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**STRENGTHENING COMPREHENSIVE AND  
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**“Is Myanmar Changing Or Has Myanmar  
Changed Us?”**

*by*

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# **IS MYANMAR CHANGING OR HAS MYANMAR**

## **CHANGED US ?**

**KYAW TINT SWE**

### **INTRODUCTION**

ASEAN has come a long way from its modest beginning in 1967 when five countries in the South East Asia joined together to form an association focused on economic cooperation. In 1999, ASEAN became an association of ten member countries, fulfilling the dream of the founding fathers. With the adoption and the ratification of the ASEAN Charter by all ten members, ASEAN has become a rule-based Association and gained a legal personality. It has established three pillars, Political and Security Community, Economic Community and Socio Cultural Community. ASEAN Community will come into being in 2015.

ASEAN represents the collective will of ten sovereign member states with different political systems. No single government let alone Myanmar can bring changes to ASEAN. Nor can ASEAN change the political system in any of its component members, including Myanmar. It needs to be stressed that ASEAN has indeed changed. It is the maturity of the Association and of its ten component member states that is responsible for changes in ASEAN.

The establishment of the ASEAN Intergovernmental Commission Human Right (AICHR) is a historical milestone in ASEAN community-building and is a demonstration of the change that is taking place in ASEAN. In the words of ASEAN Secretary General Surin Pitsuwan, it is -“an important step in implementing the letter and spirit of the ASEAN Charter”. The existence of an ASEAN human rights mechanism was regarded by many as an impossibility only five years ago. Its establishment gives an opportunity to further the human rights agenda in member states. In fact for ASEAN, the establishment of AICHR is a conceptual move away from a state-centric approach to one that is more human-centric. It must also be pointed out that AICHR is the only regional human rights mechanism in the entire Asia and Pacific Region.

It must again be stressed that ASEAN do contribute to the changes taking place in member countries. Firstly, ASEAN Charter stipulates the principle of constitutional government. Secondly, all ten countries are implementing the three pillars of Political and Security Community, Economic Community and Socio Cultural Community and are adopting the approaches contained in these three pillars.

Myanmar has also come a long way in its endeavor to develop the country, bring unity through national reconciliation and pave the way to a democratic society. To appreciate the changes that are taking place in Myanmar,

it is necessary to see where Myanmar is at present and where it had been before. An understanding of the political background of Myanmar would also be useful.

### **Brief political background of Myanmar**

Myanmar opted for parliamentary democracy at independence in 1948. However, as the system did not live up to expectations it switched to socialism in 1974. Subsequently, in 1988, the socialist system was replaced with a multiparty system and a market-oriented economy.

Myanmar is a multi-ethnic, multi-religious country and is home to eight major ethnic groups comprising over 100 ethnic nationalities. It is situated in a strategic part of the Asian continent and is surrounded by countries with different political systems, cultures and religions. Its five neighbours include the world's two most populous countries, China and India. The challenges faced by Myanmar are therefore complex and multifaceted. The Government of Myanmar has to ensure harmony and maintain close and harmonious relations with her neighbours based on the five principles of peaceful coexistence. The unique circumstances of Myanmar should be taken into account whenever its situation is considered.

As national unity is vital for the country, the Government has been striving to promote it. Peace overtures have resulted in the return to the legal fold of 17 out of 18 major armed insurgent groups. The door is still left open for the remaining armed group. This is a significant development resulting in peace and stability to almost all parts of Myanmar. Li Xuecheng a Senior Research

Fellow of China Institute of International Studies wrote. “The international community should make a balanced assessment on the Myanmar government’s commitment to national reconciliation and domestic peace. We should see the positive efforts and progress the Myanmar government has made in bringing about national unity and pushing forward the process of domestic democratisation. As an Asian developing country, we fully understand the tough challenges Myanmar is facing. The biggest challenge is development. Another is national unity and domestic peace”<sup>1/</sup>.

Now that peace and stability prevails in the country, the Government is focusing on the political, economic and social development of the country. A seven-step road map for transition to democracy was initiated in 2003. The general elections, the fifth step of the seven-step road map, are scheduled for 2010. Systematic steps are being taken to hold free and fair elections. Electoral laws have been promulgated and the election commission formed so that political parties can contest the elections and State power can be handed over systematically to a government in keeping with the Constitution. At the last count, 29 out of 32 political parties that has registered have been allowed registration by The Election Commission.

### **Addressing Issues Cooperatively**

Myanmar faced serious challenges and is the subject of a number of accusations. The cooperative manner that Myanmar addressed these

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<sup>1/</sup> Myanmar Prospect for Change by Li Chenyang and Wilhem Hofmeister

challenges are a demonstration of the change that is taking place in the country. This despite the fact some of the accusations are politically motivated.

### **Combating illegal narcotic drugs**

Myanmar has been waging a war against illicit narcotic drugs for decades. A comprehensive 15-year National Plan was put in place in 1999. National efforts against drugs are based on two strategies; first, to strive for the eradication of narcotic drugs as a national task and, second, to strive for the elimination of poppy cultivation through the promotion of the living standards of the national races residing in the border areas. These strategies are buttressed by strengthened legislation and effective law enforcement.

As a result of Myanmar's anti-narcotic endeavours, poppy cultivation decreased by 83 per cent between 1998 and 2009. Moreover, we have been able to declare opium-free zones in the Mongla, Kokang and Wa regions, the largest poppy-growing areas in the country. Myanmar aims to rid the country of narcotic drugs by 2014, one year ahead of the date set by ASEAN.

### **Relief and rehabilitation in the aftermath of Cyclone Nargis**

The manner in which Myanmar cooperated with the United Nations and ASEAN in the relief and recovery effort to provide assistance to the victims of cyclone Nargis is another good example of the change that is taking place in Myanmar. The cooperation with UN and ASEAN was agreed to by Myanmar, despite the aggravating fact that a regional power attempted to use

the humanitarian crisis to push through its favoured approach to human security and implement the concept of Responsibility to Protect, well beyond the UN norms.

Cyclone Nargis, which hit the Ayeyarwaddy Delta, was the worst natural disaster in Myanmar's history. It resulted in extensive loss of life and property. The Government worked closely with the international community to provide assistance to the affected families and communities. Due to these efforts, Myanmar was able to overcome the emergency situation and prevent the outbreak of diseases. A tripartite core group, comprising high-level representatives of the Government of Myanmar, ASEAN and the United Nations, was established to coordinate relief efforts and to conduct a post-cyclone joint assessment. The success of the Tripartite Core Group demonstrates Myanmar's willingness and ability to work with the international community.

On 9 February 2009, the Tripartite Core Group launched the Post-Nargis Response and Preparedness Plan, a three-year plan to guide recovery efforts following Cyclone Nargis. The recovery needs amount to US\$ 691 million over the next three years. To date, only half of that amount has been committed by the international community.

The sustained effort of the government and its efficient coordination with international community enable it to overcome the social and economic difficulties brought by cyclone Nargis. "Food price had increased by

5.3 percent in May 2008, but in June the rate dropped to 1.9 percent.... From April to July 2008, FDI reached USD 850 million, seventy times compared to USD 12 million in the same period of 2007. Private export increased by 13 percent in July. The paddy rice plantation, in the rain season, which has the largest impact on rice output in 2008, has been completed as planned <sup>2/</sup>.

The cooperative manner adopted by the Myanmar government resulted in the conclusion by the International Crisis Group- ICG- that it is time to normalize aid relations with Myanmar. “It is natural for the government to want to take the lead in national development efforts and this has benefits in terms of sustainability. Rather than shunning the authorities, the best way to help the people is to involve government officials at all levels and enlist their cooperation and support.<sup>3/</sup>” ICG went on to state that “ considering the failure of twenty years of isolation, a normalization of aid relations may present the best available opportunity for the international community to promote change in Myanmar”<sup>4/</sup>.

### **The new State Constitution**

The most important change that has taken place is adoption of a new state constitution. It would be therefore useful to examine Myanmar’s new state constitution.

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<sup>2/</sup> The Economist Intelligence Unit Limited 2008, Country Report: Myanmar, November, 2008

<sup>3/</sup> International Crisis Group, Asia Report No 161-20 October 2008, p-28

<sup>4/</sup> International Crisis Group, Asia Report No 161-20 October 2008, p-31



The new State Constitution was passed by 92.48 per cent of the total eligible voters in the referendum held on 10 May 2008.

The Constitution provides for a bicameral legislature and a presidential system of governance. The President will be elected by a presidential electoral college. The State will be composed of seven states, seven regions, five self-administered zones and one self-administered division. Nay Pyi Taw, the Capital, would be designated a Union territory. In keeping with the state structure, the Constitution also establishes 14 state and regional legislative bodies.

The Constitution has been drafted in accordance with the principles of constitutional law. In drafting the instrument, the drafters studied the constitutions of other countries. They also followed the Basic Principles and Detailed Basic Principles laid down by the National Convention reflecting the views presented by people from different strata of life in Myanmar.

The Constitution contains various legal aspects of constitutional law found in the constitutions of other countries. It contains Basic Principles of the Union, State Structure, Legislature, Executive, Judiciary, Defence Services, Citizens, Fundamental Rights, Duties of Citizens, Elections, Political Parties, Provisions for State Emergency, Amendment of the Constitution, State Flag, State Seal, National Anthem, the Capital, Transitory Provisions and General Provisions.

With regard to the Legislature, the Pyidaungsu Hluttaw would be the principal organ. It would consist of the Pyithu Hluttaw and the Amyotha Hluttaw. The Pyithu Hluttaw will consist of 440 representatives and the Amyotha Hluttaw of 224 representatives. The representatives of the Pyithu Hluttaw and Amyotha Hluttaw will take turns for the speakership of the Pyidaungsu Hluttaw for two and a half years. The functions of the Hluttaws are in accordance with international standards and norms.

The Executive Head of the Union is the President. The Union Government will consist of the President, two Vice Presidents, the Ministers of the Union and the Attorney General of the Union.

In the Judiciary, there will be three levels of court in the Union. First, there will be the Supreme Court with its High Court of Regions and State, Court of Self-Administered Divisions, Court of Self-Administered Zones, District Courts, Township Courts and the other Courts constituted by law. These courts will adjudicate in accordance with their own law without affecting the powers of the courts at the second and third levels. Secondly, the Courts Martial will be constituted in accordance with the Constitution and the other laws and adjudicate with regard to defence personnel. Thirdly, the Constitutional Tribunal will have its own jurisdiction and have the duty to interpret the provisions of the Constitution and oversee whether the laws promulgated by the Pyidaungsu Hluttaw, the Region Hluttaw and Self-Administered Division Treaty Bodies and Self-Administered Zone Treaty Bodies are in conformity

with the Constitution. As in many legal systems, it is the Supreme Court that interprets law when application is made in a case. The Supreme Court interprets the law through case law. Zhu Xianghui, Assistance Professor of Institute of South East Asian University stated that “remarkable that a constitutional tribunal is set up to interpret the provisions of the constitution.” He also found that the government’s new constitution is a shift away from Parliamentary to Presidentialism.

A step by step mechanism is also provided for important ingredients of the Constitution, for example, State of Emergency. It empowers the President to make an ordinance and allows the administration of a particular place or the country be given to a body. The same would apply should there be danger of the Union disintegrating, should national solidarity be threatened or should there be a cause for loss of sovereignty. In both cases, the President, after coordinating with the National Defence and Security Council, shall promulgate an ordinance and declare a state of emergency which shall be subsequently approved by the Pyidaungsu Hluttaw at its next session. The duration of the ordinance would be for a year, after which a report would be made by the body to whom the power to administer is entrusted, e.g. the Commander in Chief of the Armed Forces.

Strict Codes of Conduct are also present under the Constitution. Whenever military personnel are transferred as ministers to ministries to perform their duties, they will be accountable to the President in the

performance of all their duties. If there be misconduct, they shall be subject to both military law and civilian law, whereas civilian ministers will be subject only to impeachment.

### **Conclusion**

Myanmar is changing. The steady implementation of its 7 step political road map is inrefutable evidence of change. He Shengda, former Vice-President of Yunan Academy of Social Science attribute this to five factors; namely “ the capacity of the military regime; considerable domestic support (twenty million members of Union Solidarity and Development Association, National Unity Party, and other pro-government parties); reconciliation reached with major ethnic forces and relatively stable relations with them; progress in the agriculture-dominant economy depending on rich resources; and sound relations with neighbouring countries.”

The return to legal fold by 17 of the 18 insurgent group signifies a policy that relies on national reconciliation rather than force of arms to address the insurgencies that plague the country since independence. This is another important change. In preparing for a new government after elections this year, the administrative machinery has been steadily civilianized. The recent privatization moves are also changes in the right direction. The elections, which the government has repeatedly assured that it will conduct in a free and fair manner, will usher in a new government under the new state constitution. This has been a long road and the challenges were formidable. The changes brought

about places Myanmar at a critical stage in history. The changes are brought about from within. It was not intentional pressure that brought about these changes. History has shown that changes imposed from external sources do not work well. Recent events are constant reminders of this.

In the aftermath of the elections, a new government will emerge. It will be a time that the government and people of Myanmar need the understanding and cooperation of the international community in the endeavor to build a democratic society, a developed country where peace and stability and rule of law prevail.