Burma/Myanmar*, p. xxiv). There are many more ethnic groups, including the roughly 800,000 Muslim Rohingya residing in the Rakhine region, who are regarded as illegal immigrants and stateless. Violence targeting the Rohingya and other Muslim groups flared up in November 2012.

14 Other important agreements were signed with the Shan State Army–South and Shan State Army–North, the New Mon State Army, the Karen National Liberation Army Peace Council, the Karenni National Progressive Party (KNPP), and the Arakan Liberation Party (ALP). For a list of ceasefire agreements, see International Crisis Group (ICG) (2012), *Reform in Myanmar: One year on*, Asia Briefing no 136, 11 April, p. 18.

15 Thant Myint-U (2006), *The river of lost footsteps. Histories of Burma*. New York: Farrar, Straus and Giroux, p. 296.

16 Hence the reference to the 8/8/88 massacre.

name of the country from Burma to Myanmar. Years of military suppression and human-rights abuses followed, including discrimination against ethnic minority groups, internal displacement, forced labour, rape, and the use of child soldiers.¹⁷ In order to quell the popularity of the main opposition party, the National League for Democracy (NLD), party leader Aung San Suu Kyi was placed under house arrest, for what would become a total of fifteen years. The refusal to honour the outcome of the 1990 parliamentary elections, which ended in a landslide victory for the NLD¹⁸, resulted in Western sanctions against the regime, turning the country into the pariah state it would remain until 2011. Tensions within the military surfaced in 1992, when Than Shwe purged Saw Maung and appointed himself Head of State and leader of the Myanmar armed forces. Under his rule, the SLORC morphed into the State Peace and Development Council (SPDC) in 1997, while gaining membership of ASEAN in the same year. Based on its core policy of constructive engagement, the Southeast Asian regional organization allowed Myanmar to join, much to the dismay of the European Union.¹⁹

2.2 The 2003 military road map and the post-2011 reforms

In 2003, the head of military intelligence, General Khin Nyunt, was appointed as prime minister. On this occasion the SPDC announced a seven-step road map towards “disciplined democracy” that aimed to create a new constitution and establish a civilian government. The 2003 road map consisted of the following steps: (1) establish a National Convention to draft a new constitution; (2) outline the steps needed to establish democracy after the National Convention is concluded; (3) draft a constitution; (4) hold a national referendum to approve the new charter; (5) elect a democratically representative government; (6) convene the parliament; and (7) build a modern, developed and democratic nation. Purportedly out of fear of a US invasion, in 2005 the military junta relocated the national capital from Yangon (Rangoon) to Naypyidaw.²⁰ Two years later the Armed Forces (Tatmadaw) mercilessly cracked down on the Saffron Revolution, a series of non-violent protests led by Buddhist monks and sparked by the increase in fuel prices.

Even though Myanmar was badly hit by Cyclone Nargis on 8 May 2008, leaving over 138,000 dead, the junta went ahead with what they considered the fourth step in their road map, and held the constitutional referendum scheduled for 10 May, a day which was believed to be auspicious. Only in the hardest-hit regions was the referendum

17 See the report to the UN commissioned by former Czech President Vacláv Havel and Archbishop Desmond Tutu: DLA Piper Rudnick Gray Cary (2005), *Threat to the Peace: A Call for the UN Security Council to Act in Burma*, retrieved 11 December 2012, <http://www.dlapiper.com/US/news/detail.aspx?news=8bcac83e-c5b9-4a8b-924e-a72ca16d5c1c>.

18 The NLD won 82% of the votes.

19 Myanmar's ASEAN membership and record of human rights abuses in the country marred the EU-ASEAN bilateral relationship, but also had a negative bearing on the interregional Asia-Europe Meeting (ASEM) to which Myanmar was finally admitted in 2004. See Silja Keva (2008), “Human Rights and Burma/Myanmar in the ASEM Dialogue”. In: Bart Gaens (ed.), *Europe-Asia Interregional Relations – A Decade of ASEM*, Aldershot: Ashgate.

20 Astrology may have played a minor role in the decision to relocate the capital. Than Shwe is said to have used astrology and numerology as an auxiliary force, influencing key dates, auspicious times, and numbers including the length of prison sentences, for example. See Rogers (2010), pp. 172-173.

postponed until 24 May. According to the military, voter turnout was 98.12%²¹, in spite of the devastation caused by the cyclone. Official sources claimed that the constitution was approved by over 92% of the voters on both occasions.²² The regime subsequently held general elections (the road map's fifth step), equally regarded as severely flawed, on 7 November, 2010. With 25% of the seats already constitutionally reserved for the armed forces, the military-backed USDP (Union Solidarity and Development Party) won an overwhelming 80% of the seats up for election by blatantly manipulating the votes.²³

Shortly after the general elections, however, a number of military officers who had shed their uniforms formed a nominally civilian government. They initiated a process of political and economic reforms, freeing political prisoners, improving freedom of expression, legalizing labour unions, signing ceasefire agreements and engaging in a dialogue with ethnic minority armies. Myanmar's parliament convened in January 2011, and in the following month selected Thein Sein as president. Since establishing a nominally civilian government, reforms have taken place in rapid succession. In response to wide public protest, the large-scale, Chinese-funded Myitsone dam project was suspended in late September 2011. This was followed by the release of 6,000 prisoners, including 203 political prisoners in October, and the permission granted to the NLD to register as a political party. Approximately 400 additional political prisoners were released on two further occasions in 2012. The country agreed on a strategy to eliminate forced labour by 2015, and passed laws to allow labour unions, criminalize forced labour, and create a dispute-resolution mechanism. In April 2012 parliamentary by-elections were held, generally considered as free and fair, resulting in a victory for the NLD, winning 43 out of 44 contested seats. Media censorship was abolished.

International recognition of Myanmar's reforms followed. ASEAN has endorsed Myanmar's chairing of the organization in 2014. In December 2011 US State Secretary Hillary Clinton visited the country as the first senior American official in half a century, trailed by French Minister for Foreign Affairs Alain Juppé and British Foreign Secretary William Hague early in 2012. Catherine Ashton, the EU's High Representative for Foreign Affairs and Security Policy, visited in April 2012, opening an EU representative office in Yangon. The EU announced the decision to review Myanmar's exclusion from the Generalized System of Preferences (GSP), and suspended all restrictive measures except the arms embargo. Within two years, Myanmar has transformed dramatically from an international outlaw state to East Asia's most attractive investment hub and to a legitimate political actor. What were the key drivers behind this seemingly sudden transformation?

21 *New Light of Myanmar*, 3 June 2008.

22 *New Light of Myanmar*, 2 June 2008.

23 International Crisis Group (ICG) (2011), Myanmar's post-election landscape, Asia Briefing no 118, 7 March, p. 2.

3. BOLSTERING “DISCIPLINED DEMOCRACY”

3.1 The entrenchment of the military in national politics

First of all, it is important not to overemphasize the discontinuity with the past, as Myanmar’s conversion was to a large extent following a scripted scenario. Indeed, in many ways the current changes are an outcome of the military’s long-term logic, denoting continuity rather than discontinuity.²⁴ After all, even Thein Sein, Myanmar’s decidedly reform-minded president, is a former general whose past is not without controversy. He has been described as one of Than Shwe’s key lieutenants, highly limited in number, showing “total loyalty” to the dictator.²⁵ Between 1997 and 2001 he served as officer in the Shan state, as head of the Triangle Region Military Command, and was rumoured to be close to local drug lords in the region²⁶, known for its opium production.²⁷ Furthermore, according to leaked US-embassy cables, he was involved in the crackdown against the 1988 uprising in support of democracy, in his capacity as commander of a Light Infantry Division.²⁸ Thein Sein was handpicked by strongman Than Shwe in 2003 as a key player in the step-by-step implementation of the road map and functioned as prime minister under the junta.²⁹ Thein Sein himself, in describing Myanmar’s irreversible changes, has also emphasized continuity with the preceding regime that planned the reform process and implemented democracy by taking step-by-step measures.³⁰ Current changes can therefore be seen as having been in the making for a long time.

Even if to Western observers the reforms seem sudden and swift, the ruling elite view the process as having started over a decade ago with their “road map to discipline-flourishing democracy”. The military were likely aware of the unsustainability of authoritarian rule in the long term. A 2005 interview with a former Chinese ambassador clarifies that military leaders were intent on finding a way out and giving way to a civilian government, but only after protecting their private and commercial interests and meeting the needs of the armed forces community.³¹ In other words, “all the top generals want assurances that, if they willingly step aside, they and their families will retain their assets and will not be prosecuted”.³² For the military, a gradual shift towards a tailored democratization process had to go hand in hand with the protection of their

24 See also Robert H. Taylor (2012), “Myanmar: from army rule to constitutional rule?”, *Asian Affairs*, vol 43, no 2, July.

25 Rogers, p. 91.

26 The so-called Golden Triangle overlapping the border regions of Myanmar, Thailand and Laos.

27 “The road up from Mandalay”, *The Economist*, 21 April 2012.

28 “Tough(er) guys move up in Rangoon: biographic information on the new prime minister and S-1”, Wikileaks, 20 October 2004.

29 Shwe Mann, currently Speaker of the Lower House and a strong candidate to become the next president after the 2015 general elections, was also closely aligned with Than Shwe.

30 Lally Weymouth, “Burma’s President gives his first foreign interview”, *Washington Post*, 20 January 2012.

31 “A Chinese fly-on-the-wall view of the Burmese regime”, Wikileaks, 30 September 2005.

32 “Burma’s generals: starting the conversation”, Wikileaks 2 April 2009.

own interests and those of their families. Their impunity and avoidance of accountability for crimes committed therefore had to be inscribed constitutionally.

As well as looking for an “escape strategy”, the junta have always seen the military as the only guarantor of unity and stability.³³ For them, it was vital that a strong army retains a leading role in ensuring political and economic stability, also after power is transferred to a nominally civilian government. In 2005 Than Shwe declared that the “Tatmadaw will systematically hand over State power to the public, the original owner”.³⁴ At the same time he compared Myanmar’s democracy to a newly-dug well that for some time will produce murky water, implying that it would need the military to filter it.³⁵ In 1990, after the elections which the NLD won with a landslide victory, General Saw Maung already proclaimed that even after a new government took office, the military would not relinquish what it saw as its basic duties, namely preventing disintegration of the nation and national solidarity, and defending national independence and sovereignty.³⁶ The Tatmadaw regards itself as the single most important instrument for ensuring “Union Spirit”, a sense of patriotism that all of Myanmar’s ethnic groups (nationalities) need to safeguard. In their words, fruit trees and flowering plants in a garden only grow well “under the nurturing work of a competent gardener”.³⁷

3.2 The establishment of “disciplined democracy”

Key to achieving this goal was the establishment of “disciplined democracy” as the military’s overarching security ideology and national binding agent, and the transition to a “genuine, disciplined multi-party democratic system”. The origins of “disciplined democracy” go back to the early days of the SLORC. The formulation is said to have been launched by former prime minister Saw Maung in 1988, who argued that “you need full discipline to enjoy full democracy”, whereby discipline implied rules and regulations compatible with the state’s structures and in line with historical traditions, customs and culture of nationality.³⁸ By 1997 the SLORC’s successor, the SPDC, had developed the idea of “disciplined democracy” into a more intricate concept as a tool to achieve national

33 Than Shwe is said to have remarked in 1992 that the military “cannot stay in power too long without risking unpopularity” and that fragmentation of the Burmese state “can only be avoided if the people are brought in” (“Burma’s leader exudes confidence – and a softer line”, Wikileaks, 18 September 1992). However, he was also convinced that “the nation is strong only when the Tatmadaw (army) is strong” (“Burma’s armed forces pat themselves on the back and promote the army cinc”, Wikileaks, 29 March 1994).

34 *New Light of Myanmar*, 1 July 2005.

35 David I. Steinberg (2010), “The United States and Myanmar: A ‘Boutique Issue?’”, *International Affairs*, vol. 86, no. 1, p. 192; David I. Steinberg (2010), “Aung San Suu Kyi and U.S. policy toward Burma/Myanmar”, *The Journal of Current Southeast Asian Affairs*, vol. 29, no. 3, p. 46. The actual quote delivered in a speech on Armed Forces Day, 27 March 2009, was as follows: “In a democratization process, given that a well-established mature democracy that is the end result of two or three centuries of development cannot reasonably be made to appear overnight, all-round consideration and thoughtful action will be advisable. Democracy in Myanmar today is at a fledging stage and still requires patient care and attention. As a Myanmar proverb puts it, a recently dug well cannot be expected to produce clear water immediately” (*New Light of Myanmar*, 22 March 2011).

36 *Washington Post*, 29 May 1990.

37 *New Light of Myanmar*, 1 December 2010.

38 Gustaaf Houtman (1999), *Mental culture in Burmese politics: Aung San Suu Kyi and the National League for Democracy*, Tokyo: Institute for the Study of Languages and Culture of Asia and Africa, p. 81.

unity or “Myanmafication”.³⁹ As argued by an International Crisis Group report, “the regime’s ‘national security’ ideology equates the security of the state with that of the regime and the Tatmadaw”, based on the “three national causes” of non-disintegration of the Union, non-disintegration of national solidarity, and perpetuation of national sovereignty.⁴⁰ The image of unity and national solidarity is much more than simple rhetoric, and outweighs pluralism and ethnic diversity. In the mind of the military, national reconsolidation (rather than the opposition’s preferred term reconciliation) by the military is indispensable for preventing chaos and disintegration.⁴¹ One prime goal for the junta since the early 1990s, when the elections made it clear that the general population did not exactly share the notion of military leadership to save the country from disintegration, has been to devise a political system in which a strong role for the Defence Forces is embedded.

There are strong indications that Myanmar looked to Indonesia for a possible developmental model to follow, as was pointed out by UN Special Envoy Gambari in 2008.⁴² But Myanmar eyeing Indonesia can be traced back much further, to the early 1990s when the SLORC went in search of a system in which the military leadership is secured while enjoying the tolerance or even the tacit support of the majority of the population.⁴³ In Indonesia, Suharto’s “controlled democracy” focussed on a strong, nominally-civilian regime with a heavy military component, and on development and economic growth.⁴⁴ In Indonesia, rich in natural resources and highly multiethnic like Myanmar, the military saw themselves as the prime defenders of national unity and sovereignty, and as in charge of political guidance. This role was enshrined in the constitution.

The then First Secretary, Khin Nyunt, visited Jakarta in 1993 in order to study the dual function (*dwifungsi*) that allowed the military a strong role not only as defence forces but also in terms of politics, economy and society. In Indonesia under Suharto, the country’s president for three decades (1967–1998), the military was in charge of defending the country against internal and external threats, but also controlled ideology, politics, the economy, and social, cultural and religious issues.⁴⁵ In order to follow the Indonesian example, in September 1993 the SLORC firstly created the USDA, a military-run civilian political grouping for rallying support similar to Suharto’s GOLKAR, and secondly sought to enshrine the Tatmadaw’s political role in a new constitution.⁴⁶

The National Convention eventually needed fourteen years (1993–2007) to draft such a military-biased constitution. The process started in 1993 but was abandoned three

39 Ibid.

40 International Crisis Group (ICG) (2000), *Burma/Myanmar: how strong is the military regime?*, Asia Report, no 11, 21 December, p. 8.

41 International Crisis Group (ICG) (2000), p. 10.

42 “Myanmar looking at Indonesian model: Gambari”, *Daily Times*, 27 March 2008.

43 Ulf Sundhaussen (1995), “Indonesia’s New Order: a model for Myanmar?”, *Asian Survey*, vol. 35, no. 8, p. 768.

44 Between 1970 and 1997 Indonesia’s economy grew by an average of 6% per year, the GDP per capita increased from 80 USD tot 1,300 USD, and 76 million people escaped poverty (“Suharto’s end game”, *The Economist*, 24 July 1997).

45 Myo Tun, Sai Khaing (2011), “A comparative study of state-led development in Myanmar (1988–2010) and Suharto’s Indonesia: an approach from the developmental state theory”, *Journal of Current Southeast Asian Affairs*, vol. 1, p. 70.

46 Sundhaussen, pp. 777–778.

years later when the NLD delegates left the convention in protest. After Thein Sein was appointed as Chairman of the Convening Commission of the National Convention in 2003, the process restarted in 2004 as part of the road map to “disciplined democracy”. A comparison with Indonesia thus yields three similarities: first, both countries organized nominal elections to gain broader support from the West, albeit only after limiting civil liberties;⁴⁷ second, the leadership of both countries aimed to avoid personal backlashes by limiting democratic procedures;⁴⁸ and third, both regimes institutionalized military involvement in sectors other than defence through the constitution.⁴⁹

3.3 The 2008 Constitution

A vital step for the military junta was therefore to force through a military-biased constitution in 2008. In this 213-page document, the ruling junta achieved their fivefold aim of (1) guaranteeing a central role for the military in the core state structure; (2) entrenching a strong position for the military in the parliament; (3) achieving impunity and escaping future prosecution; (4) preventing Aung San Suu Kyi from becoming president or vice-president; and (5) guaranteeing military veto power against constitutional amendments:

First, the constitution codifies participation by the Tatmadaw in the national political leadership as one of the state’s six “consistent objectives”, while making the Defence Services responsible for safeguarding three other core objectives, namely the non-disintegration of the Union, the non-disintegration of national solidarity and the perpetuation of sovereignty (Chapter 1 section 20). If any of these three elements are under threat, “the Commander-in-Chief of the Defense Services has the right to take over and exercise State sovereign power” after the president has declared a national state of emergency (Chapter 1 section 40c; Chapter 11 section 417, 418).

Second, the constitution requires that 25% of parliamentary seats automatically go to the military, namely 110 out of 440 seats in the House of Representatives (Lower House, Pyithu Hluttaw) (Chapter 4 section 109b), and 56 out of 224 seats in the House of Nationalities (Upper House, Amyotha Hluttaw) (Chapter 4 section 141b). In addition to the “civilianized” military officers part of the Union Solidarity and Development Party (USDP) who have obtained seats in the parliament, this virtually entrenches the power of the military in the legislative process and provides a “structural guarantee” that military interests remain at the core of government and parliament.⁵⁰ In other words, for the military this justified playing their envisaged “leadership role in national politics with the mandate given according to the constitution by the people”.⁵¹

47 William Case (2009), “The evolution of democratic politics”, in Mark Beeson (ed.), *Contemporary Southeast Asia*, New York: Palgrave Macmillan, pp. 95, 98.

48 Case, p. 99.

49 Myo Tun, p. 83.

50 International Center for Transnational Justice (ICTJ) (2009), *Impunity prolonged: Burma and its 2008 constitution*, New York: ICTJ, p. 3.

51 *New Light of Myanmar*, 24 March 2011.

Third, referring to the junta's former denominations SLORC and SPDC, the constitution furthermore stipulates that no proceedings shall be instituted against any member of the SLORC or the SPDC for "any act done in the execution of their respective duties" (chapter 14 section 445). The constitution thus guarantees their impunity, even if this may violate international law and international treaty obligations.⁵²

Fourth, the constitution also effectively precludes Aung San Suu Kyi from becoming president or vice-president, as the person who holds either of these positions shall "he himself (sic), one of the parents, the spouse, one of the legitimate children or their spouses not owe allegiance to a foreign power, not be subject of a foreign power or citizen of a foreign country" (Chapter 3 section 59f). Suu Kyi's deceased husband Michael Aris was British, and her two sons have British passports.

Fifth, with one out of four seats in the parliament automatically belonging to the military, it will be very hard to amend the constitution without their support. In order to pass an amendment bill, an approval rate exceeding 75% is needed. This gives the military virtual veto power over any proposed amendments. In addition, for the most important sections of the constitution, including all the stipulations mentioned above that entrench the military's power, a nationwide referendum needs to be held requiring "the votes of more than half of those who are eligible to vote" (Chapter 12 section 436).

In sum, the junta was intent on only gradually implementing a process of controlled change in order to prevent chaos and preserve national unity, especially in view of Myanmar's highly heterogeneous population. Drafting a new constitution was therefore also essential in order to cement the Tatmadaw's role as binding agent within the state, to ensure unity and stability through a continuously dominant role for the military.

For the same reason the regime did not allow the participation of Aung San Suu Kyi in the process, as her potential influence among ethnic groups and her links with the West were seen as harmful to the implementation of the road map. Myanmar's opening was a scripted process of reform long in the making. According to the leadership's own views of "disciplined democracy", we are currently in the final stage of "building a modern, developed and democratic nation". The seemingly unexpected change in attitude towards Suu Kyi that occurred in 2011 should therefore be seen as a consciously planned move to include the opposition leader in the final stage of the military road map. The former military rulers felt confident enough about the progress of their reform programme, and realized they can use Suu Kyi to give it legitimacy. After agreeing to cooperate with the regime already in 2009 to lift sanctions,⁵³ Suu Kyi appears to have compromised in return for reforms to continue, and shown willingness to run for parliament in spite of a constitution that secures a strong role for the army in politics.⁵⁴

52 International Center for Transnational Justice, p. 33.

53 "Burma: meeting with Aung San Suu Kyi on sanctions", Wikileaks, 9 October 2009.

54 "Pragmatic virtues", *The Economist*, 11 February 2012.

4. THE EFFECTS OF WESTERN SANCTIONS

“I always say that sanctions work. Not in the way people think it did.”
– Aung San Suu Kyi⁵⁵

In addition to the internally-motivated drive to embed the military in the state apparatus and to secure impunity, a second motivation behind the reforms in Myanmar can be traced to external pressures and push-and-pull factors. The Burmese government has faced over two decades of restrictive measures by Western powers. It has been most often assumed that these sanctions failed to yield the desired results. However, the Western sanctions regime, including the EU’s own “targeted sanctions”, did deprive Myanmar of international recognition and status, and furthermore resulted in an imbalance in the foreign presence in Myanmar. A desire to regain international status, attract more diverse foreign investment and expertise from abroad to rebuild the economy, and balance the presence of international actors in Myanmar can therefore be seen as a secondary yet significant driver for change. The following sections will take a more detailed look at the effect of the sanctions implemented by the European Union in particular.

4.1 The EU’s targeted sanctions

4.1.1 Overview

Restrictive measures including sanctions as a reaction against human-rights abuses in third countries are instruments for the EU to adhere to its goal to implement an ethical external policy. At least since the end of the Cold War, the promotion of human rights has been an “essential component” of the EU’s foreign relations.⁵⁶ As mentioned in the European Commission’s 1994 Asia Strategy paper, “the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms together form a major objective of the external policy of the European Union”.⁵⁷ Sanctions are therefore a logical outcome of the EU’s self-proclaimed identity as an international actor aiming to spread civilian and democratic standards of governance on the basis of “ethics of responsibility”.⁵⁸ The EU’s construction of identity in external relations is closely related to a set of clearly articulated shared “European” values and principles, including the rule of law, democracy, and respect for human rights. This has resulted in descriptions of the EU as a “proactive cosmopolitan”⁵⁹, a

55 Bill Keller, “A conversation with Daw Aung San Suu Kyi”, *The New York Times*, 30 September 2012.

56 Karen E. Smith (2006), “The Limits of Proactive Cosmopolitanism. The EU and Burma, Cuba and Zimbabwe”. In: Ole Elgström & Michael Smith (eds), *The European Union’s Roles in International Politics. Concepts and Analysis*, London and New York: Routledge, p. 156.

57 European Commission (1994), *Towards a New Asia Strategy*, COM(94) 314 final, Brussels, 13 July.

58 Duchêne 1973 cited in Sonja Lucarelli (2006), “Introduction: Values, principles, identity and European Union foreign policy”. In: Sonja Lucarelli & Ian Manners Ian (eds), *Values and Principles in European Union Foreign Policy*, Routledge, Abingdon, p. 6. See also Juha Jokela & Bart Gaens (2012), “Interregional relations and legitimacy in global governance: The EU in ASEM”, *Asia-Europe Journal*, vol. 10, no 2–3, p. 151.

59 Paul Taylor (1999), “The United Nations in the 1990s: Proactive cosmopolitanism and the issue of sovereignty”, *Political Studies*, vol. 47, no. 3, p. 540, cited in Smith, p. 156.

normative power (NPE, Normative Power Europe)⁶⁰, a responsible power⁶¹ or an ethical power (EPE, Ethical power Europe)⁶². The EU furthermore is obliged to take into account the voice of the European Parliament, which has been a strong supporter of sanctions. Between 1999 and 2012 the EP filed 159 motions for resolutions, adopted 26 resolutions, submitted 169 written questions to the Commission, and issued 2 declarations concerning the situation in Myanmar. Many of these endorsed a firm stance against the military regime, and focussed on the personality of opposition leader Aung San Suu Kyi.

Western sanctions came into being soon after the SLORC came to power in 1988. The EU has since then aimed to cooperate with the US to forge an international front imposing sanctions on the Burmese regime. Unlike the US however, the EU has tended to focus more on targeted or “smart” sanctions, while rejecting more comprehensive trade and investment bans.⁶³ Targeted sanctions are based on the belief that “harm should be canalised towards identifiable leaders and elites, while the population at large should be spared”.⁶⁴ They exclude comprehensive trade and investment embargoes due to their perceived indiscriminate effects. Targeted sanctions are divided into those affecting separate individuals, those that affect specific sectors of the economy, and diplomatic sanctions resulting in the limitation of contacts. The European policy therefore was geared towards “the interests of all the peoples of the country”, and aimed at the promotion of (1) democracy and human rights, (2) peace and non-violence, and (3) the alleviation of poverty. The endeavour to prevent sanctions from affecting ordinary people, visible in the careful limitation of aid-related restrictions and in the actual European involvement in development aid in the country, has gradually gained prominence in European thinking.⁶⁵

The EU immediately suspended all non-humanitarian development aid and technical assistance to the Burmese junta in 1988, followed by an arms embargo in 1990. The Council adopted a Common Position in 1996, and imposed new sanctions including a visa ban for high-ranking military officers and government officials, putting into effect a moratorium on high-level bilateral contacts. Myanmar’s failure to comply with Core Labour Standards (CLS), as defined by the International Labour Organization (ILO), resulted in the application of the punitive social clause included in the General System of Preferences (GSP), excluding the country from the system in 1997.⁶⁶ The application

60 Ian Manners (2002), “Normative Power Europe: a contradiction in terms?”, *Journal of Common Market Studies*, vol. 40, no 2, pp. 235–58.

61 Hartmut Mayer & Henri Vogt (eds) (2006), *A responsible Europe? Ethical foundations of EU external affairs*, Basingstoke: Palgrave Macmillan.

62 Lisbeth Aggestam (2008), “Introduction: Ethical power Europe”, *International Affairs*, vol. 84, no 1, pp. 1–11.

63 The US suspended Myanmar from its Generalized System of Preferences (GSP) in 1989, banned imports in 1990, and prohibited new investments by American companies in Myanmar in 1997. For a complete chronological overview of sanctions, see Peterson Institute for International Economics (n.d.), Case studies in sanctions and terrorism. Case: 88-1. US/EU/Japan v. Burma, retrieved 19 December 2012. <http://www.piie.com/research/sanctions/myanmar.cfm>.

64 European Parliament (2011), Impact of sanctions and isolation measures with North Korea, Burma/ Myanmar, Iran and Zimbabwe as case studies, Report drafted by Clara Portela, Directorate-General for External Policies, Policy Department, p. 7.

65 As argued by Timo Kivimäki in Keva (2008), p. 77.

66 Jan Orbie (2008), “The European Union’s role in world trade: Harnessing globalisation?”. In: Jan Orbie (ed.), *Europe’s global role. External policies of the European Union*, Farnham: Ashgate, p. 60.

of this punitive clause and Myanmar's exclusion from the GSP for exports to the EU constituted a unique case in EU sanctions history, only repeated once afterwards.⁶⁷

Sanctions were further revised in 2000 when an embargo on the export of defence-related equipment and a freeze on the assets and economic resources of the military leaders was announced. An important strengthening in policy occurred in 2007 when additional restrictive measures were taken concerning exports, imports and investments in the sectors of logs and timber products, and the mining of metals, minerals, precious and semi-precious stones.⁶⁸ Furthermore, a ban came into effect aiming to prohibit European companies from participating in a substantial number of government-controlled companies active in these industries. But how can the Western sanctions regime, in particular the targeted measures and smart sanctions taken by the EU, be evaluated in retrospect?

4.1.2 General criticism against EU sanctions

The EU's over two-decade-long "targeted sanctions" policy vis-à-vis Myanmar has been widely and often justifiably criticized. This criticism has focussed mainly on European policy inconsistency, and on internal divisions. First, the EU's pursuit of its core values in external relations in general and its employment of sanctions has been seen as pragmatic and inconsistent, and highly dependent on relative power. This relative power is defined by the EU's own power position. It is easier to take the moral high ground when economic circumstances are in the EU's favour, such as during the Asian Financial Crisis at the end of the 1990s. An emphasis on core values is, however, less straightforward during times of economic recession, such as after 2009 when the European sovereign-debt crisis started. The relative power of the EU's interlocutor also matters, with the EU marginalizing the human rights agenda when faced with economically powerful counterparts or when the economic stakes are generally high, but emphasizing it when encountering weaker counterparts or when the EU has relatively little to lose in economic terms.

The EU's human rights policy therefore depends on "perceptions of power, rather than declarations of morality"⁶⁹, and is closely related to "practical feasibility": the European human rights position becomes more flexible and less critical to trade negotiations when the EU lacks sufficient economic power to influence human rights in countries such as China.⁷⁰ In the case of Myanmar however, Eurostat figures list trade with the country as accounting for close to 0.0% of the EU's total. The same goes for "conditionality", or the inclusion of human rights clauses in international trade agreements: not the ethical concerns per se, but the relative power of Europe vis-à-vis other countries or regions defines the extent to which the EU emphasizes these clauses.⁷¹

67 Belarus was excluded from the GSP in 2007.

68 Council of the European Union (2007), Info sheet: Burma/Myanmar – EU sanctions, October.

69 Elisabeth S. Duquette (2001), "Human Rights in the European Union", *Cornell International Law Journal*, vol. 34, p. 392.

70 Duquette, p. 395.

71 Hartmut Mayer (2008), "Is it still called 'Chinese whispers'? The EU's rhetoric and action as a responsible global institution", *International Affairs*, vol. 84, no. 1, p. 70.

Secondly, a lot of disagreement has existed within the EU on the right path to follow. On the one hand, the EU's Myanmar policy is quite remarkable, as the EU has collectively defined and adhered to a common stance vis-à-vis Yangon. According to a European Commission official, the EU is not a state and therefore cannot be expected to speak with one voice on every issue. The fact that 27 member states can reach an agreed position and act together is in itself significant.⁷² Nevertheless, in spite of the common position, Europe has been highly divided on the right policy mix for Myanmar. The UK, given its colonial links with Yangon, has taken the toughest rhetorical stance, demanding more comprehensive European sanctions closer to the US position. It has been joined by the Nordic countries, primarily Denmark but also Sweden and Finland, and supported by the Netherlands and the Czech Republic.

France is located in the middle. It has supported the sanctions in place, but at the same time it has been opposed to tougher sanctions as they “feel good, but don't do good” unless neighbouring countries participate.⁷³ One prime reason for French opposition to tougher financial and investment restrictions has been national economic interest. French oil interests in Myanmar formed the single most important obstacle to stricter sanctions to include the energy-extracting sector, for example.

On the other side of the spectrum is first of all Germany. Bonn has shared with Paris the view that Western sanctions play into the hands of China, and that they isolate the West from contact with the Burmese government. Stressing the importance of talking to all parties to enable quick action when the time comes⁷⁴, Germany advocated constructive engagement through discreet diplomacy in combination with an emphasis on business interests. This is in line with Germany's role in promoting the engagement policy at the EU level when Europe sought rapprochement with Southeast Asian countries in the early 1990s.⁷⁵ Equally in the “engagement” camp have been Austria, Italy and Portugal. Myanmar for its part has tried to utilize the EU's internal division on the preferred policy to its advantage, remaining highly critical of the British government, which has consistently pushed for more sanctions, while courting France and Germany, two states that have more or less openly supported more pragmatic engagement, in order to increase investments.⁷⁶

72 “Interview with Mr Alain Ruche, Deputy Head of Unit, Asia Directorate, External Relations DG, European Commission”, Singapore: EU Centre, retrieved 30 November 2012, <http://www.eucentre.sg/details.php?i=73>.

73 “Engage Burma: European views”, Wikileaks, 2 November 2005.

74 Ibid.

75 Bart Gaens (2009), “The development of the EU's Asia strategy with special reference to China and India – Driving forces and new directions”. In: Bart Gaens; Juha Jokela; and Eija Limnell (eds), *The European Union's Role in Asia: China and India as Strategic Partners*, Aldershot: Ashgate, p. 60.

76 International Crisis Group (ICG) (2001), Myanmar: the military regime's view of the world, *Asia Report*, no. 28, 7 December, p. 15.

4.2 Assessing the EU's "smart" Myanmar policy

4.2.1 Economic concerns and economic impacts

It is generally accepted that the Western policy, including the European Union's sanctions policy, has been largely ineffective in bringing about change in Myanmar. EU sanctions in particular had a minor impact, primarily because they have often been only symbolic, and have always been limited. Unlike the US, the EU has tended to avoid comprehensive and strong economic sanctions. The most obvious reason supplied is the humanitarian concern and the possible effects of strict economic sanctions on the wider population. As least as importantly however, stricter trade and investment sanctions would have harmed European business interests. Targeted sanctions therefore can result in perceived hypocrisy: EU member states "outsource" the rhetoric on human rights to the EU level, while continuing business-as-usual on the ground. This results in the "good cop/bad cop" role-play where the EU level is used to implement human rights pressures or even to simply pay lip service to human rights positions, while member states remain focussed on commercial cooperation.⁷⁷

Until 2007 the limited economic impact of EU sanctions was obvious. The arms embargo had little impact given the willingness of other governments including China and Russia to supply arms. The removal from the GSP may have marginally affected the local textile industry, thereby even penalizing the population at large, and did not cover the export of energy.⁷⁸ The freeze on the assets and economic resources of military leaders was highly symbolic as Burmese assets in Europe were virtually non-existent,⁷⁹ and did not apply to European assets of large state-run companies.⁸⁰

On the other hand, EU trade in sectors yielding profits for the regime, though small in relative terms, continued. In 2006 for example, the total EU trade with Myanmar amounted to 387 million euro, including 81 million euro for exports, and 306 million euro for imports. Imports mainly consisted of clothing (70% of the total), wood products (15.6%), fishery products (5.4%), and precious and semi-precious stones (2.7%). Myanmar's main trade partner in the EU was Germany (35% of the total) followed by the UK, Spain, Italy, France and the Netherlands.⁸¹ The limited investment ban in Burmese government-controlled groups which came into being in 2004⁸² did not work retroactively, profiting both the UK and France.⁸³ The UK, one of the staunchest

77 Hanns Maull (2005), "Europe and the new balance of global order", *International Affairs*, vol. 81, no. 4, p. 792, cited in Michael Reiterer (2006), "Interregionalism as a new diplomatic tool: The EU and East Asia", *European Foreign Affairs Review*, vol. 11, pp. 238-9.

78 European Parliament, p. 17.

79 Morten B. Pedersen (2008), *Promoting Human Rights in Burma. A Critique of Western Sanctions Policy*. Lanham: Rowman and Littlefield, p. 225.

80 Robert L. Howse & Jared M. Genser (2008), "Are EU trade sanctions on Burma compatible with WTO law?", *Michigan Journal of International Law*, vol. 29, Winter, p. 176.

81 Answer on 19 November 2007 by Commissioner for External Trade Peter Mandelson to written question E-5253/2007 of 19 October 2007, and answer on 19 November 2007 to question E-5087 of 16 October 2007.

82 Council Regulation (EC) No 1853/2004.

83 *Financial Times*, 9 October 2004.

supporters of stricter sanctions, was at the same time the second largest investor in Myanmar via its dependent territories, generating huge profits for the regime.⁸⁴ The economic effects of sanctions were thus limited, even if, as pointed out by Egreteau, public opinion and the fear of bad publicity did lead many European companies to withdraw from Myanmar after the mid-1990s.⁸⁵

The new Common Position of 2007, restricting exports, imports and investments in the sectors of logs and timber products, and the mining of metals, minerals, precious and semi-precious stones, had a substantial effect on the Myanmar government, costing it at least 288 million euro (410 million US dollars) per year.⁸⁶ Nevertheless, both before and after 2007, sanctions have never covered the oil and gas extracting industries. This obviously limited the impact of the European Commission's proclaimed goal for "smart" sanctions "not hurting the already impoverished population of Burma/Myanmar, but hitting instead the finances of the regime".⁸⁷

The highly important state-run Myanmar Oil and Gas Enterprise (MOGE), for example, was never targeted. The UK and France were the largest investors during the 1990s (primarily through British Premier Oil and French Total)⁸⁸ in Myanmar's energy sector. Total invested heavily in a joint venture with MOGE through a 30-year contract it negotiated with the SLORC in 1992. Total also concluded a joint venture in 1993 with American UNOCAL, Thai PTTEP and MOGE to develop the Yadana gas field. This has yielded the Myanmar government 400 million USD per year.⁸⁹ In 2007, the Commission stated it did not even have information on EU companies active in Myanmar.⁹⁰ The European Commission's own prime emphasis on European trading interests was already widely criticized in 1997 when, together with Japan, it lodged a complaint with the WTO concerning a State of Massachusetts law that penalized foreign companies investing in Myanmar. According to the Commission, the law of 25 June 1996 imposing an extra fee on state contracts for companies doing business in Myanmar, violated the WTO agreement guaranteeing open competition for government contracts on both sides of the Atlantic.⁹¹

84 Christopher O'Hara (2010), *The Myanmar 2010 Elections: A European Perspective*, Stockholm: Institute for Security and Development Policy, pp. 29–30.

85 These include Heineken, Carlsberg, Philips, Accor and Premier Oil. Ericsson withdrew in 1998 for fear of US boycotts (*Financial Times*, 5 May 1998). Renaud Egreteau (2010), "Intra-European bargaining and the 'Tower of Babel' EU approach to the Burmese conundrum", *East Asia*, vol. 27, p. 24.

86 Howse and Genser, p. 176.

87 As Commissioner for External Relations Benita Ferrero-Waldner emphasized on behalf of the Commission, in reply to a question in the European Parliament. Answer on 6 November 2007 to question P-4919/2007 of 4 October 2007.

88 International Crisis Group, Myanmar: the military regime's view of the world, p. 15.

89 Egreteau, p. 24.

90 Answer on 23 November 2007 by External Trade Commissioner Peter Mandelson to written question P-5279/07 of 23 October 2007.

91 European Report, 3 March 1999.

4.2.2 From isolation to calls for engagement

In addition, sanctions have isolated the regime, bringing about a “bunker mentality”. Sanctions have provided the regime with a useful instrument for reinforcing military unity and strengthening coercive capacity, promoting an “isolationist mode” and hampering international aid.⁹² The junta labelled the international support for the opposition as Western interference and neo-colonialism. And they gave the regime a scapegoat for economic mismanagement, unemployment, poverty, and the effects of the most recent global financial crisis. As repeatedly stated by current President Thein Sein, for the Myanmar leadership they were mainly sanctions that, while failing to harm the government, had “a tremendous negative effect on ordinary people”,⁹³ resulting in unemployment and the migration of around 3 million people to neighbouring countries, primarily Thailand. In another interview⁹⁴ Thein Sein blamed Myanmar’s 26% poverty rate on over twenty years of sanctions.

Furthermore, diplomatic sanctions including visa bans are a knife that cuts both ways. They effectively ostracize the regime internationally and rob it of legitimacy, but at the same time they preclude dialogue and engagement. The EU, for example, has continuously proclaimed the importance of “critical dialogue”, allowing for example a visa ban exception for lower-ranked officers to attend interregional summits between the EU and Asian countries. While these exceptions attracted criticism from NGOs, they were also doomed to fail as the highest-level and most powerful officials were excluded from participating.⁹⁵

Only after the US launched its policy of “pragmatic engagement” with Myanmar in 2009⁹⁶ did a slow shift take place in several member states. Denmark, also in 2009, shifted towards a policy mix of sanctions, aid and engagement. A Danish Development Minister commented that economic sanctions and a tourism boycott are counterproductive, and that 20 years of sanctions have not changed the mindset of the junta but only served to isolate the people which is “exactly what the military regime wants to do”.⁹⁷ Together with the EU Special Representative for Burma, Pietro Fassino, Italy, Germany and Austria supported a new engagement policy in combination with development assistance ahead of the 2010 Burmese elections.⁹⁸ This proposal was opposed by the UK, Denmark and the Netherlands.⁹⁹ France indicated the risk of the EU

92 Pedersen, pp. 230–231.

93 Bill Keller, “A conversation with President U Thein Sein of Myanmar”, *New York Times*, 30 September 2012.

94 Weymouth, “Burma’s President gives his first foreign interview”.

95 In Myanmar, power is generally seen as highly personal and hierarchical, and shared responsibility at the top levels is frowned upon (see Steinberg, *Burma/Myanmar*, p. 155).

96 See Kurt M. Campbell (2009), US policy toward Burma. Statement Before the Subcommittee on East Asian and Pacific Affairs Senate Foreign Relations Committee, Washington DC, 30 September, retrieved 20 December 2012, <http://www.state.gov/p/eap/rls/rm/2009/09/130064.htm>.

97 “Danes review Burma policy”, Wikileaks, 4 March 2009.

98 “EU reaction to Burma policy review update”, Wikileaks, 17 April 2009.

99 Ibid.

and the international community being sidelined as a result of the new US approach.¹⁰⁰ In spite of Spanish, German, and Italian lobbying for re-engagement and the relaxation of sanctions, however, the overall EU policy remained largely unchanged, leading to criticism of the EU's inability to respond quickly to changes in Myanmar due to an overly rigid position.¹⁰¹

4.2.3 Positive outcomes

Notwithstanding the lack of overall effect, sanctions did have some positive outcomes. First of all, sanctions have the important moral or political effect of underscoring the refusal to endorse a regime and its practices. No reaction at all and continuing business as usual are unthinkable if the EU is serious about its "global responsibilities".¹⁰² Together with the US, the EU has at least succeeded in stigmatizing Myanmar and reducing the country's international legitimacy. Sanctions placing Myanmar politically in an outcast position deprived the regime of global recognition. Aung San Suu Kyi for example, while calling on Western countries to impose comprehensive economic sanctions, has repeatedly pointed out the significant psychological impact of sanctions, as they deny the regime its international legitimacy. According to Suu Kyi, "the regime started believing their own propaganda that sanctions are responsible for the ills of the country".¹⁰³

In addition, the fact that the country could not be represented at the highest level during international summits, or that ambassadorial exchange was non-existent for example, were certainly irritants to the leadership. The military leaders were undoubtedly "affected, annoyed, and even concerned about their international pariah status and lack of access to Western trade, investment, and aid", investing in PR and lobbying to achieve a loosening of sanctions and avoid new ones.¹⁰⁴ Myanmar's pariah status caused by Western pressure has also had regional ramifications. The Association of Southeast Asian Nations (ASEAN) gradually increased pressure by taking a critical stance towards the regime and conducting quiet diplomacy in spite of their official policy of non-interference.¹⁰⁵ A good example of the psychological impact of sanctions is the remark by current president Thein Sein who, recalling twenty years of sanctions, proudly stated that Myanmar "is now establishing amicable relations with all world countries through its unbiased foreign policies".¹⁰⁶

100 "France focused on Burma prisoner release, political dialogue; no easing of sanctions", Wikileaks, 8 April 2009. This fear of European isolation resonated in the opinion of a French official of the European Commission who argued that the EU's overly rigid unified position in the case of Myanmar has, while failing to produce any substantial impact on the political regime, marginalized the EU's influence and in addition adversely affected EU relations with ASEAN ("Interview with Mr Alain Ruche").

101 Sophie Boisseau du Rocher (2012), "The European Union, Burma/Myanmar and ASEAN: A challenge to European norms and values or a new opportunity?", *Asia Europe Journal*, vol. 10, pp. 165–180.

102 Mayer, p. 61.

103 Bill Keller, "A conversation with Daw Aung San Suu Kyi", *New York Times*, 30 September 2012.

104 Pedersen, p. 218.

105 See Keva, p. 82.

106 *New Light of Myanmar*, 17 December 2012.

Furthermore, sanctions were originally put in place as a bargaining chip for the democratic opposition, to persuade the junta to engage with the NLD.¹⁰⁷ The fact that both the US and the EU paid careful attention to the advice of opposition leader Aung San Suu Kyi may have increased the junta's awareness of the necessity to include her in negotiations, in addition to giving moral support and encouragement to the opposition and pro-democracy groups.

Sanctions, moreover, had an impact on thinking related to human rights.¹⁰⁸ The military ended up adopting the language (albeit not the practice as yet) of human rights and democracy, and ratified a number of international human rights conventions. The regime also grew aware of the importance of particular human rights concerns such as political prisoners, prison conditions, and forced labour, and resulted in a decreased occurrence of arbitrary policies.¹⁰⁹

4.3 A crucial (unintended) outcome: Myanmar buffering Beijing

In the end, the main reason for the limited impact of sanctions was that the Western isolation policy enticed Myanmar to reach out and develop closer ties with its neighbouring countries, including Thailand, India, and China. In 2010 Myanmar's trade with China and Thailand comprised 58.9% of its total trade volume¹¹⁰, and China alone accounted for 38.9% of Myanmar's imports. Imports from China quadrupled between 1990 and 2001,¹¹¹ and again increased more than fourfold between 2001 and 2010. The shift in focus towards neighbouring countries has arguably spurred on a desire to achieve a more balanced foreign presence in Myanmar.

4.3.1 *The Chinese presence in Myanmar*

During over two decades of Western sanctions, China in particular has significantly strengthened trade, investment and infrastructure relations with Myanmar. Beijing has pursued easier access to Myanmar's resources, facilitating trade and the construction of oil and gas pipelines as well as hydropower projects, and gaining access to the Indian Ocean. US-embassy cables¹¹² clarify the extent of Chinese dominance in Myanmar, and Beijing's presence in almost every economic sector, including a strong presence in the mining industry, the creation of dams to acquire hydropower, and investment in the oil and gas sector including the construction of pipelines to transport oil and gas from the Bay of Bengal to Yunnan. In return, Beijing has offered diplomatic support to Myanmar, blocking for example UN Security Council Resolutions in 2007 and 2008.

107 European Parliament, p. 18.

108 Pedersen, p. 218.

109 See also Egretreau, p. 22.

110 DG Trade, "Myanmar", 21 March 2012.

111 Peterson Institute for International Economics.

112 "Crouching tiger, hidden economy: Burma-China economic relations", Wikileaks, 24 February 2010.

Myanmar itself has always tried to maintain the equilibrium between utilizing China's diplomatic clout and its economic support on the one hand, and avoiding an excessive dependence on China militarily, politically, or economically on the other. Myanmar approached other countries, including Russia, to diversify its procurement and sales of weapons, while remaining suspicious of China's long-term political and strategic intentions and wary of future Chinese economic dominance.¹¹³ In the late 1990s it developed external military partnerships with Singapore, Israel and Pakistan.¹¹⁴ As shown by Jürgen Haacke, Myanmar has implemented a highly effective foreign policy towards China, helping the SPDC to cling to power and circumvent Western sanctions. However, while Myanmar has utilized Chinese diplomatic protection, it has always been committed to an independent foreign and security policy, supported by the regime's nationalism and in view of past interaction with China.¹¹⁵ This is in line with a pervasive sense of xenophobia and a nationalistic scepticism of the motivations of foreign powers.¹¹⁶

In the words of former ruler Than Shwe, "once the sovereignty of our country is influenced in any way by others, it is tantamount to indirect enslavement under neo-colonialism. Hence the Tatmadaw must ensure perpetuation of sovereignty at the risk of lives".¹¹⁷ The colonial experience, as well as the neighbouring countries that have tried to destabilize Myanmar and conspire against its government, led to the belief that "foreigners cannot love us".¹¹⁸ In their transition towards a strong military-led unitary state ("disciplined democracy") and a market-oriented economic system, it was deemed "an absolute necessity to avoid relying on external powers", as "countries with greater experience usually interfere and take advantage for their own interests".¹¹⁹

At least since the mid-1980s Burmese perceptions vis-à-vis China have been noticeably negative.¹²⁰ For one, there is the historical legacy, with the Chinese military and political support for the communist uprisings until the mid-1980s remaining fresh in the memory.¹²¹ Most importantly, perhaps, there is the uneven division of profits. China reaps the bulk of the benefits of its investments in Myanmar, while often contributing to environmental damage and displacement of local populations. Especially in the northern part of the country, Chinese companies have tended to assert their presence in an arrogant or brutal way, verging on exploitation, without providing any capacity-building in the form of technical or educational assistance.¹²²

113 See Jürgen Haacke (2006), *Myanmar's Foreign Policy: Domestic Influences and International Implications*, London: Routledge, pp. 27-8; and Steinberg, "The United States and Myanmar", p. 188.

114 International Crisis Group, *Burma/Myanmar: how strong is the military regime?*, p. 14.

115 Jürgen Haacke (2011), "The nature and management of Myanmar's alignment with China: the SLORC/SPDC years", *The Journal of Current Southeast Asian Affairs*, vol. 30, no. 2, p. 133.

116 Steinberg, *Burma/Myanmar*, p. 155.

117 *New Light of Myanmar*, 2 January 2007.

118 Steinberg, *Burma/Myanmar*, p. 182.

119 *New Light of Myanmar*, 23 March 2011.

120 Zin Min (2012), "Burmese attitude toward Chinese: Portrayal of the Chinese in contemporary cultural and media works", *The Journal of Current Southeast Asian Affairs*, vol. 31, no. 1, pp. 115-131.

121 Haacke, *Myanmar's Foreign Policy*, p. 25.

122 "Pragmatic virtues", *The Economist*, 11 February 2012.

Furthermore, in investment projects in northern Myanmar, China imports its own labourers, leading to a Sinicization process visible in both migration and real estate ownership. In addition, there exists a rift between the Chinese central and local governments. As Niklas Swanström argued, especially the Chinese province of Yunnan has been taking “liberties in northern Myanmar that go far beyond” even what the central authorities in Beijing would like to see.¹²³ Whereas Beijing in the interest of border stability is willing to sacrifice certain commercial interests, Yunnan emphasizes cross-border trade and “special relationships” with ethnic groups.¹²⁴

4.3.2 Current China–Myanmar relations

In spite of the Chinese rhetoric of a “solid, mutually beneficial relationship with the Burmese”¹²⁵, the same balancing act, namely the ambition to retain Chinese economic, military and political/diplomatic support on the one hand, and deep-seated emotions of suspicion and negative perceptions on the other, continues to define the relations between both countries at present. Nawpyitaw is increasingly willing to consider the interests of its citizens, while curbing an excessive dependence on China. The China-funded Myitsone Dam project, for example, was scheduled to export 90% of the hydroelectricity it produced to the province of Yunnan in Southwest China and threatened to have vast social and environmental impacts for Myanmar, flooding an area of over 760 km². There is a possibility that also in terms of foreign investments, Myanmar has looked at Indonesia, where ethnic Chinese (less than 4% of the population) ended up owning 70% of Indonesia’s non-landed wealth.¹²⁶

Nevertheless, China’s position in Myanmar’s economy will continue to be firmly entrenched in the years to come. Beijing is expected to remain far ahead of other contenders in Myanmar as to investment, dominating the oil, gas, and mineral industries.¹²⁷ The Myanmar government cannot back down from contracts it has signed with China. The Monywa copper mining project, for example, a joint venture between a military-backed holding company and a Chinese mining corporation was the site of widespread labour unrest in November 2012.¹²⁸ On the 29th of that month the government ordered a violent crackdown at the Latpadaungtaung site, allegedly using fire bombs against protesters, mainly local farmers and monks who were opposing the forced evictions from their land to allow for mine expansion. Reports on the crackdown have blemished the democratization report of the civilian government, and have been followed by other demonstrations against the Chinese presence in Myanmar.

123 Niklas Swanström (2012), *Sino–Myanmar Relations: Security and Beyond*, Asia Paper, Institute for Security and Development Policy, Stockholm, June, p. 8.

124 International Crisis Group (ICG) (2010), *China’s Myanmar strategy: elections, ethnic politics and economics*, Asia Briefing, no. 112, 21 September, pp. 1, 13.

125 “Less thunder out of China”, *The Economist*, 6 October 2012.

126 Case, p. 94.

127 “Brave new world”, *The Economist*, 2 June 2012.

128 It concerned a joint venture between the Union of Myanmar Economic Holdings (UMEHL), the commercial arm of Myanmar’s military, and Wanbao Mining Ltd, a subsidiary of China’s largest arms manufacturer, the China North Industries Corporation NORINCO. See Peter Lee, “China seeks copper firewall in China”, *Asia Times*, 15 December 2012.

Aung San Suu Kyi, already appointed in August 2012 to head the “Lower House’s Committee for the Rule of Law and Tranquility”¹²⁹, was further asked to lead a separate commission investigating the Monywa mining project and the violent incidents following the protests. This constitutes another good example of how the civilianized government has skilfully brought the opposition leader into play. Given Beijing’s pervasive presence in the local economy and industry, popular protests against the social, economic, and environmental effects of Chinese projects in Myanmar will likely continue occurring. As is completely clear from Aung San Suu Kyi’s comments¹³⁰, Myanmar will have to try to strike a delicate balance between protecting the interests of the people and sticking to contracts with foreign firms in order to retain international trust.

4.3.3 The continuing “gold-rush embrace”

Myanmar’s opening and willingness to balance the presence of China has furthermore resulted in a wide array of other countries eager to step in, invest in Myanmar’s slowly reforming economy and infrastructure, and gain access to the country’s natural resources. The US has been aiming to engage with Myanmar as part of its 2009 strategy to re-launch its presence in East Asia and not in the least to contain Chinese influence both in Myanmar and in the region. The Obama administration’s new emphasis on “pragmatic engagement” kept the sanctions in place but allowed for direct dialogue with senior leaders, visits and offers of help reciprocated by concessions.¹³¹ As a result, China has only felt more compelled to consolidate its political and economic ties to Myanmar.¹³² Myanmar for its part saw new opportunities to attract American investments, start exporting to the US, raise capacity-building and deal with pressing humanitarian and development issues.¹³³

The EU has reacted relatively swiftly to the recent reforms since 2011. In April 2011 the suspension of high-level meetings was temporarily lifted, allowing for dialogue with new members of government unaffiliated to the military. The council furthermore lifted the visa ban in January 2012, and suspended all restrictive measures except the arms embargo in April. In addition, the recently inaugurated EU representative office in Yangon will become an official EU Delegation in 2013. The targeted nature of EU sanctions allows for a smooth process of lifting them at a faster rate compared to the US. However, in launching a presence in Myanmar’s burgeoning market economy the EU is bound to face tough competition from Asian countries, including China, India and ASEAN states, but also certainly from Japan.

Much more than the US and the EU, Japan has not wasted any time in re-launching its presence in Myanmar, striking investment deals and packages including debt forgiveness and re-financing soon after Myanmar’s opening became clear. Shifting rapidly from

129 The 15-member Committee included nine members belonging to military-backed parties (Min Lwin, “Suu Kyi to head ‘rule of law’ committee”, *Democratic Voice of Burma*, 8 August 2012).

130 “Suu Kyi speaks out on Monywa copper mine project”, *Mizzima*, 26 November 2012.

131 “Goodbye clenched fist, hello sweaty palm”, *The Economist*, 17 November 2012. See also Steinberg, “Aung San Suu Kyi and U.S. policy toward Burma/Myanmar”.

132 International Crisis Group (ICG), *China’s Myanmar strategy*, p. 1.

133 Jürgen Haacke (2012), *Myanmar: now a site for Sino-US geopolitical competition?*, LSE IDEAS, November, p. 59.

“cautious re-engagement” to a “gold-rush embrace”, Japan’s government and business made it a major player in Myanmar practically overnight.¹³⁴ As the most recent example, early in January 2013 Japan wrote off 500 billion JPY (around 5.7 billion USD) in overdue debt and provided a new low-interest loan of 50 billion JPY (around 570 million USD).¹³⁵

134 Antoni Slodkowski, “Special report: How Japan Inc stole a march in Myanmar”, Reuters, 2 October.

135 “Tokyo’s Aso, Thein Sein hold Myanmar economic talks”, *The Japan Times*, 4 January 2013.

5. CONCLUSION

When Myanmar started opening up in 2011 and treading a cautious path towards democratization, it came as a surprise to many Western observers. A military regime transformed into a nominally civilian government and took steps to place the country on the road towards “normalization”. This paper has argued that the roots of political reforms have to be sought in the junta’s long-term intentions to entrench the military in the state apparatus for the foreseeable future, while at the same time achieving self-preservation for military and former military personnel. The “road map towards disciplined democracy” was the instrument for achieving that goal. The Myanmar Spring thus followed a carefully scripted scenario, including the drafting of a military-biased constitution, and keeping the “civilianized military” in charge through doctored national elections. The voice of the military (Tatmadaw) will therefore remain highly influential in determining Myanmar’s future path, given their central position in the parliament and their ties with their affiliated political party, the USDP.

Myanmar has looked to Indonesia as a possible model to follow. Indonesia also developed from a military-dominated regime based on “electoral authoritarianism” to a “low-quality democracy”¹³⁶ in which the role of the military was thenceforth gradually reduced. In Indonesia Suharto’s tightly controlled political order started in 1968, and was rooted in the military’s self-awareness of being responsible for containing friction and keeping the nation together by ensuring a strong military component in the state structure. Suharto’s regime lasted until 1998 when it collapsed after the eruption of violent popular protests rooted in the Asian Financial Crisis of 1997-1998. During the ensuing six-year transition period, marked by separatist and religious violence, the military initially retained a strong position in the economy and politics, but their role was gradually weakened. Politically-ambitious generals were replaced, and a law was passed to force the army to surrender its businesses to the government.¹³⁷ The constitution was amended in 2002, allowing for direct presidential elections to be held in 2004.

Using Indonesia as a yardstick, it is possible to argue that Myanmar can undergo a comparable transformation from an authoritarian state towards an initially “low-quality” democracy. Similar to Indonesia’s initial goals, Myanmar’s new system aims to revive the economy, attract foreign capital and integrate into the global trading system.¹³⁸ Like Indonesia’s Susilo Bambang Yudhoyono, the country’s first directly elected president, Myanmar’s current leader is a reform-minded former general.

Reform in Indonesia was partly the result of a bottom-up push for change caused by an economic crisis, followed by a rapid transition period during which the military returned to the barracks. Similar to Indonesia, the role of the military in Myanmar is likely to be gradually reduced as well. However, the largely top-down nature of the reform process and a strong constitutionally-determined military presence, in combination with a slow and guided process of opening up and economic success, can keep the army in place for much longer than in Indonesia. If Indonesia’s example is anything to go by, the military

136 The terms were coined by Andreas Schedler (2006), *Electoral authoritarianism: The dynamics of unfree competition*, Boulder: Lynne Rienner, cited in Case, p. 91.

137 “Going out of business”, *The Economist*, 2 October 2008.

138 Myo Tun, p. 83.

and former military officers can probably succeed in achieving their goal of impunity, as in Indonesia neither Suharto nor the military in charge of atrocities during and after his rule faced trial.

Did sanctions play a role in spurring on change in Myanmar? Western restrictive measures including European “smart” or “targeted” sanctions ultimately achieved little. However, they may have stirred a desire among the Myanmar leadership to bring about a more balanced foreign economic presence in the country and revive the economy while regaining international legitimacy. In particular, balancing an excessive dependence on China and curbing the dominant Chinese influence in the country may have been a secondary driver behind the reforms. Myanmar’s opening and improving relations with the US, the EU, Japan and other countries have now strengthened Myanmar’s toolbox for balancing relations with Beijing, and will continue to attract international expertise and more diverse foreign investment.

The process towards “disciplined democracy” in Myanmar was carefully choreographed and even problematic. It is furthermore clear that numerous challenges remain in Myanmar’s transition process. The country’s recent transformation has brushed up the country’s international status and image, and Western and Asian countries alike are eager to reap the benefits of the ongoing changes, but the economy and financial sectors are in dire need of reform. In order to increase the awareness for further reforms, Western input is vital. Given the fact that the EU has always been a strong economic player in Myanmar and in East Asia in general, it is in a position to offer important incentives for further change by increasing development aid, rewarding gradual political reform, and investing in joint ventures while taking into account social responsibilities. The greatest challenge likely lies in Myanmar’s continuing ethnic tensions. Here the EU can offer expertise on conflict mediation and capacity-building, acting as a “middle power” or regional stabilizer.

In spite of these remaining challenges, the ongoing gradual reforms are more than a cosmetic contrivance for Western consumption, and are likely to continue. Current key actors in the USDP have been groomed for a future role as civilian leaders in the “discipline-flourishing democracy”, and are reform-minded. The national elections in 2015 will reveal to what extent the ruling elite is genuinely dedicated to further democratization. The most likely outcome is that the opposition will win a majority of seats, but will be obliged to cooperate with the military and the former officers-turned-civilian. One such “civilianized officer”, current Parliamentary Speaker Thura Shwe Mann, will likely be selected as president, whereas Aung San Suu Kyi, given the constitutional rule against her taking on the position of president or vice-president, could be given a post as a minister. True democracy in the Western sense will require substantial changes in the constitution. This, however, is impossible without the support of the military and will therefore likely be a lengthy process.

LIST OF ACRONYMS

ALP	Arakan Liberation Party
ASEAN	Association of Southeast Asian Nations
ASEM	Asia-Europe Meeting
BSSP	Burmese Socialist Program Party
CLS	Core Labour Standards
EU	European Union
EP	European Parliament
EPE	Ethical power Europe
GDP	Gross Domestic Product
GOLKAR	Golongan Karya (Federation of Functional Groups)
GSP	Generalized System of Preferences
ILO	International Labour Organization
KIA	Kachin Independence Army
KNU	Karen National Union
KNPP	Karenni National Progressive Party
MOGE	Myanmar Oil and Gas Enterprise
NLD	National League for Democracy
NGO	Non-governmental Organization
NORINCO	China North Industries Corporation
NPE	Normative Power Europe
ODA	Official Development Assistance
PTTEP	PTT Exploration and Production Public Company Limited
SLORC	State Law and Order Restoration Council
SPDC	State Peace and Development Council
UMEHL	Union of Myanmar Economic Holdings
UN	United Nations
UNOCAL	Union Oil Company of California
USDP	Union Solidarity and Development Party
UWSA	United Wa State Army
WTO	World Trade Organization