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**“Is Myanmar Changing Or Has Myanmar
Changed Us?”**

The Myanmar Quandary

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The Myanmar Quandary

*Fluctuating Approaches absent Domestic Change?*¹

International responses to the crisis of governance in Myanmar can be broadly categorised as falling into one of two camps: either pro-engagement or pro-sanction. Traditionally, most of the Asian states have been in favour of what the Association of Southeast Asian Nations (ASEAN) has termed 'constructive engagement'. Aside from the promotion of greater interaction, constructive engagement effectively adheres to the ASEAN Way where the ASEAN members will abstain from interfering in each other's internal affairs. Some advocates of constructive engagement have argued that the associated processes of socialization, together with increased economic interdependence, will eventually improve the behaviour of the Myanmar government – the State Peace and Development Council (SPDC).² While the policy may have contributed to improved relations with Myanmar, it did not resolve either the crisis of governance or human rights situation in the country. Meanwhile, many Western countries, including the European Union and the United States, embarked on a twenty-year process of increasingly tighter sanctions. In recent years, the failure of both approaches has resulted in policy reassessments from both sides of the debate. This paper outlines the evolution of these approaches and assesses the prospects for positive change – whether internally or externally driven.

Has Myanmar Changes Us?

In the case of ASEAN, a gradual shift in policy can be traced back to the advocacy of both Malaysia and Thailand during the late 1990s. The initial push came from Anwar Ibrahim, the Deputy Prime Minister of Malaysia at the time, who called on ASEAN to be open to 'constructive interventions' before emerging problems in the region 'erupt into full-blown crises.'³ Dr Surin Pitsuwan – then the Foreign Minister of Thailand and now the Secretary-General of ASEAN – built on Anwar Ibrahim's call with a proposal for 'flexible engagement'. He argued that the ASEAN members could '...no longer afford to adopt a non-committal stand and avoid passing judgment on events in member countries' and therefore 'intra-ASEAN relations [needed to be] more constructive than before'.⁴ While the Thai proposal was 'bitterly opposed by Myanmar' and all the remaining ASEAN members, except the

¹ The author would like to thank Dr Frank Frost for providing some very informative comments and articles during the course of the past few months. The author would also like to thank the University of Canberra for their support in researching this subject. Further, the author would like to thank and acknowledge the gracious support of the University of New South Wales at the Australian Defence Academy. The research for this paper could not have been completed in the absence of an appointment as a visiting fellow and the associated access to their excellent library and database facilities.

² Leszek Buszynski, 'Thailand and Myanmar: The Perils of Constructive Engagement,' *Pacific Review* 11, no. 2 (1998): pp.290-91.

³ David Capie and Paul Evans, *The Asia-Pacific Security Lexicon*, 2nd ed. (Singapore: Institute of Southeast Asian Studies, 2007), p.92. An 'in practice' shift away from 'constructive engagement' and a strict adherence to the 'non-interference' principle had, however, occurred earlier when the then Prime Minister of Thailand, Chuan Leekpai, permitted a meeting of eight Nobel Peace Prize laureates to visit Thailand in order to pressure Myanmar to undertake political reform. Jorn Dosch, *The Changing Dynamics of Southeast Asian Politics* (London: Lynne Rienner, 2007), p.41.

⁴ Cited in Ramcharan, 'ASEAN and Non-Interference: A Principle Maintained?,' *Contemporary Southeast Asia* 22, no. 1 (2000): p.75.

Philippines,⁵ a compromise proposal for enhanced interaction led by Indonesia⁶ laid the groundwork for a 'phased adjustment of the principle' towards the realization of flexible engagement vis-a-vis Myanmar.⁷ An early example of this shift in ASEAN's policy occurred in October 2004 when Aung San Suu Kyi was attacked by what would appear to be members of the USDA, a political organisation of the government, resulting in an unknown number of deaths together with Aung San Suu Kyi's return to house arrest where she has remained ever since.⁸ A month later, the ASEAN Foreign Minister's statement specifically referred to the incident and '... urged Myanmar to resume its efforts of national reconciliation and dialogue among all parties concerned...' so as to lead to '... a peaceful transition to democracy'.⁹ Soon thereafter, Thailand's Foreign Minister suggested that 'ASEAN's willingness to talk about the matter showed that it had reached another stage of maturity'.¹⁰

Relations between ASEAN and Myanmar continued to decline during the course of the next four years due to further adverse developments. For example, in 2004, the SPDC arrested Prime Minister Khin Nyunt and then embarked on a series of extensions to Aung San Suu Kyi's house arrest. In one instance, the SPDC announced that they would be extending her house arrest just one week before the 11th ASEAN Summit. One of the ASEAN Foreign Ministers responded to this by saying that the SPDC's timing represented 'a slap in the face of ASEAN'.¹¹ Then, in 2005, without any forewarning, the government suddenly shifted its capital to Nay Pyi Daw¹² and, in 2006, Tan Sri Razali Ismail, the UN Special Envoy to Myanmar and eminent Malaysian diplomat, resigned on the basis that 'they do not want me back' as he had been denied entry to the country for 22 months.¹³ Further, in 2007, not only did the SPDC restore diplomatic relations with North Korea – contributing to a debate on whether Myanmar is seeking nuclear weapons¹⁴ – but the SPDC also became the center of

⁵ N. Ganesan, 'Myanmar's Foreign Relations: Reaching out to the World,' in *Myanmar: Beyond Politics to Societal Imperatives*, ed. Kyaw Yin Hlaing, Robert H. Taylor, and Tin Maung Maung Than (Singapore: Institute of Southeast Asian Studies, 2005), p.46, Alan Collins, *Security and Southeast Asia: Domestic, Regional, and Global Issues* (Boulder, Colorado: Lynne Rienner, 2003), p.144.

⁶ Shigekatsu Kondo, *East Asian Strategic Review* (Tokyo: National Institute for Defence Studies, 2000), p.36.

⁷ Ruukan Katanyuu, 'Beyond Non-Interference in ASEAN: The Association's Role in Myanmar's National Reconciliation and Democratization,' *Asian Survey* 46, no. 6 (2006): p.830.

⁸ David. I. Steinberg, 'The United States and Myanmar: A "Boutique Issue"?' *International Affairs* 86, no. 1 (2010): p.181, Simon Montlake, 'Burma's "Black Friday"', BBC, 2004, <http://newsvote.bbc.co.uk>.

⁹ Added sting was imparted with the statement that ASEAN 'looked forward to the early lifting of restrictions placed on Aung San Suu Kyi and the NLD members'. 'Joint Communique of the 36th ASEAN Ministerial Meeting,' ASEAN Secretariat, 2003, www.aseansec.org/14833.htm.

¹⁰ Bhanravee Tansubhapol, 'Rangoon Tackled over Suu Kyi,' *Bangkok Post*, 17 June 2003.

¹¹ Eileen Ng, 'Myanmar Told That Suu Kyi's Detention a Slap to ASEAN, Says Official,' *Associated Press*, 11 December 2005.

¹² The lack of transparency and/consultation has aggravated a number of regional leaders. 'Thai PM Deposed in Military Coup,' BBC News, 2006, <http://news.bbc.co.uk/2/hi/asia-pacific/5361512.stm>. Further, George Yeo, Singapore's Foreign Minister, described the move as 'sudden' and 'bizarre'. 'ASEAN Chides China, India for Inaction over Myanmar,' *Agence France Presse*, 30 March 2006.

¹³ 'UN's Burma Envoy Quits,' *SBS World News*, 9 January 2006.

¹⁴ For two informative but contrasting views on this debate see: Andrew Selth, 'Burma and North Korea: Conventional Allies or Nuclear Partners,' *Australian Journal of International Affairs* 64, no. 2 (2010): pp.145-65, Desmond Ball, 'Burma's Nuclear Program: The Defector's Story,' *Defence and Foreign Affairs Special* XXVII, no. 49 (2009).

international attention following a violent crackdown against protesters in September 2007. While ASEAN's relations with Myanmar had also declined over a perception that it had a complete disregard for the interests of ASEAN,¹⁵ the September crackdown prompted ASEAN to deliver one of the strongest statements against a fellow ASEAN member in the Association's History. On behalf of all the ASEAN Foreign Ministers (except Myanmar) Singapore's George Yeo stated that:

*... they were appalled to receive reports of automatic weapons being used ... [and that] they [had] expressed their revulsion to Myanmar Foreign Minister Nyan Win over reports that the demonstrations in Myanmar are being suppressed by violent force and that there has been a number of fatalities. [They] demanded that the Myanmar government immediately desist from the use of violence against all demonstrators.*¹⁶

There were other individuals, within ASEAN's political elite, that adopted a far harsher approach. For example, Ambassador Barry Desker, from the S. Rajaratnam School of International Studies, went as far as to call for Myanmar's suspension from ASEAN – a call that was commended by the US Senate.¹⁷ However, the evolution of how ASEAN and its member-states have responded to the crisis in Myanmar did not end with mere statements. For example, Air Bagan (a Myanmar airline) was forced to cancel all its flights to Singapore after the Singaporean Banks refused to deal with it.¹⁸ A further example occurred in the context of the United Nations Security Council (UNSC). Between 2005 and 2007, the United States made a concerted effort to elevate the Myanmar issue to the UNSC. During one of these occasions, in December 2005, the Filipino government indicated that it would support a possible US security resolution.¹⁹ By 2006, Malaysia had joined the Philippines in calling for the UN to debate the Myanmar issue officially while Thailand, later that year, also called for the UN to undertake a greater role in resolving the crisis. Consequently, in July 2006, when Myanmar was placed on the agenda of the United Nations General Assembly (UNGA), 'ASEAN refused to defend Burma internationally, leaving it to Cuba as Chair of the Non-Aligned Movement (NAM) to protest against the development'.²⁰ While ASEAN was anything but unified over the UN's potential role in Myanmar, and the position of individual members constantly fluctuated, a key

¹⁵ For example, when the SPDC invited the UN's new Special Envoy, Ibrahim Gambari, to Nay Pyi Daw to meet with Senior General Than Shwe and to also meet with Aung San Suu Kyi in Yangon, Syed Hamid, Malaysia's Foreign Minister, lamented that Myanmar had not invited any ASEAN leader or Foreign Minister to visit its new capital. Further, at the inaugural ASEAN Defence Ministers Meeting, Myanmar's Defence Minister was the only minister not present. 'ASEAN Set to Wash Its Hands of Burma,' *The Australian*, 22 June 2006, 'Myanmar Absent from First ASEAN Defence Ministers Meeting,' *Agence France Presse*, 5 May 2006.

¹⁶ 'Statement by ASEAN Chair: Singapore's Minister for Foreign Affairs George Yeo, New York,' ASEAN Secretariat, 2007, www.aseansec.org/20974.htm. While George Yeo made the statement in the capacity of the ASEAN Chair, the wording of the document had been circulated to the ASEAN Foreign Ministers and they had consented to the statement's release. As Jurgen Haacke contends, in practical terms the document represented a 'joint statement' as other Foreign Ministers had contributed amendments and it was delivered in the presence of all the Foreign Ministers except Myanmar. Jurgen Haacke, 'ASEAN and the Situation in Myanmar/Burma,' in *Myanmar/Burma: Challenges and Perspectives*, ed. Guo Xiaolin (Stockholm-Nacka, Sweden: Institute for Security and Development Study, 2008), p.140.

¹⁷ Barry Desker, 'Suspend Myanmar from ASEAN,' *The Straits Times*, 4 October 2007.

¹⁸ Ardeth Maung Thawngmung and Maung Aung Myoe, 'Myanmar in 2007: A Turning Point in the "Roadmap"?', *Asian Survey* XLVIII, no. 1 (2008): p.18.

¹⁹ 'RP Backs Call for Suu Kyi Release,' *Manila Standard*, 3 December 2005. See also Lee Jones, 'ASEAN's Albatross: ASEAN's Burma Policy, from Constructive Engagement to Critical Disengagement,' *Asian Security* 4, no. 3 (2008): p.282.

²⁰ Jones, 'ASEAN's Albatross: ASEAN's Burma Policy, from Constructive Engagement to Critical Disengagement,' p.283.

outcome of these developments, as summarized by Foreign Minister George Yeo, was the belief that 'ASEAN has lost the credibility and ability to defend Myanmar'.²¹ Thus, by the time of the September 2007 crackdown, various statements indicated that both ASEAN and Myanmar had effectively disengaged from each other in their intramural relations.²²

ASEAN's diplomacy, together with that of individual ASEAN members, did not go unnoticed internationally. In the case of the United States, Condoleezza Rice had commended ASEAN as far back as 2006 for undertaking an 'important evolution' in the pressure it applied against Myanmar. Further, Rice associated herself with the September 2007 ASEAN's Chair's statement with the implication, according to Jurgen Haacke, that 'ASEAN had finally joined the side of Myanmar's long-term critics.'²³ However, this was not entirely true. As stated, for close to two decades, the US and the EU had continually tightened their sanctions regime. These sanctions took two forms: targeted and broad sweeping. The targeted (smart) sanctions include a visa ban and assets freeze for members of the regime and its supporters along with an arms embargo. However, the 'broad-sweeping' sanctions included a ban on imports from Myanmar along with a prohibition against the export of financial services to the country – including all new investments by US firms and nationals. An example of the impact of these latter sanctions can be seen in the case of the textiles industry. The US government itself estimated that these sanctions cost more than 100,000 jobs.²⁴

In 2008, a new crisis emerged that for some countries forced a reassessment of how to approach the Myanmar issue. On 2 May 2008, Cyclone Nargis struck the Ayeyarwady delta region of Myanmar with devastating effect. Not only did the SPDC initially refuse the delivery of foreign aid, by 14 May reports had emerged that the SPDC had implemented fines of up to \$3,000, or five years imprisonment, for any foreign nationals caught in the delta.²⁵ In retrospect, the SPDC irrationally interpreted the situation as a security issue rather than a humanitarian crisis. Thus, Singapore intelligence intercepts reported that the *Tatmadaw* (Burmese military) had been called into 'defensive positions' instead of being employed to help in an aid and recovery effort.²⁶ In part, such threat perceptions emerged because of offers of aid from US, French and British naval ships in the Andaman Sea. While these ships were both inadequate in number and type to implement any forced intervention, the French Foreign Minister called on the UN to invoke the 2005 doctrine of the

²¹ Kavi Chongkittavorn, 'Record of ASEAN Discussion Reveals "Bitterness" with Burma,' *The Nation*, 25 December 2005, Vivian Ho, 'Myanmar Asks ASEAN to Oppose U.N. Security Council Resolution,' *Kyodo News*, 12 December 2005.

²² For example, the 'ASEAN Chairman's Statement on Myanmar' declared that '[t]he ASEAN Leaders agreed that ASEAN would respect Myanmar's wishes and make way for Myanmar to deal directly with the UN and the international community on its own.' 'ASEAN Chairman Statement on Myanmar,' ASEAN Secretariat, 2007, <http://www.aseansec.org/21057.htm>. Further, Singapore's George Yeo stated that the UN was now 'the best hope for a peaceful resolution to the situation.' 'Singapore Ministry of Foreign Affairs Spokesman's Comments on the Situation in Myanmar, September 27 2007,' Ministry of Foreign Affairs, http://app.mfa.gov.sg/pr/read_content.asp?View,8314.

²³ Haacke, 'ASEAN and the Situation in Myanmar/Burma.'

²⁴ Donald M. Seekins, 'Burma and U.S. Sanctions: Punishing an Authoritarian Regime,' *Asian Survey* 45, no. 3 (2005): p.442.

²⁵ 'Burma/Myanmar after Nargis: Time to Normalise Aid Relations,' (Brussels: International Crisis Group, 2008), p.3, Simon Jenkins, 'As Burma Dies, World's Invaders Sit on Their Hands,' *The Mail and Guardian*, 16 May 2008, 'Myanmar Briefing: Human Rights Concerns a Month after Cyclone Nargis,' *Amnesty International*, 5 June 2008.

²⁶ 'Transcript of Minister for Foreign Affairs George Yeo's Interview with Dow Jones on 16 July,' Singapore Ministry of Foreign Affairs, 2008, http://app.mfa.gov.sg/2006/press/view_press.asp?post_id=4168.

'responsibility to protect' to forcibly deliver aid into the delta and Yangon.²⁷ However, and in the end, ASEAN provided the most constructive response by depoliticising the delivery of aid and by acting as a mediator between Myanmar and the international community.

Within a week of the cyclone, ASEAN was able to deploy its Emergency Rapid Assessment Team (ERAT) into Myanmar to assess the situation in the country. Meanwhile, on 8 May, ASEAN's Secretary General, Surin Pitsuwan, organised the ASEAN Cooperation Fund for Disaster Assistance followed by, on 12 May, a meeting between the ASEAN Secretariat, the World Bank and the UN's Office for the Coordination of Humanitarian Affairs (OCHA). While many other developments took place, the final outcome of ASEAN's diplomacy was what became known as the Tripartite Core Group (TCG), which contained representatives from ASEAN, the UN and Myanmar. The TCG was established to coordinate, facilitate and monitor the distribution of aid. It is important to note that the formation of the TCG was a slow and arduous task that, at various junctures, met with resistance from the SPDC. However, strong pressure from individual ASEAN members helped overcome such hurdles. For example, at one point during a heated debate, Indonesia's Foreign Minister 'leaned across the table and asked the Foreign Minister of Myanmar what he thought ASEAN membership meant to Myanmar and what – at that time and in those circumstances – Myanmar's membership meant to ASEAN ... in terms of ASEAN's internal coherence, international profile and its membership's shared vision for the future'.²⁸ According to one Ambassador from Singapore, the clear implication of the statement was that Myanmar's membership in ASEAN was on the line.²⁹ Nonetheless, following the formation of the TCG, foreign aid workers were soon granted access into the Ayeyarwady delta area and a meaningful recovery effort commenced that, undeniably, saved lives.

The operation of the TCG demonstrates that it is possible to work with the SPDC in the delivery of aid and assistance at the grassroots level.³⁰ Indeed, some Western countries are starting to follow suit. In 2003, the United Kingdom's 'Department for International Development' (DFID) announced a commitment of US\$15.7 million to combat the spread of HIV/AIDS. The UK was also the largest donor in the wake of Cyclone Nargis. In justifying its new approach, the department stated:

*In the international aid world more generally there is the contemporary need for much more realism about what's achievable and politically feasible in a particular country context; to develop local solutions rather than relying on best practice models from elsewhere; and to be more realistic about timescales for fundamental reform.*³¹

²⁷ Robert H. Taylor, 'Myanmar: Reconciliation or Reconsolidation? Isolation or Resolution?,' *Asian Affairs* 40, no. 2 (2009): p.219. The SPDC was also very concerned about how the presence of foreign government officials, aid workers and the media might affect its grip on power. In other words, Andrew Selth suggests that it was worried about avoiding 'alien cultural influences' that might translate into 'social instability'. Andrew Selth, 'Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion,' *Contemporary Southeast Asia* 30, no. No.3 (2008).

²⁸ Correspondence with official source from an Embassy in Singapore, 21 January 2009.

²⁹ Ibid. See also 'Transcript of Minister for Foreign Affairs George Yeo's Interview with Dow Jones on 16 July.'

³⁰ As the ICG argues, 'internal factors along with international pressure and particularly regional pressure and diplomacy had their effect, and developments since then show that it is possible to work with the military regime on humanitarian issues.' 'Burma/Myanmar after Nargis: Time to Normalise Aid Relations,' p.i.

³¹ Martin T. Smith, 'Ethnic Politics and Regional Development in Myanmar: The Need for New Approaches,' in *Myanmar: Beyond Politics to Societal Imperatives*, ed. Kyaw Yin Hlaing, Robert H. Taylor, and Tin Maung Maung Than (Singapore: Institute of Southeast Asian Studies, 2005), p.74.

The new US administration has also started to reassess its foreign policy regarding Myanmar. While Hillary Clinton, the US Secretary of State, highlighted in February 2009 that ASEAN's policy of constructive engagement had not brought about tangible results, she also stated that '[c]learly, the path we have taken in imposing sanctions hasn't influenced the Burmese junta' either.³² The Obama administration then conducted a review of its policy and formally announced a new approach in September 2009. While its current sanctions would remain in place, the US stated that it will establish a process of direct dialogue with the Burma regime and will increase humanitarian assistance.³³ Assistant Secretary of State, Kurt Campbell, summarised the reasoning behind the new approach in the following manner:

*Burma's continued estrangement from the international community harms the country and has direct negative consequences beyond Burma's borders. Burma's engagement with the outside world has the potential to encourage new thinking, reform and participation in the work of the international community.*³⁴

External versus Internally Driven Change: Prospects and Challenges

While both policy makers and regional analysts continue to debate the contrasting utility and effect of policies ranging from engagement and trade to isolation and sanction, some observations can be made with relative certainty. Unqualified engagement (i.e. constructive engagement), for its part, may socialize certain positive norms of behaviour in the long-term (depending on who Myanmar interacts with) but the nature of the situation inside Myanmar means that such an approach, on its own, will not directly contribute to an early resolution of the crisis of governance and human security within Myanmar. At the other end of the spectrum, there are a number of reasons why a sanctions regime, on its own, will also fail in the Myanmar context. An examination of Myanmar's history reveals how the government largely isolated itself from the outside world since the early years of independence.³⁵ In contrast to the often-cited South African case study, it survived – albeit at subsistence levels – without the need for significant trade and investment from the West. As the former 'rice bowl of Asia', the fertile soils in Myanmar have generally provided sufficient food security to avoid the depths of famine that have at times plagued other isolated regimes – such as North Korea.

As noted earlier, broad sweeping sanctions have primarily affected the people of Myanmar rather than the SPDC. However, economic engagement by China, India and Thailand has provided the military with more than enough revenue to survive. Thanks to trade with these nations, the government has had a positive balance of payments for the past seven years and its foreign exchange reserves are at record highs.³⁶ However, most of this revenue goes directly to the military

³² 'Burma's Clenched Fist: Is It Time for the United States to Reach out to the Junta?', *The Washington Post*, 20 February 2009.

³³ Frank Frost, 'Burma/Myanmar: Internal Issues and Regional and International Responses,' (Canberra: Parliament of Australia: Department of Parliamentary Services, 2009), pp.8-9.

³⁴ Brian McCartan, 'US Takes a Radical Turn on Myanmar,' *Asia Times*, 30 September 2009.

³⁵ Christopher B. Roberts, 'Myanmar and the Argument for Engagement: A Clash of Contending Moralities?,' *East Asia: An International Quarterly* 23, no. 2 (2006).

³⁶ Taylor, 'Myanmar: Reconciliation or Reconsolidation? Isolation or Resolution?,' p.211, Barry Desker and Christopher Roberts, 'Myanmar: Prospects and Challenges of Engagement,' in *Security through Cooperation: CSCAP Regional Security*

to fund mega projects such as the new capital in Nay Pyi Daw. Thus, the military is now stronger than ever despite western sanctions.³⁷ In 1988, there were 188,000 personnel in the armed forces whereas today that number has grown to 400,000.³⁸ Further, the military is backed by the supply of weaponry, sometimes at subsidized rates, from countries such as China, India, the Ukraine, Bulgaria, Russia, North Korea and others.³⁹ Thus, any sanctions regime on its own was doomed to fail unless the entire international community, including Myanmar's strategic and economic partners, enforced it. Given Myanmar's strategic importance – in terms of both geographical location and natural gas reserves – countries such as China and India cannot be counted on to join a unanimous international effort to force reform. The only feasible exception might involve a severe security crisis where, for example, the current rumour that Myanmar is seeking nuclear weapons was confirmed. Even here, however, recent developments including China's refusal to censure North Korea over its sinking of a South Korean navy vessel indicates that nothing is certain.

While several key members from the international community are in the midst of a period of critical self-reflection regarding their Myanmar policies, recent political developments within Myanmar have also become a source of significant international attention and critical analysis. As noted, the final draft of the constitution was ratified through a highly controversial referendum. While the referendum was held on 10 May 2008 in the areas that were not affected by Cyclone Nargis, it was held just two weeks later, on 24 May 2008, in the areas that were affected by Cyclone Nargis.⁴⁰ The Myanmar government claimed that 98.12 percent of eligible voters cast their vote and an astonishing 92.48 percent voted in favour of the constitution; however, Donald Emerson highlights that 'the junta did not even bother to come up with two different numbers for the 'yes' majority in each round'.⁴¹ Nonetheless, as the international community lacks the level of leverage necessary to change the constitution, or indeed force the regime from power, it is important to provide an objective and fair assessment of what it will mean for the country. The constitution does entrench an indefinite role for the military through a number of provisions including Sections 109, 141, 161 and 167, which provides that the Commander-in-Chief of the armed services, currently Than Shwe, has the power to appoint twenty-five percent of the members in both the lower People's Assembly (Pyithu Hluttaw) and the upper Nationalities Assembly (Amoyatha Hluttaw). These provisions also provide the military with the power to appoint one third of the delegates in the fourteen regional and state assemblies. The constitution becomes even more restrictive in the event of a 'state of emergency'. Here, an eleven-member National Defence and Security Council (NDSC), with at least six members being from the armed forces, can dissolve both the government and the legislatures. However, only the president can call a state of emergency. Interestingly, the Constitution vests the president with considerable power including the authority to appoint the commander-in-chief of the

Outlook (CRSO), ed. Brian L. Job and Erin Williams (Singapore: CSCAP, 2008), p.34. See also the Economist Intelligence Unit (EIU).

³⁷ Taylor, 'Myanmar: Reconciliation or Reconsolidation? Isolation or Resolution?', p.222.

³⁸ Neil Englehart, 'Giving up the Burma Fantasy,' *Dissent* 57, no. 2 (2010): p.12.

³⁹ 'Procurement, Myanmar,' *Jane's Sentinel Security Assessment*, 15 April 2010.

⁴⁰ At the time, the SPDC argued that the 'referendum is only a few days away and the people are eagerly looking forward to voting'. 'Myanmar's Junta Says Referendum Voters Accepted New Constitution,' *Kyodo News*, 30 May 2008.

⁴¹ Donald K Emmerson, 'Critical Terms: Security, Democracy, and Regionalism in Southeast Asia,' in *Hard Choices: Security, Democracy, and Regionalism in Southeast Asia*, ed. Donald K Emmerson (Stanford: Stanford University Press, 2008), p.40.

Defence Services. The president also has the power to appoint a cabinet together with state-and regional governments. Further, the President is appointed through a majority vote from both legislatures.⁴²

In the event that a future government adhered to the constitution on the basis of a literal interpretation, then its provisions, at face value, do strengthen the rule of law and provide improved human rights protection. In the case of the former, the constitution states that, 'to the extent possible', there shall be a separation of powers between the executive, the legislature, and the judiciary. Accordingly, the constitution provides for one 'Supreme Court of the Union', together with 'High Courts of the Regions, High Courts of the States and Courts of the different levels including Courts of the Self Administered Areas'. Here, the constitution also vests the President with the power to select the Chief Justice of Myanmar and the judges of the Supreme Court but this is subject to the approval of the lower People's Assembly. The constitution provides some further safeguards in this realm including, *inter alia*, a prohibition against any citizen being held in 'custody for more than twenty-four hours without the permission of the court'.⁴³

In terms of civil liberties and religion, the Constitution declares that 'every citizen is equally entitled to freedom of conscience and the right to free profess and practice [sic] religion'. Further, Chapter 8 of the Constitution prohibits discrimination based on 'race, birth, religio, official position, status, culture, sex and wealth'. However, this provision is potentially undermined by a clause that declares such rights to be subject to 'public order, morality or health and to other provisions of this Constitution'. In terms of some of the other major human rights protections, Section 358 prohibits the enslaving and trafficking in persons', Section 359 'prohibits forced labour except hard labour as punishment for crime; and section 356 protects a citizen's property and personal effects. Many other protections and caveats are also provided within the Chapter. Such provisions, if adhered to, represent a clear improvement to the current judicial and extrajudicial conditions that prevail in Myanmar. Importantly, the Constitution also establishes a mechanism to guide its interpretation thereby providing some protection in terms of adherence. Thus, Section 320 provides for the formation of a 'Constitutional Tribunal of the Union'. Again, the President is granted considerable authority in its establishment, having the power to choose three representatives, with a further six to be chosen by the speakers of the two assemblies.⁴⁴

Ironically, the utility of the Constitution is reinforced by some of the negative provisions that evidence the military's own concern about the risks associated with a devolution of their power. While certain caveats to the authority of the judiciary have already been noted, Section 203(b), for example, provides that the NDSC has the power to recommend the granting of amnesty to the President and Section 43 declares that no penal (criminal) penalty shall be implemented with retrospective effect. Problematically, the Constitution excludes the military from judicial authority by stating that the '... Defence services has the right to independently administer and adjudicate *all affairs* of the armed forces' and, in the event of an 'emergency', the court's power to issue writs will be suspended. Given these provisions, it is important acknowledge that the military has operated for decades with few constraints to its power. While the scheduled elections will not introduce any substantial form of democracy, the junta's power will no longer be limitless. As Neil Englehart states,

⁴² Christopher B. Roberts, *ASEAN's Myanmar Crisis: Challenges to the Pursuit of a Security Community* (Singapore: ISEAS, 2010), p.200.

⁴³ *Ibid.*, pp.200-01.

⁴⁴ *Ibid.*, p.205.

the junta 'will now have to deal with political parties, a parliament, and even possibly a presidency whose occupant may not fully agree with the military leaders.'⁴⁵ Finally, it is important to note the Constitution does provide a mechanism for constitutional amendment. Where twenty percent of the representatives from both the national assemblies back the admission of a Bill for constitutional amendment, then the constitution can be amended if the proposal is supported by seventy-five percent of the members of parliament in both houses. That said, there is a further caveat for issues considered sensitive to the military – such as military representation in the legislative assemblies – where, in addition to parliamentary approval, such proposals will have to be approved through a nationwide referendum.⁴⁶

The constitution was followed by the release of the government's new electoral laws in March 2010. Of the new laws, the Political Parties Registration Law is the most restrictive and one of the most contentious provisions bars any individual from participation in the election if they are *currently* serving 'a prison term as a result of a conviction in a court of law.' This provision was problematic for the main opposition party, the National League for Democracy (NLD) as many of their members are currently political prisoners. In this regard, Human Rights Watch claimed the number of political prisoners had grown to 2250 by September 2009.⁴⁷ Nonetheless, while the electoral laws are far from perfect, participation is not impossible. Further, it is not even clear whether the provisions of the new law will actually bar Aung San Suu Kyi from being eligible for participation in the forthcoming election. While the Constitution forbids her from being either the President or the Vice-President, it may be possible for her to be a member of parliament as she may not necessarily be classed as currently serving a prison term as her sentence was suspended.⁴⁸

Nonetheless, as outlined by the International Crisis Group, a potential opportunity was missed when the NLD decided against registering its party for election. Had it done so by the 6 May 2010 deadline, then by law it would have had 90 days to meet the requirements for the participation in the election including negotiations to resolve the status of Aung San Suu Kyi. During this 90-day period, the NLD could have also continued to pressure the SPDC to grant an amnesty for other party members currently in prison. Such an approach would have maintained both domestic and international pressure against the regime to reach a compromise and, in the event that such diplomacy was unsuccessful, then the NLD still could have withdrawn from the election. As it stands, the decision of the NLD not to register has meant that its political voice has been significantly marginalized and, moreover, it is now illegal for it to continue to operate as a political organization. Most importantly, while the principled decision to boycott the election is understandable, the practical effect is that the absence of the NLD's participation removes any prospect for a credible opposition to contest the election.⁴⁹ Thus, the position of Aung San Suu Kyi, 'that she would not even think of registering' the party, deprives the electorate of an obvious pro-democracy choice.⁵⁰ Given her iconic status as a

⁴⁵ Englehart, 'Giving up the Burma Fantasy,' p.13.

⁴⁶ Roberts, *ASEAN's Myanmar Crisis: Challenges to the Pursuit of a Security Community*, p.201.

⁴⁷ 'Burma's Forgotten Prisoners,' Human Rights Watch, 2009, www.hrw.org/node/84743.

⁴⁸ 'The Myanmar Elections,' (Jakarta/Brussels: International Crisis Group, 2010), p.11.

⁴⁹ *Ibid.*, pp.11-13.

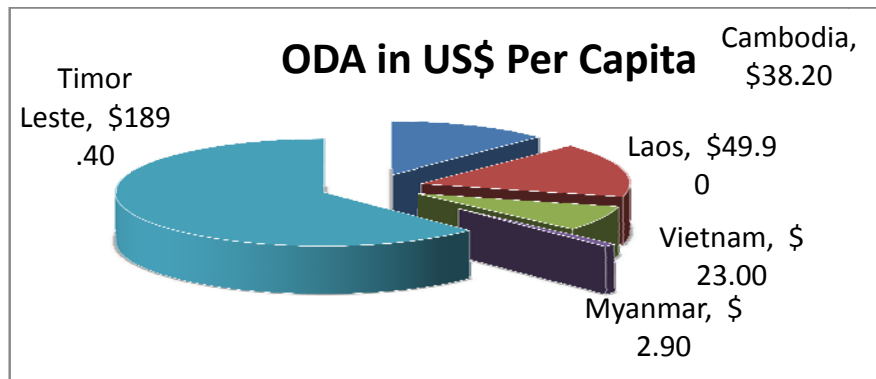
⁵⁰ 'Suu Kyi Slams 'Unjust' Myanmar Vote,' *Aljazeera*, 24 March 2010.

champion of the rights of the Burmese, such a position may also render other potential candidates more hesitant to contest the election.

Future Directions

While the forthcoming election will be highly unlikely to implement a genuine and substantive model of democracy in Myanmar, the provisions of the constitution do lay the groundwork for the possibility that certain democratic attributes may arise, on an incremental basis, during the course of the next few elections. In order to boost the prospects for this outcome, the international community needs to be more innovative and nuanced in how it responds to the situation in Myanmar. As noted, ASEAN and some Western countries have started to make some progress in this regard. However, the international community needs to do more as the situation for the people on the ground is dire. While the financial position of the current government (the military) is relatively strong, in 2007, Myanmar's GDP per capita was estimated to be US\$334 (the lowest in Southeast Asia) and the figure is likely to be far less in the ethnic minority areas.⁵¹ As indicated in Figure 1 below, such poverty has been compounded by Myanmar's isolation from aid where, for example, country receives sixty-five times less Official Development Assistance (ODA) than Timor Leste. Further, government services, including healthcare and education, are on the brink of collapse. Meanwhile, Myanmar's civil services have been neglected to the point where the opportunity receive bribes represents one of the few remaining reasons to join the government. The military, by contrast, is the last remaining sector with 'substantive pools of skills and pockets of competence'.⁵² In this context, the stability and security of the nation will necessitate a continued role for the military during the initial phases of a transition to a more efficient and/or democratic form of governance. Here, the continued operation of the United Wa State Army (UWSA), including 21,000 soldiers and their large-scale production of illicit methamphetamines, provides a stark reminder of just how volatile the country remains.

Figure 1: ODA Per Capita in the CLMV Countries & Timor Leste



Source: Compiled by author from UNDP statistics as per the Human Development Report 2007/2008, located at <http://hdr.undp.org/statistics/data/>.

⁵¹ Frost, 'Burma/Myanmar: Internal Issues and Regional and International Responses,' p.3. In 2005, it was estimated the per capita GDP was only around US\$100 in the Kokang, Wa and Shan Areas. Smith, 'Ethnic Politics and Regional Development in Myanmar: The Need for New Approaches,' p.73.

⁵² Englehart, 'Giving up the Burma Fantasy,' p.11.

There are no easy answers for the crisis of governance and human rights in Myanmar. Nonetheless, ASEAN's establishment of the TCG in the wake of Cyclone Nargis represents a potential mechanism for the delivery of aid to the people of Myanmar that could be utilized in the future. The idea of interacting with the SPDC may be repugnant to many, but the reality is that the people of Myanmar need our help. The gradual erosion of the education sector is particularly worrisome as it undermines the potential for the emergence of any independent and democratically minded leadership in the future. In fact, the small pocket of people with access to education and professional training are increasingly limited to those affiliated with the military. As such, the international community should increase the number of scholarships available to the Burmese for study overseas. Meanwhile, funding and aid should be delivered to the country through a TCG type model and/or Non-Governmental Organisations (NGOs). Again, the events surrounding Cyclone Nargis demonstrate that humanitarian assistance should not be interpreted as an impossible pipedream and nor should it be politicised.

Beyond humanitarian assistance, other actions can also be undertaken. Than Shwe is likely to retire sooner rather than later. Already, on 20 June 2008, there was a cabinet reshuffle, which, according to Jane's Intelligence, 'represents the next, and essential, step in the long process of constitutional reform that is gradually transforming the junta's rule from direct to indirect rule'. This reshuffle, together with two earlier reshuffles in May and June 2006, resulted in the removal of several aging members of the SPDC that had been previously close to General Than Shwe. Because of these developments, there is now a slim possibility of a power struggle between Vice Senior General Maung Aye (current SPDC Vice-Chairman and Vice Commander-in-Chief) and General Thura Shwe Mann (current Chief of General Staff – Army, Navy and Air) following Than Shwe's retirement.⁵³ As compared to Than Shwe, and the leadership that emerged after Prime Minister Khin Nyunt's dismissal, some Burmese believe that comparatively younger Shwe Mann is relatively moderate and may be more inclined to engage with the international community on a constructive basis.⁵⁴ In any event, the international community should be ready to quickly enter into dialogue with any future leaders (where appropriate) and also seek opportunities to engage with moderates at all levels of government. Further, should the right conditions emerge, then governments, think-tanks and universities should embark on the establishment of professionalization courses (i.e. human rights courses) with the middle and lower ranks of both the military and the civil services. Such programs have the benefit of introducing the participants to new ways of thinking including the socialization of better standards of behaviour (norms). Further, the implementation of these programs is not impossible as they have already been conducted by Australia in the past and continue to be conducted by Singapore.⁵⁵

Notably, this paper does not advocate an abandonment of all sanctions. Targeted sanctions should remain but clear and feasible benchmarks should be set for their removal. In the meantime, targeted sanctions should be supplemented by a policy of selective engagement of the kind outlined above. Further, the international community should be more forthcoming in rewarding positive behaviour. In this context, a recent opportunity to strengthen good governance was squandered in the context of former Prime Minister Khin Nyunt. During his period in power, the SPDC delivered some

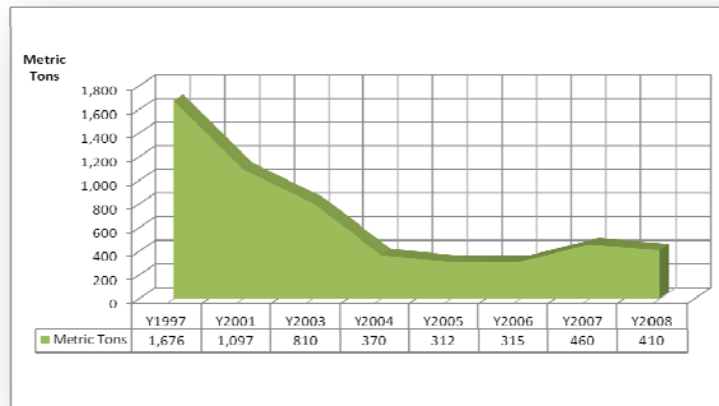
⁵³ 'Security, Myanmar,' *Jane's Sentinel Security Assessment*, 19 July 2009.

⁵⁴ Roberts, *ASEAN's Myanmar Crisis: Challenges to the Pursuit of a Security Community*, p.63. In the case of Singapore, the S. Rajaratnam School of International Studies provides training to military officers on an annual basis. Desker and Roberts, 'Myanmar: Prospects and Challenges of Engagement,' p.35.

⁵⁵ David Kinley and Trevor Wilson, 'Engaging a Pariah: Human Rights Training in Burma/Myanmar,' *Human Rights Quarterly* 29, no. 3 (2007): pp.368-402.

considerable concessions (from their perspective at least) when they released Aung San Suu Kyi from house arrest, embarked on a seven point roadmap for democracy, allowed the reopening of NLD branches, and cooperated with the US and the United Nations Office of Drugs and Crime (UNODC) in slashing opium production.⁵⁶ While the merit of some of these actions can understandably be debated, Figure 2 below indicates that the anti-narcotics efforts, in the very least, had tangible outcomes.⁵⁷ Nonetheless, rather than rewarding the SPDC for these efforts, the US tightened its sanctions further and, ironically, blocked anti-narcotics aid.⁵⁸ As noted, Khin Nyunt, a relative moderate, was soon removed from power and Robert Taylor argues that this was partly because of his failure to acquire concessions from the West.⁵⁹ Such errors in policy should not be repeated in the future. Moreover, by quickly rewarding positive behaviour on an issue-by-issue basis – rather than on the basis of an unrealistic benchmark that requires a resolution to all outstanding issues – the international community may be better placed to initiate a cycle of *quid pro quo* that also reinforces trust and reduces the prospect of any unnecessary misunderstandings.

Figure 2: Opium Production in Myanmar



Source: Compiled by author from UNODC statistics, located at <http://www.unodc.org>

⁵⁶ Further, the SPDC was quick to provide rhetorical support to the US 'war on terror' and subsequently allowed, for the first time, US bombers to have free passage through Myanmar's airspace from bases in Thailand through to Afghanistan. Further, the government 'reached agreements with the International Labour Organisation (ILO) to end the practice of the use of unremunerated labour and establish an ILO presence in the country. On several occasions, it also received the Special Rapporteur of the UN Human Rights Commission and two delegations of international investigators from Amnesty International. They, along with the International Committee of the Red Cross, were allowed access to political prisoners and other dissidents'. Englehart, 'Giving up the Burma Fantasy,' p.12, Taylor, 'Myanmar: Reconciliation or Reconsolidation? Isolation or Resolution?', p.213.

⁵⁷ Here, it is also important to note that the remaining areas of opium production are primarily limited to parts of the Shan region that are not strongly under government control. 'Myanmar: Opium Survey,' United Nations Office of Drugs and Crime, 2005, http://www.unodc.org/pdf/myanmar/myanmar_opium_survey_2004.pdf.

⁵⁸ Taylor, 'Myanmar: Reconciliation or Reconsolidation? Isolation or Resolution?', p.213.

⁵⁹ Ibid.: p.214.

Meanwhile, Myanmar itself must take greater responsibility for its actions – domestically and internationally. At the domestic level, it should understand that any meaningful version of democracy, even its so-called ‘discipline flourishing’ version, will need to open the gateway to reconciliation through the establishment of social processes where political conflicts can be resolved through peaceful dialogue. Such a process requires a value-system that encourages and embraces the participation of all citizens and their political organisations. In the long-term, this is the only way for the SPDC to achieve the level of security and stability it has publically declared as a goal. Further, and without seeking to justify the negative provisions of the Constitution, there is no longer any reason for the SPDC to fear the NLD, or other opposition groups, as not only has the SPDC successfully entrenched its role in any future government, but it has also guaranteed itself amnesty from future prosecution. Consequently, there is no reason for it to obstruct the emergence of a genuine multiparty race to win the forthcoming election. As a recent ICG report suggests, it is not too late to bring a small amount of credibility to the election. Thus, ‘the authorities could still take some steps that would have a significant impact, however, including a mass amnesty for political prisoners that would permit them to participate if they chose, and allowing space for parties and candidates to campaign, including access to the domestic media’.⁶⁰ Finally, in order gain access to the aid and trade that Myanmar needs for the purpose of economic development, not only does the SPDC need to be more forthcoming in accepting responsibility for the abuses that occur within its territory, but it also needs to be more transparent about the challenges it faces and better communicate its situation to the outside world.⁶¹ As Malaysia’s Foreign Minister, Syed Hamid states, ‘If [they] have a good story to tell, [they] must not be fearful of the things [they] have done. They must convince people and not only ASEAN that their plan [for democracy] is on track’.⁶²

While this paper has, where possible, attempted to provide some optimism as far as the constitution and forthcoming elections are concerned, the reality is that a free and fair election involving multiple parties will be unlikely this year. Nonetheless, delivering a viable future for the people of Myanmar will require a long-term process of capacity-building at the grass roots level. Such an approach may clash with a number of contending moralities⁶³ but, in the end, the sad reality is that the Myanmar conundrum leaves the international community with little better than the choice of the lesser evil in its policy formulation. In the meantime, it is safe to state that Myanmar has changed us more than the international community has changed Myanmar. Further, for too many nations the politics of ‘self-interest’ have prevailed for far too long. For some states, access to Myanmar’s natural resources has been a primary driver of foreign policy formulation. For other states, such as China and India, access to Myanmar’s territory, as a strategic gateway to the Andaman Sea, has also been a primary motivator. Yet for others, until recently, Myanmar has simply served as a ‘sound bite’ for which political venting has satisfied domestic constituencies.⁶⁴ More positively, for a small number of states, such as Japan, the United Kingdom and more recently ASEAN and the United States, a more ‘constructive’ approach has emerged. Let us hope that these constructive efforts will continue to develop and that they will be joined, and reinforced, by many more nations in the coming years.

⁶⁰ ‘The Myanmar Elections,’ p.13.

⁶¹ ———, ‘Myanmar: Reconciliation or Reconsolidation? Isolation or Resolution?’, p.211.

⁶² ‘Malaysian FM Says Myanmar Holding ASEAN Hostage,’ *Dow Jones Newswires*, 18 April 2006.

⁶³ For an in-depth debate about this see: Roberts, ‘Myanmar and the Argument for Engagement: A Clash of Contending Moralities?’.

⁶⁴ Taylor, ‘Myanmar: Reconciliation or Reconsolidation? Isolation or Resolution?’, p.222.

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