

The Myanmar 2010 Elections: A European Perspective

Christopher O' Hara

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Executive Summary

Myanmar is a closely watched, but puzzling country for the European Union. This means that the EU often encounter difficulties when responding to the autocratic nature of the military regime, the human rights abuses and the general lack of democratic norms. If the EU is viewed as an integrated region, its policy towards Myanmar seems to be divided. However, when the member states that make it up are observed individually, policy towards Myanmar becomes slightly clearer. Some member states have a moral argument as their base, others have a more pragmatic stance, and others have a combination of both. Most member states claim that their individual policies are aligned with the EU as a whole, but at other times these policies are changed, often in an ad hoc manner, to meet the demands of the particular setting.

The EU does not have the same difficulty when it comes to the generals and their repressive regime. That is to say, there are similarly minded criticisms on the content of the 2008 constitution, its drafting, the circumstances surrounding the referendum and the up-coming 2010 election. These similarities become less unified, when attention is focused on the expectations the EU has of Myanmar's generals, and becomes even less unified when the EU has to decide how to react to them.

Accordingly, this paper deals with the perception that Europe has of Myanmar from the view point of politicians and also the media; the expectations that Europe has of Myanmar from the perspective of politicians and also the general public; and the reactions of Europe with regard to the issues of sanctions, the internment of Aung San Suu Kyi, and the ongoing human rights abuses.

Many of these views are divided and decisions are quite often made for reasons of a moral nature, rather than from a pragmatic stance, and are often decided upon prematurely, before understanding the situation fully. Due to these observations, this report outlines some recommendations which may be useful to keep in mind when contemplating policy towards Myanmar. The recommendations aim to cover a broad area and include, but are not limited to:

- The need for the EU to engage in pan-European dialogue to break the “Myanmar position” stalemate that is occurring.
- The need for the EU to revise their view of the sanctions and to understand how ineffective they are at accomplishing change.
- The need to improve dialogue between the regime and the EU through the use of both direct and indirect channels, which automatically assumes the loosening of visa restrictions
- The need to learn from and follow the lead of Obama’s engaging attitude with his administration’s use of “the smart policy.” It must be noted that this would only be the starting point; the finish line is indiscernible.
- The need to be aware of the deficiencies in development aid and the continuing need to improve it.
- The need to be aware of the opportunity for change in a country that is experiencing change on many different fronts, whether the generals like it or not.

Burmese Independence, Constitutions and Elections

British Rule

When Britain made Burma¹ a province of India in 1886, increased economic activity and drastic structural changes began to take place. Many British firms reaped huge financial rewards during this period, with the Anglo-Burmese² and Indians following closely. The Burmese people, as a whole, were not so lucky and suffered a fate that is all too common for indigenous people. Due to the great economic activity that took place during this period, there were high hopes for Burma in the eyes of the British, not only during the colonial period but also in the years leading up to independence and in the post independence years. In fact, Burma was seen as the most positive example of success, where Britain could show how a “primitive” society could be transformed, not only in terms of economic growth, but also in terms of governance.³ With British guidance, the whole traditional Burmese society was transformed and there was a huge amount of capital flowing into Burma at the time. Due to these facts, the expectations for reform, increased trade, increased wealth and better governance, during British rule and beyond, were over estimated, and in hind sight, unrealistic. With other European countries watching the assimilation of a society, that appeared to be a perfect “how to” example, Britain could hold its head high and show that the British way of doing things was best. After British rule ended in the 1940s Burma emerged as one of the most developed countries in South East Asia, and continued to be in the limelight when the socialist government took control in the 1960s.

¹ The use of the name Burma is used when addressing historical issues. Myanmar is used throughout the rest of the paper because this is the official name according to the United Nations. The use of either the name Burma or Myanmar does not represent any political views.

² Anglo-Burmese were the product of inter-marriage between the British and Burmese. They came to dominate the colonial society, above the indigenous Burmese but under the British.

³ This was the drastic change in governance, including the demise of the monarchy and increased secularization.

However, from the 1960s, the level of development began to recede and has continued to remain low up until today. It is for these reasons that Europe and particularly Britain seems to have a love affair with Burma that had great potential but ended up going astray.

1947 Constitution

The 1947 Constitution of the Union of Burma was an important step for Burma, as it set the foundation for all of the constitutions that were to follow. It was drafted in 1947 and became active immediately after the United Kingdom granted independence in January 1948. The 1947 constitution set up a multi party system and four elections were organized under it (1947, 1951, 1956 and 1960).⁴ The main focus of this constitution had to do with power sharing provisions between the numerous ethnic minorities and states. The fact that different minorities were given varying degrees of autonomy and different levels of representation led to fighting between many of the groups. Some of these conflicts are still simmering today, in the form of instances of violence between groups and the government, and a lack of governmental control in many areas, although they have been curtailed somewhat, due to effective ceasefire agreements. This shows that the power sharing provisions were not considered properly. There was an eagerness, among leaders of the regime, to get the constitution written as soon as possible, as they realized that the ethnicity issue would take too much time to resolve. So instead, the constitution was drafted quickly, with the hope that the issues of power discrepancies and autonomy would, somehow, just go away. Many of the problems within the constitution that have to do with minorities and power distributions have continued to be found in the later constitutions.

The conflict that occurred, gradually from 1947, meant that the power of the democratic government had dissipated from 1947 to 1958. Control of the country was limited and there were many insurgent groups operating against one and other and the government, each fighting for their own gain. Due to the powerlessness of the government and their lack of control, it was

⁴ Michael W. Charney, *A history of modern Burma* (Cambridge and New York: Cambridge University Press, 2009).

not possible to stop a coup d'état that occurred in 1958. The new short term military government was heavily critical of the constitution and retained power for almost two years. In 1960 they organized elections and handed power back to a civilian government. However, the insurgency, political turmoil, constitutional defects and whispers of secession that followed gave the military reasons to re-take control in 1962, after only two years of an un-effective civilian government.⁵

General Ne Win set up the Revolutionary Council pursuing a socialist ideology, annulled the constitution and retained all legislative, executive and judicial power indefinitely. The "hands off" isolated socialist ideology that he promoted meant that a centralized socialist state would be created without any foreign influence. The Burma Socialist Programme Party (BSPP) was founded in 1962 and was the only legal party from 1964 to 1988. All media outlets were taken over by the Revolutionary Council and there were strict regulations with regards to civil liberties and ethnic expression. The Council abolished the power sharing agreements set out in the 1947 constitution and granted all citizens equal rights regardless of ethnicity. Accordingly, all local governments and administrative regions were abolished under the central control of the military government, headed by General Ne Win.

1974 Constitution

In 1974 the Constitution of the Socialist Republic of the Union of Burma was approved with a 95 per cent voter turnout and a 90 per cent approval rating, but questionably free and fair. This constitution was five years in the making from the time when Ne Win announced his plan to draft it and return power to the people. It created a one party socialist state with no separation of powers, unlike the previous constitution. The president would retain all executive power, and the country took its present form with regards to its ethnic states and divisions, with the local council's remaining under the supervision of the president, still retaining control of each division/state. As

⁵ International Crisis Group, "Myanmar: Towards the Elections," *Asia Report* 174 (2009), <http://www.crisisgroup.org/home/index.cfm?id=6280&l=1>

set out by the constitution, the country was united under the unitary control of a centralized government.⁶

Elections took place in 1974 and most members of the BSPP were appointed as political leaders. The same members of the BSPP and the revolutionary council remained in power, albeit under different titles. All of the elections that occurred from 1974 to 1985 only offered candidates from the BSPP for selection. In this way Ne Win superficially fulfilled his promise of returning power to the people. The government ruled in this fashion without much opposition until 1988. At the same time, many citizens were suffering due to un-sound economic decisions made by the government, which led to mass protests and increased violence. Amidst this environment of tension, Ne Win resigned, but the unrest continued and in 1988 the military, under the new leadership of General Saw Maung, violently curtailed the unrest. The new regime formed the State Law and Order Restoration Council (SLORC) which took control of the country, annulled the 1974 constitution and dissolved the BSPP.

In line with the aims of the BSPP, the SLORC announced that multi party-elections would take place. Although there was suspicion with regards to the prospect of an election, there was much political activity none the less, with 235 parties participating. One of the biggest and most organized parties was the National League for Democracy (NLD) headed by Aung San Suu Kyi.⁷ The general elections took place in mid 1990 with the SLORC still ruling by martial law. This meant that many of the parties could not campaign due to ethnic concerns, or accusations of dissent and provocation, which were of course, dealt with accordingly. Many members of the NLD were intimidated and arrested. The manipulative behavior on part of the SLORC also meant that the elections were not carried out in a free, fair and democratic manner.⁸

⁶ International Crisis Group, "Myanmar Backgrounder: Ethnic Minority Politics," *Asia Report* 52 (2003), <http://www.crisisgroup.org/home/index.cfm?id=1528&l=1>

⁷ See "Timeline Burma: A chronology of key events," *BBC News*, <http://news.bbc.co.uk/2/hi/asia-pacific/1300082.stm> (accessed October 29, 2009). For a detailed description of what Aung San Suu Kyi did and who she is, see her website Daw Aung San Suu Kyi's pages, <http://www.dassk.com>

⁸ Amnesty International, *The repression of ethnic minority activists in Myanmar*, (London: Amnesty International Publications, 2010).

However, the suppression of opposition parties by the SLORC actually yielded results that were not expected. Many of the opposition parties, particularly the NLD, gained a lot of sympathy and support from the general populous. Sensing a defeat in the election, Major General Khin Nyunt put in place measures that would allow the military to retain power until a new constitution was drafted and a new stronger government was in place. The suspicion of a defeat turned out to be correct for the generals, because the NLD won the general election by nearly 60 per cent of the vote and secured nearly 81 percent of the seats.⁹ However, as warned by the military, they did not give up power, but instead continued to keep the people's representatives incarcerated, until a new constitution could be drawn up and a more stable government could be created. This led to international outcry from many nations across the globe, although the junta claimed they had the right to protect the Union by any means fit. This meant that many of the opposition leaders went into exile and many other were arrested.

The 2008 Constitution

The drafting of new constitution began in 1993 by a small number of NLD representatives and by huge numbers of appointees who were chosen by the SLORC. The 54 member drafting constitution commission completed a proposal on February 19, 2008 in an extremely regimented environment. It was drafted under strict regulations and guide-lines with most input coming from members who were approved by the military junta. The commission was set six very clear objectives, the most important one being the pivotal role of the military. This is outlined in the "Tadmada" section of the Constitution and it implants the leading political role of the military.¹⁰ The military mentality and the un-democratic regulations that encompassed the drafting

⁹ The NLD got 59.87 per cent of the votes and this secured nearly 81 per cent of the seats. See Maung Aung Myoe, *A Historical Overview of Political Transition in Myanmar Since 1988*, Asia Research Institute, National University of Singapore, Working Paper Series No. 95 (August 2007), p. 13.

¹⁰ Aung Hla Tun, "New Myanmar constitution gives military leading role," *Reuters*, February 19, 2008, <http://www.reuters.com/article/worldNews/idUSBKK10184120080219?feedType=RSS&feedName=worldNews> (accessed on December 1, 2009).

environment caused conflict between the opposition parties and the SLORC representatives. The small numbers of NLD participants were expelled from the drafting process after they continually contested the regulations surrounding the drafting process. Due to this fact, there was no input from independent parties, and the constitution became a good example of a top-down product.¹¹

The drafting process continued to progress at a slow rate and in 1997 the SLORC renamed itself the State Peace and Development Council (SPDC), although it was simply a re-arranging of power among members of the SLORC. The SPDC then announced a seven step road map which would lead to a form of disciplined democracy, climaxing with democratic elections and a new constitution. This roadmap gives the appearance of a democratizing country, with the creation of many new institutions, which appear to be publicly controlled. In reality, the generals are still the ones in control of these institutions. Due to these power arrangements, any real political change is difficult to foresee, rather, continued military rule is more likely. However, with this in mind, the junta seems to be realistic about their chances of staying in power and many important military leaders seem to be looking for "a way out," so to speak, which could occur in the form of a slow transition from military rule.

After 15 years in the making, the 2008 constitution was finally ready to be put to referendum, with plans for the long awaited elections scheduled to take place in 2010, although no exact date has been specified yet. The constitutional referendum went ahead during one of the worst natural disasters in Myanmar's history (Cyclone Nargis), and was approved with a 92 per cent approval rating and 95 per cent voter turn-out, which suggest that the figures may not be completely reliable. Added to this, several international observers claimed that the referendum did not meet basic democratic norms.¹² This meant that the military will be able to put themselves in a better position to control the country, but it will also enable them to devise exist strategies, if

¹¹ "Myanmar says writing of draft constitution completed," Associated Press, February 19, 2008, <http://www.highbeam.com/doc/1A1-D8UTGKL01.html> (accessed on October 15, 2009).

¹² International Crisis Group, "Myanmar: Towards the Elections."

and when the time presents itself. Such exit strategies may focus on ways in which members of the regime can exit from positions of power whilst retaining some of their financial gain. It must be kept in mind that power offers many ways in, but also many ways out.

The 2010 Election

Even though the military government has announced plans for elections in 2010, it has not provided an exact date. They claim to be making all the necessary arrangements to make the election take place in an environment of inclusion in line with their view of “disciplined democracy.” At the time of writing this paper, there was no election law or political party law which laid down the regulations for the parties on how to organize during their campaigns. Therefore, there were no rules or regulations that allow parties to register for election. This was problematic for obvious reasons, because if there was no frame work in place that allowed parties to organize, then they simply could not do anything to prepare. However, now the election law has been released and has been met with much criticism. The majority of people are not satisfied with the law on the registration of political parties, mainly due to provisions barring prisoners, members of religious parties, and foreigners. Even so, there is a divide within the opinion of the population which can be broken down into different perceptions. Some want to boycott the election, while others want to go ahead with it even though they are not happy with the registration law. Most people, however, just want to have some sort of change, no matter how small it is.

European Perception of Myanmar

What is Europe?

For the purposes of this paper, I will build on the ideas presented in an article by Jonathan Holslag to gain a deeper insight into the entity we call Europe.¹³ Even though there are differences in the member states policies towards Europe, it is possible to extract common interests and approaches, which usually revolve around issues of morality and the multi-definitional word democracy. Hence, it must be noted that when I refer to “Europe” or “European” I am mainly referring to common themes that can be found in official EU policy. The institutes of the EU show how member states act in unison towards Myanmar. By examining the Joint Statements and Common Positions that have been developed and approved by each of the member states, one can reveal the unified approach to Myanmar. However, it must be noted that sometimes individual member states do act and speak contrary to the “common policies.” Due to this, the official policies of the EU will be referred to throughout the paper, as well as explicitly mentioning national policies, opinions and statements. This will show that Europe is neither a single entity nor a group of disjointed states, but rather a group of nations that have similar and sometimes not so similar agendas, policies, opinions, interests, ambitions and criticisms.

The European View of the 2008 Constitution and the 2010 Elections

It seems that many from the political sphere, as well as academics and media commentators in Europe view the new constitution as a sham and accordingly the planned election cannot be taken seriously.¹⁴ The whole democratization process is not seen as a seven step road map to democracy, as the junta claims, but rather as a way to consolidate their military reign. The criticisms

¹³ Jonathan Holslag, “The European Union and China: The Great Disillusion” *Asia Paper*, Vol. 1, No. 3 (2006), p. 2.

¹⁴ TomFawthrop, “Burma’s sham constitution,” *Guardian.co.uk*, March 12, 2008, <http://www.guardian.co.uk/commentisfree/2008/mar/12/burmasshamconstitution>

surrounding the constitution mainly has to do with the conditions in which it was passed in May 2009, as well as with certain criteria that must be fulfilled, before the election can be described as democratically credible.

In general, the European criticism of the 2008 constitution can be broken down into three main parts. The first is the conditions under which the constitutional referendum was voted upon. The second is on the content itself and the third is the criticism of the election law.

Conditions Surrounding the Referendum

There are many problems with the way in which the 2008 referendum was carried out. There has been a wide array of criticisms from the international community which focus on Cyclone Nargis, the repression of opposition parties and electoral fraud.

Cyclone Nargis

Even though there were reports that over 1.5 million people were affected by Cyclone Nargis and the fact that there were five formally declared disaster zones, the vote on the referendum still went ahead.¹⁵ The UN called for the referendum to be postponed, which was rejected by the regime that proceeded none the less, although in severely affected areas there was some postponements. There were also reports of human rights abuses through out the entire process, where many important resources were taken away from victims and diverted to the referendum.¹⁶ This is also in line with the official EU view.

Repression of Opposition Parties

The junta injected a lot of money into the 2008 referendum by utilizing propaganda through the use of the state papers, radio and television, explaining to

¹⁵ "U.N.: 1.5 Million Affected by Cyclone" ABC News, May 8, 2008, <http://abc-news.go.com/International/story?id=4813195&page=1>

¹⁶ Anasuya Sanyal, "Independent observers allege abuse of Cyclone Nargis victims," *Asia Pacific News*, February 28, 2008, <http://www.channelnewsasia.com/stories/southeastasia/view/411982/1/.html> (accessed on November 27, 2009).

the public the need to vote yes.¹⁷ Along-side this propaganda machine, opposition parties who were canvassing were suppressed, particularly the NLD, with many of their organisers arrested and campaign material destroyed. The majority of opposition parties also claimed that they were not able to voice their unhappiness with the constitution, and any attempt to do so would end with violence,¹⁸ the threat of violence or other forms of reprisal.

Electoral Fraud

The referendum was full of irregularities and was carried out in an environment of intimidation and coercion where free ballot was not allowed.¹⁹ There were even some reports of officials bribing and forcing people to vote in favour of the constitution. In other cases, ballot cards were handed out that had already been filled in. There were even cases of voters turning up at polling stations and being told to return home because their votes had already been cast.²⁰ Every single one of the opposition parties claimed that the election was not carried out in a free and fair manner, and could most certainly not be described as democratic.²¹ Even so, the junta released figures

¹⁷ "Burma military pressures people to vote Yes," *Democratic Voice of Burma*, March 31, 2008, <http://english.dvb.no/news.php?id=1094> (accessed on December 1, 2009).

¹⁸ Human Rights Watch, "Burma: Referendum is a Sham: Governments Should Not Endorse Vote on New Constitution," Human Rights Watch, May 1, 2008, <http://www.hrw.org/en/news/2008/04/30/burma-referendum-sham> (accessed on December 2, 2009).

¹⁹ *Burmese Constitutional Referendum: Neither Free nor Fair*, Report prepared by the Public International Law and Policy Group, May, 2008, http://www.burmalibrary.org/docs5/PILPG_Report_Burmese_Constitutional_Referendum_Neither_Free_Nor_Fair-11_May_2008.pdf; and U.S. Department of State, Bureau of East Asian and Pacific Affairs, "Background Note: Burma," July 2009, <http://www.state.gov/r/pa/ei/bgn/35910.htm> (both accessed on January 13, 2009).

²⁰ International Crisis Group, "Myanmar: Towards the Elections."

²¹ Reporters Without Borders, "Government launches aggressive censorship and harassment campaign in run-up to referendum on new constitution; rap singer arrested," IFEX: International Freedom of Expression eXchange, April 24, 2008, http://www.ifex.org/burma/2008/04/24/government_launches_aggressive (accessed on December 12, 2009)

claiming that 92% of the voters approved the constitution and that there was 95% voter turnout.²²

Criticism on Content

The Military

According to the new constitution, the military will still hold a lot of political power. Twenty five per cent of the legislative seats will be kept for military personnel, all of whom will be appointed by the commander in chief. The military will also take its place at the foundation of the Union of Myanmar with the inclusion of a chapter entitled the Tatmadaw (armed forces) into the constitution.²³ This chapter outlines the core role of the military, which has led many commentators and politicians in the EU to believe that this will make the military the most important institution and secure their future role in the Union.²⁴

The military will also be able to nominate one of the three presidential candidates. One will be appointed by the upper house, one by the lower house and one by the military. The successful nominee will become president, whilst the two unsuccessful nominees will become vice presidents.²⁵ This is a positive development in comparison to the current situation.

The military will also keep a tight grip on key security ministries. A powerful national defence and security council will be established which will be chaired by the president. This national defence and security-council will have a military majority. Six out of eleven members will be the commander in chief and his appointees. There are no regulations in the constitution that says how the appointees are to be selected and the commander in chief is not subject to legislative oversight. This means that the commander in chief can appoint who he wants when he wants, and this will most likely occur in an

²² "Burma charter offers scant reform," BBC News, May 19, 2008, <http://news.bbc.co.uk/2/hi/asia-pacific/7408738.stm> (accessed on December 01, 2009).

²³ For detailed information regarding the Tatmadaw, see *Constitution of the Republic of the Union of Myanmar (2008)*, Chapter 7, http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf

²⁴ International Crisis Group, "Myanmar: Towards the Elections," *Asia Report* 174.

²⁵ Ibid.

informal environment not based on merit, but rather personal relationships and nepotism. It also means that the commander in chief has complete freedom to perform actions he wishes to do, without worry of repercussion.

Under certain circumstances the president may declare a state of emergency. This would then mean that the commander in chief would receive far-reaching powers to rectify the situation. For example, if there is a threat to national security (this could also be defined as a threat to the legitimacy of the regime), the commander in chief would be given legislative, executive and judicial power for one year in order to resolve the crisis.²⁶ Added to this, under the constitution, members of the SLORC and any member of government are granted immunity in the execution of their duties. It also gives them the right to administer their own personal dealings. This will apply to their conduct since 1988.

Ethnicity

Burma has a population of roughly 56 million. This is, however, only an estimate because there has not been a census in over 20 years. Within this large population there are around 135 different ethnic groups, many of which want to see a union where ethnic autonomy is assured.²⁷

Many want to see a federal structure, but according to the constitution, the Union will remain the same as it is now, with the word "division" changing to "region."²⁸ These are only superficial changes, because the structure of the Union will remain the same, with seven states and seven regions (divisions). However, within some of these states and regions there are new self administering zones. The divisions or regions are majority Burman ethnicity, whereas the states are of other mixed or majority ethnicities.

²⁶ Amnesty International, "Myanmar: Constitutional Referendum Flouts Human Rights," *Amnesty International Briefing Paper*, May 9 (2008), <http://www.amnesty.org/library/asset/ASA16/010/2008/en/ef4a33f9-2cd0-11dd-bcd2-ff211e7307f7/asa160102008eng.pdf>

²⁷ Bruce Matthews, "Ethnic and Religious Diversity: Myanmar's Unfolding Nemesis," ISEAS, Visiting Researchers Series No. 3 (May 2001), <http://www.iseas.edu.sg/vr32001.pdf> (accessed on November 5, 2009).

²⁸ International Crisis Group, "Myanmar Background: Ethnic Minority Politics," *Asia Report* 52 (2003), <http://www.crisisgroup.org/home/index.cfm?id=1528&l=1>

Even though there will be a minister appointed to head each state and region, these ministers will be selected by the president. This has led many commentators to suggest that the constitution will lead to very little ethnic autonomy, and rather than looking forward to a federal union, the union will remain the same as it is now, under the control of the central government.²⁹ It is not certain whether the governments of the states/regions will have any administrative or legislative power as the part of the constitution that deals with this is ambiguous and unclear. In reality, the military government is creating powerless state/regional governments, which is intended to give the impression of a federal system, all the while retaining power under central leadership.

Strict Candidate Requirements

There are strict regulations regarding potential candidates running for important appointments, including the presidency and key ministries. For example a presidential candidate will only be allowed to be included in the process if he has an in-depth understanding of the Union and all its affairs. Anyone in a position of power can decide who has such understanding even though the candidate, in reality may not be suitable. It is at this point where nepotism comes into play. The candidate must also not have a parent, spouse or child who is a foreign citizen, and must not have lived outside the country for the past 20 years, except on official visits. This means that members of opposition parties who have been exiled will be barred from the elections. This also means that Aung San Suu Kyi will not be allowed to run for the presidency on account of her sons being British citizens.³⁰

The eligibility for government ministers and legislative representatives is also restricted. For example, they must not have lived outside the country for the past 10 years, or owe allegiance to a foreign government, or be a foreign citizen. Alongside this, they must also not receive funds or support from a

²⁹ "New Myanmar constitution gives military leading role," *Reuters*, February 19, 2008, <http://www.reuters.com/article/worldNews/idUSBKK10184120080219?feedType=RSS&feedName=worldNews> (accessed on October 25, 2009).

³⁰ For details of candidate requirements, *Constitution of the Republic of the Union of Myanmar 2008*, Chapter 9.

foreign government, or be a member of a group that does so. In addition to this, they must not be a member of a religious organization or be a civil service employee. Arguably this is because the government does not want anything or anybody outside of the military to have influence. But perhaps the most crucial restriction is the fact that candidates must not be serving prison terms. This in effect allows no room for participation by Aung San Suu Kyi or 2,000 members of her party, the NLD. If these members are not released and allowed to take part in the elections, then the elections cannot be considered free and fair. However, some members of this party will be allowed to run in the election even if they have been previously convicted, as the constitution allows previously convicted persons to run for election.³¹

Amendment Difficulty

The fact that the constitution is very difficult to amend³², has led many spectators to believe that the Union will be stuck with a defective constitution for the foreseeable future. There are many dubious parts of the constitution which will remain at its core due to rigid amendment regulations. This means that there will not be much hope for positive improvements and rather than having an evolving constitution where negative aspects are set aside, and positive aspects worked on, the status quo will remain. This is because the 25 per cent of the military that will hold seats will yield enough power to block any potential amendments that they deem threatening. This means that anything that if the military persons who take the seats feel themselves to be under threat due to new developments, they can simply block it. However, if appropriate exit strategies present themselves, they may be more willing to embrace change that is, of course, only if they are promised safety, both financially and legally.

³¹ International Crisis Group, "Myanmar: Towards the Elections."

³² See *Constitution of the Republic of the Union of Myanmar 2008*, Chapter 12.

Criticism on the Election Law

A Delayed Election Law

Previously, the most important criticism with regard to the election law was that it did not actually exist. Senior General Than Shwe promised that the election law would coincide with democratic values, and that the Union will have a free and fair election in 2010. According to Than Shwe, the election law plays an important role in the seven step road map to democracy, which will lead to national reconciliation and a democratic country.³³ Since the election law has been released there have been criticisms of many of the regulations surrounding the organisation of political parties. This is no surprise considering Chapter 9; Section 329 of the constitution bans any member of a religious order and persons serving prison terms from voting, therefore it is normal that the election law follows these rules. Most of the criticisms focus on the fact that Aung San Suu Kyi will not be allowed to register to a political party to run in the election, neither will previously convicted person or persons holding prison terms. This seems to be splitting parties down the centre as some are willing to accept it, and some are not willing to accept it, therefore not recognising the legitimacy of the regime.³⁴ This difference of opinion is also evident throughout the country.

European Suspicion

The fact that the election law has been delayed has also raised suspicion in Europe. There are many different suggestions as to why the government of Myanmar has done this. One suggestion is that they have delayed its release in order to gain an advantage over opposition parties, because if there is no election law then opposition parties will have very little time to prepare. Because of the lack of a proper party registration law, opposition parties were not able to register. This registration law is usually released a few years

³³ The China View, "UN chief: Myanmar leader promises to hold inclusive general election," <http://chinaview.cn>, July 5, 2009, http://news.xinhuanet.com/english/2009-07/05/content_11654565.htm (accessed on December 1, 2009).

³⁴ Salai Pi Pi, "Junta speaks of possible split in NLD," *Mizzima*, January 29, 2009, <http://www.mizzima.com/news/election-2010/1624-junta-speaks-of-possible-split-in-nld.html> (accessed on December 5, 2009).

before elections are due to take place. This is problematic for the opposition parties and gives the junta an advantage with regards to preparation.³⁵ Moreover, the military are the only ones capable of actually preparing properly for the election, as they have the best resources and can dictate the environment in which the election will take place.

Another suspicion has to do with the preparations the government is making with regard to the logistics of the elections. They are taking their time with regards to vital preparations and they may, in fact, not make any preparations at all. This could mean that the elections will take place towards the end of 2010 or it could mean that the government are not planning to make any great effort to give people easy access to voting. A recent International Crisis Group (ICG) report has suggested that the elections will be carried out in "a rough and ready manner" similar to the way the referendum of 2008 took place, in an environment of confusion and chaos, which presents the opportunity for electoral fraud and intimidation.³⁶ From the perspective of Europe, the longer the delays in the regulations for the organizing of the election, the declaring of the party registration law and election law, the more suspicious the Europeans will become.

Reason vs. Emotion

When dealing with matters of importance, such as the sensitive electoral environment in Myanmar, it is difficult to separate emotion and reason. The constitution is flawed in many ways, but there is also room for improvement in many aspects.³⁷ It is not reasonable to assume that Myanmar can overnight transform its self from an autocratic military regime to a functioning

³⁵ Wai Moe, "Junta Queries Candidates for 2010 Election," *The Irrawaddy*, February 16, 2009, http://www.irrawaddy.org/article.php?art_id=15124 (accessed on November 16, 2009).

³⁶ International Crisis Group, "Myanmar: Towards the Elections."

³⁷ Any change in Myanmar will be better than the status quo. The military are of course implanting themselves at the foundation of the Union, but there is also a chance for opposition parties to gain some seats if they would only participate. Let us not forget that the junta was not effective in fixing the previous 1990 election result. There is more at risk now, as a repeat performance of the 1990 election surprise would yield even harsher criticism from ASEAN, the U.S. and Europe.

democracy without any input from the military. The military is the only institute that is functioning well in the country, and will therefore play a huge role in other vital institutions. None the less, many Western countries still seem more concerned with what should happen in Myanmar rather than what is actually possible.³⁸ Most articles that discuss the problems that Myanmar faces tend to focus on how bad the military regime is, how much the people are suffering, the horrible human rights abuses and many other problems. Of course these are problematic issues, but saying them over and over again and calling for a change in Myanmar will probably not solve the issue. It is far more pragmatic to engage the only functioning institution in the country (the military) and work with what little space there is. Sanctions have, as one example, not been successful.

For example, the restrictive provisions of the constitution do indeed make it very difficult to amend, but there have been other cases where rigid constitutions have been amended. It is also possible for a constitution to evolve through re-interpretation by a group of worthy peers, but the problem here is who is classified as worthy peers. Even so, it seems that because the military is viewed as untrustworthy by Western media and politicians, the perception is that the election will be fraudulent and that they, the Generals, have already broken their promises and therefore there is little hope of any positive interpretation. Also, the close emotional relationship Europe (particularly Britain) has to Myanmar seems to be stimulating an emotional reaction, rather than reasonable one. Rather than working within the limited framework the military has set, and making minor adjustments, which can have major impacts on people's lives, Europe ignores the Generals. By acting from this ideological base, the only option Europe has is to continue to refer to the villainous generals, and repeat their usual ineffective actions of sanctions.

Emotion and Misunderstanding

There have been many misunderstandings of the constitution. One misunderstanding has to do with the restrictions on prisoners that say anyone who

³⁸ For an interesting perspective on the pragmatic ASEAN approach vs. the moral Western approach, see Xiaolin Gou, "Dealing with Myanmar: A Unity of Divided Interests," Institute for Security and Development Policy, *Policy Paper* (June 2008).

has ever been sentenced to prison has no right to vote in elections. However, similar restrictions are found in some European constitutions, with regard to both running in an election and voting.³⁹ Another misunderstanding of the constitution can be seen with regards to Aung San Suu Kyi that seems to stem from an emotional response to Myanmar, rather than from pragmatic stance. For example, a prevalent claim is that Aung San Suu Kyi is excluded from partaking in the elections due to her marriage to a foreign citizen, which in fact is not the case. It is because her sons are British citizens, and many commentators say that these clauses are deliberately inserted to exclude her, which is also not the case as many of these restrictions were included in previous constitutions. Also, there is no reason to assume that Aung San Suu Kyi would aspire to take on such a role, and she may not be nominated anyway in the present circumstances. Another example of this misinterpretation of facts can be seen in the exclusion of monks from voting and running as candidates in the election. Many have pointed to this fact and called it discriminatory⁴⁰. However, it is worth noting that it was Buddhist monks, who specifically devote themselves to Buddhism and Dharma practices, asked for this provision, which was meant to keep the state and religion separate.⁴¹ Aung San Suu Kyi has also shown support for this. These are just some examples where negative emotional reaction plays a role in distorting facts and over rides reason. It seems that the feeling is that they (they military) are bad people and we (Europe) are good. Perhaps the generals are afraid that a civilian government will be too weak to unite the many different ethnicities in the Union, which could and has led to conflict in Myanmar in the past. It is important to note that sometimes the road to hell is paved with good intentions. If the rules of the self fulfilling prophecy are applied to this case, the generals will continue to be viewed as evil if Europe continues

³⁹ Robert Winnett and Tom Whitehead, "Prisoners to get right to vote after 140 years following European ruling," *telegraph.co.uk*, April 9, 2009, <http://www.telegraph.co.uk/news/newstoppers/politics/lawandorder/5126647/Prisoners-to-get-right-to-vote-after-140-years-following-European-ruling.html>

⁴⁰ "Burma charter offers scant reform."

⁴¹ See *The Constitution of the Union of Burma* (1947), Chapter 2, Section 20, <http://www.scribd.com/doc/25420681/1947-Constitution-of-Burma-English-Version>

to believe they are evil. In this way, it is emotion that dictates the perceived reality rather than logic, understanding and sound judgement.

European Expectations of Myanmar

Europe's Moral Obligations

The European Union is trying to show a common front with respect to Myanmar. With regards to the constitution, the common thread in European opinion is that it must be revised with more input from opposition parties, and must take into consideration ethnic concerns. With regard to the elections themselves, they say that the elections will have no credibility unless all political prisoners and opposition leader are released unconditionally. The release of Aung San Suu Kyi in particular is one criterion which must be fulfilled in order for the elections to be taken seriously in Europe. The junta must also initiate open and long term dialogue with the EU and UN, in which opposition parties, ethnic groups and the regime can participate with equal input, without intimidation. For example, the EU foreign minister said that the generals must "take the steps necessary to make the planned 2010 elections a credible, transparent and inclusive process" in line with international standards and that the EU's ultimate goal in Myanmar remained "a peaceful transition to democracy,"⁴² or else the sanctions will continue.

The EU Common Position

The EU Common Position has changed over the past few years, but none the less Europe has tried to show a common front to an on-going problem. At the moment, the EU common position is a series of restrictive measures directed at the Union of Myanmar and in particular the junta leaders, which focuses on targeted measures because of the internment of Aung San Suu Kyi and other political prisoners, the human rights abuses and the general lack of democratic norms. The EU expects the government to take certain steps

⁴² Toby Vogel, "EU extends sanctions on Myanmar until 2010," *EuropeanVoice.com*, April 27, 2009, <http://www.europeanvoice.com/article/2009/04/eu-extends-sanctions-on-myanmar-until-2010/64716.aspx> (accessed on December 5, 2009).

towards democratization, and if they do not, then there will be a price to pay in the form of sanctions.⁴³

In my opinion, and broadly speaking, the common position, which is series of restrictive measures directed at the Union of Myanmar, allows for much more flexibility in tackling problems in Myanmar and focuses (but fails in many instances) on areas such as health, education, human rights and good governance. All of these issues are half heartedly approached without the assistance of the junta and no members of the government receive any funds from the member states. All funds are handled directly by NGOs or the United Nations. However, the EU does engage with the junta with regard to the Millennium Development Goals, although this is purely diplomatic. The EU also states that, when possible, the NLD should be referred to on all aspects of application and formation of development programmes, as they are the legitimate government as of the 1990 election, which they won, and because of this stance, they even refuse to deal with ASEAN if Myanmar is included. The key components of the common position is an arms embargo, visa restrictions on military leaders and their families, the suspending of aid (but not humanitarian aid), limiting diplomatic relations with the junta and the freezing of their assets. There was also a limited investment ban, which stops European companies from investing in a number of state run firms and businesses. Most of the restrictions focus on targeted sanctions which come from the common position of 1996⁴⁴, which had similar restrictions to the present common position.

After the internment of Aung San Suu Kyi in the form of a further eighteen months (in total) house arrest there was European condemnation. The UK and France claimed that the internment of Aung San Suu Kyi was only imposed to stop her from participating in the upcoming elections. They called for a world wide arms embargo and said that countries like China, Thailand, and India should also participate.⁴⁵ The European Union called

⁴³ Ibid.

⁴⁴ "Council Common Position 2006/318/CFCP of 27 April 2006 renewing restrictive measures against Burma/Myanmar," *Official Journal of the European Union*, 29.4.2009, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:116:0077:0097:EN:PDF>

⁴⁵ "Worldwide protest at Myanmar sentence," Radio Netherlands World Wide,

for her immediate release along with the US and the UN secretary general Ban Ki-Moon. However, there are also many countries within the EU which are still divided on this "common position," which is a series of restrictive measure directed at members of the junta and their families. It is in these issues that the European Union says it is united on with regard to its actions towards and opinions about the regime.

The EU "Common Position"

Although there is a European common position, on paper, regarding the situation in Myanmar, there are often very different opinions being expressed by senior representatives of EU member states. For example, at the 17th ASEAN-EU Ministerial Meeting which took place in Myanmar regarding the upcoming elections, delegates from Britain, France, Norway and Czech Republic voiced their criticism over the internment of Aung San Suu Kyi. However, the Netherland's delegate said that this issue was a case for the legal system of Myanmar and did not merit interference.⁴⁶ Even so, it seems that within the Netherlands, there are also disagreements with regards Aung San Suu Kyi. For example, the Dutch foreign minister was extremely critical of the trial and sentencing of Aung San Suu Kyi and suggested that it should be the regime on trial and not her. With regard to sanctions, Norway (although not an EU member), has opposed sanctions on Myanmar in the past and has stated that these sanctions are not wholly effective in tackling the military regime, even though the Norwegian government is critical of the regime. This is in line with the view of the French foreign minister Bernard Kouchner, who recently said that "sanctions are useless and everyone recognises that."⁴⁷ This was met with criticism from the British Ambassador

August 11, 2009, <http://www.rnw.nl/english/article/worldwide-protest-myanmar-sentence> (accessed on October 4, 2009).

⁴⁶ Ministry of Foreign Affairs, Nai Pyi Taw, The Union of Burma, "Deputy Minister for Foreign Affairs U Maung Myint addresses the 17th ASEAN-EU Ministerial Meeting," Ministry of Foreign Affairs, *The New Light of Myanmar*, June 2, 2009, <http://www.mofa.gov.mm/news/Deputy%20Minister%20for%20Foreign%20Affairs%20U%20Maung%20Myint%20addresses%20the%2017th%20ASEAN-EU%20Ministerial%20Meeting.htm> (accessed on December 3, 2009).

⁴⁷ Richard Lloyd Parry, "Aung San Suu Kyi meets ambassador for sanctions talks,"

to Rangoon Andrew Heyn, who claimed that targeted sanctions are effective in combating the junta.

These are two vital areas where one can see differences in opinions with regards to Myanmar. Many European states show fundamental differences in attitudes to two very important focal points, which is the treatment of Aung San Suu Kyi and the sanctions that the EU imposes. Most of the governments of countries in Europe are in agreement with the sanctions and the treatment of Aung San Suu Kyi, but some leaders have slightly different views, and the recent statement by the French foreign minister shows that the disagreements between countries is growing on the effectiveness of the sanctions.

More generally, the differences in opinions of EU member states make it very difficult to come to an agreement on the EU's attitude to be adopted towards the regime. More specifically, member states like Ireland, the Netherlands, Czech Republic, and the UK are taking quite a staunch view of the generals and refuse to make any concessions towards them, which clashes with member states that are contemplating the policy change along the lines of the change the Obama administration has made. This changing view is more open to interaction with the generals, and the possible loosening of sanctions.

European Sanctions

Many countries in the EU are not prepared to impose sanctions that will actually harm the military regime. For example, the ban on non-humanitarian aid has not really had any huge impact on the regime to date. The limited investment ban that was introduced in 2004 was also not effective in hurting the junta, because European companies are only banned from investing a very small number of state run firms.⁴⁸ These do not include companies from industries that are of central importance to the government such as timber, mining, and oil & gas. For example, the EU and US say that there are invest-

The Times, October 10, 2009, <http://www.timesonline.co.uk/tol/news/world/asia/article6867787.ece> (accessed on October 25, 2009).

⁴⁸ In the past, between 1990 and 2000, western countries distributed over 65% of total foreign investment to Myanmar.

ment bans on European and US companies from investing in Myanmar, even though Total and Chevron invest huge amounts of money, which ends up in the pockets of the regime. It has been estimated by a recent report that Total has invested heavily in the Yadana gas project and has made a pipe line which sends over 60 per cent of Burma's gas exports to Thailand.⁴⁹ This, of course, means the regime is in a position to reap great financial benefits. The report estimates that the junta has earned about US\$5 billion from the project by using an outdated exchange rate, which has been lodged in banks in Singapore. Not to mention the Chinese, Indian, Russian and Thai trade.

It is interesting to note that one of the biggest advocates of sanctions is Britain. This is interesting because Britain is also the second largest investor in Myanmar via its dependent territories.⁵⁰ These off-shore banking havens allow for investment by British companies without the risk of exposure. Even so, there has been no attempt made by the British government to deal with this issue or by regulating the institutions there to make them more transparent.

Even Aung San Suu Kyi has revised her position on sanctions. She recently met with Aung Kyi, a member of the junta in order to "co-operate with the SPDC on lifting sanctions imposed on Myanmar."⁵¹ She also met with Western diplomats and is trying to understand how the sanctions are impacting the citizens of Myanmar. She aims to understand the details and consequences of the sanctions and the opinions of the countries that are imposing them. More importantly, she wants to find out ways to lift them and will work with each country and the junta in order to do so (something the EU would also benefit from). This process will take some time and there will have to be lengthy negotiations that will require many concessions from the regime, Europe and Aung San Suu Kyi.

⁴⁹ Earth Rights International, *Total Impact: The Human Rights, Environmental, and Financial Impacts of Total and Chevron's Yadana Gas Project in Military Ruled Burma (Myanmar)*, September 2009, http://www.earthrights.org/mwt_journal_admin/total-impact.pdf (accessed on November 28, 2009).

⁵⁰ International Federation for Human Rights, "Burma Campaign Report: International crimes committed in Burma: the urgent need for a Commission of Inquiry," *FIDA* 527, Aug 31, 2009, <http://www.fidh.org/IMG/pdf/bu08.pdf>

⁵¹ Vogel, "EU extends sanctions on Myanmar until 2010."

The Bottom Line – What Does Europe Want?

The main common demands of Europe focus on: 1) the amendment of any provisions in the 2008 Constitution “not in accord with democratic principles”; 2) the unconditional release of Aung San Suu Kyi and opposition leaders; 3) an all-inclusive free and fair election with international supervision; 4) the eradication of human rights abuses; 5) and the lifting of restrictions on international organizations. The first three points are the most relevant for this report.

There are many in Europe that feel there can be no democracy in Myanmar with the present constitution, and therefore the constitution needs to be re-written through more inclusive means and with more input from opposition and ethnic leaders. Many international observers have shown that the constitution was drafted under strict regulations was set by the military, and many of the members of the drafting committee were appointed by the government. Also, as stated previously, the constitutional referendum took place in the middle of a natural disaster (Cyclone Nargis). In the highly unlikely scenario that the constitution is re-written, the referendum should take place under more appropriate conditions. Lately, however, this view is dissipating and there is a more pragmatic focus on the elections themselves. The feeling for the EU is that if the elections take place in a free and fair manner, then this will be a step in the right direction.

The EU says that the elections that are to be held in 2010 will not be legitimate if the government does not release Aung San Suu Kyi and members of opposition parties. They say that the government should initiate open dialogue with the UN which will enable the generals to have free and fair elections, and ones that will be carried out in an environment that is absent from fear and intimidation. For example, special envoy to Myanmar Ibrahim Gambari alongside the Japanese foreign minister Hirofumi Nakasone on a visit to Tokyo, urged the military government to hold the elections in a manner that would be acceptable to the international community and placed huge emphasis on the release of Aung San Suu Kyi and other political prisoners.⁵²

⁵² Wai Moe, “NLD criticises Gambari-Japan Joint-statement,” *The Irrawaddy*, February 20, 2009, http://www.irrawaddy.org/article.php?art_id=15161 (accessed on November 29, 2009).

As can be seen above, the unfair treatment of Aung San Suu Kyi and the call for democratic elections are often overlapping, in the sense that, she must be allowed to take part in the elections, because her release and participation would indicate a step in the direction of democracy. However these requirements are problematic for Europe. The EU call for free and fair elections in 2010 received much criticism from members of the NLD. This is because if the EU expects the elections to take place in an acceptable manner, it disregards the previous elections in which the NLD won. If the NLD rejects the regime's legitimacy in the first place and the EU accepts it, there are basic compatibility issues which have the potential to escalate.⁵³ None the less Europe wants to see the regime taking steps towards democratic elections. Some in Europe want the NLD to take part in the elections, and some in the NLD are saying they will not, whilst other are waiting until the election law is released before they decide. Attilio Massimo Iannucci, the Asia Pacific minister of Italy's foreign ministry, urged members of the NLD in November 2009 to participate in the 2010 elections, and claims it will be chance for them to gain some power.⁵⁴ On the other hand, there is an internal debate within the NLD. They have the same preconditions as Europe, however, there are many in the NLD that are willing to proceed with the elections even if the constitution is not revised and remains undemocratic. Therefore it is not only a European debate, but also a debate going on inside Myanmar.⁵⁵

As can be seen there are many different opinions on how to proceed not only in Europe but also in Myanmar itself. If there is this level of confusion outside the sphere of the military regime, it will be very difficult, if not impossible, for the Generals to align their actions in accordance with the many different international and domestic expectations. In this way the common position of Europe looks very neat and tidy on paper, but in reality it is far more complicated. In the same way, the official stance of the NLD, as

⁵³ Ibid.

⁵⁴ "European envoy urges Myanmar opposition to contest Polls," *Earth Times*, November 29, 2009, <http://www.earthtimes.org/articles/show/243936,european-envoy-urges-myanmar-opposition-to-contest-polls--summary.html> (accessed on December 1, 2009).

⁵⁵ Wai Moe, "The NLD's Internal Debate," *The Irrawaddy*, October 16, 2009, http://www.irrawaddy.org/article.php?art_id=17010 (accessed on November 17, 2009).

laid down in the Shwegondaing Declaration⁵⁶ seems straight forward, but outside of this declaration, there are many different opinions on how the party should behave.

⁵⁶ Central Executive Committee, National League for Democracy, Rangoon, "National League for Democracy Shwegondaing Declaration," *Burma Digest*, April 30, 2009, <http://burmadigest.info/2009/04/30/national-league-for-democracy-shwegondaing-declaration> (accessed on December 16, 2009).

Post Election Scenarios and Predicted European Reaction

No Change

It is important to point out that most of the general population of Myanmar do not really care about this upcoming election. As far as they are concerned, the result is already a foregone conclusion and there is no real hope for a huge change. As a matter of fact, a large proportion of the population have not even read the constitution; this is because of high rate of illiteracy and a general lack of interest. This is understandable because in previous elections the power that was supposed to be handed over to a civilian government was simply kept by the regime and transferred between a few powerful individuals, with the same leaders remaining in the same positions, albeit under different titles. This is the most probable scenario, and in the upcoming election the regime will probably retain key political positions, and the power will simply be transferred between a select few. The conditions will probably remain the same in the country for the general population, with continuing human rights concerns and democratic deficiencies. These deficiencies will also continue to occur if the regime decides to abandon the elections, although there is no evidence to suggest this will happen. If this occurs, Europe will continue to react in the same manner as it does now. The European official stance will refer to the common position and sanctions will be tightened further, and a new common position, similar to the previous one, will be formulated. The feeling will still be that the sanctions are not effective as long as China, India, Russia, Thailand and others refuse to inflict them. The countries will of course not do this, and many important European companies will still be exempt from the sanctions, making them utterly useless, as they are now. However the sanctions are useful for some countries; they have been a great success for many countries outside the EU.

A Change for the Worse

In any country experiencing conflict or international pressure, election time is always a sensitive period and Myanmar is no exception. There is a potential for problems during this critical period, emanating from many different sources:

Armed Ethnic Groups/Terrorism

Even though many of the ethnic armed groups feel they cannot sustain a long term insurgency against the regime, some still have the potential to do harm. The groups agreed to cease fire agreements in the hope that some of their ethnic concerns and demands would be met, which still today have not been. This has left many with a bitter taste in their mouths and reduces the hope for change. This is problematic because some of the armed ethnic groups (Kachin Independence Organization) still have arms and therefore the potential for violence.

The section in the constitution that deals with the amalgamation of all armed groups into a united military is also problematic.⁵⁷ This section would require all groups to come together under a government controlled army, of which many are unhappy about, but of which there have been recent attempts for improved border security. These are two of the most likely areas where conflict has the greatest potential to erupt. If there was an outbreak of ethnic violence this would merit a European reaction in the form of requests to meet with the ethnic group's leaders. This would probably be granted by the Myanmar authorities as it would be in their benefit to have groups at cease fire, which paradoxically would be a positive development.

Intra-junta Conflict

Due to the restructuring that is taking place within the regime at present, the potential for conflict amongst powerful individuals is probable. There will be many different candidates available for powerful positions and the one who get sidelined will have the potential to threaten the strength of the

⁵⁷ For information regarding the Tatmadaw, *Constitution of the Republic of the Union of Myanmar (2008)*, Chapter 7.

regime. For example, it has been pointed out by a recent report that General Maung Aye will probably lose much of his political power, which will therefore affect his businesses, financial security and family, because his political power is closely attached to his monetary gain.⁵⁸ There may also be disagreements on how the elections should be run and how members of the opposition leaders are to be dealt with. This uncertainty surrounding the outcome of the elections is also a cause for internal strife.

Protests and Crack Down

The 2010 election and the 2008 constitution will not doubt entrench military rule in the Union. There is not much interest in, or expectations of, the election due to the fact that the election law has not been promulgated yet. This suggests that the junta are planning to keep parties disorganized until the last minute. This lack of action on the junta's part may not be enough to push the people of Myanmar over the edge, but the economic activities of the government and their lack of concern for the people, coupled with the effects of the global financial crisis may be enough. Recall that economic hardship and the removal of fuel subsidies was the cause of the last riots in 2007, and there have also been recent fuel rises.⁵⁹ This recent fuel price increase could lead to civil unrest, which would be a concerning situation because the last crack down that followed the riots resulted in many deaths and injuries. This would attract great media attention in Europe as the mislabelled "Saffron Riots" did, which would be followed by condemnation and then further ineffective sanctions.

This EU reaction may be seen as an appropriate response by the citizens of European countries as public awareness of Myanmar only makes the papers when a "David vs. Goliath" scenario appears (that is, Aung San Suu Kyi vs. the Regime) which stems from this simplified ideological perspective of good versus evil. This may be a reason why there is low level of understanding of Myanmar both in the general public and also within each particular government and can also sometimes be used as a tool to gain public support.

⁵⁸ International Crisis Group, "Myanmar: Towards the Elections."

⁵⁹ "Burma leaders double fuel prices," BBC News, August 15, 2007, <http://news.bbc.co.uk/2/hi/asia-pacific/6947251.stm> (accessed on October 25, 2009).

Governments, when asked about Myanmar, can show that they are doing something (even if it's not the right something), which is usually enough for the majority of people.

Boycotting the Elections

At the moment, there are some opposition groups that want to boycott the elections. There are also some that are divided internally on this issue. Although Europe believes the elections will be unfair, there are commentators that believe the parties should still partake in them. A boycott could play into the hands of the regime, in that the opposition parties would give up any chance of the 75 per cent of seats that will be no doubt strictly controlled but none the less available. However, even if a small amount of persons get in, this is better than nothing.

Border Security

As is sometimes the case in countries experiencing internal difficulty and conflict, border integrity of surrounding countries is threatened. The Chinese and Thai authorities already have difficulty in controlling exodus from Myanmar in the present circumstances and this migration would no doubt increase if any of the above issues were to become aggravated. For example the informal cross border activity and trade that already takes place.⁶⁰

A Change for the Better

There are two ways to think about the generals in Myanmar with regards to a positive change after the election. One could naively believe that they have created a path upon which democracy can be met, and that they really would like to see moves away from military rule. There may be some in the regime that would like to see such a reform but the undemocratic constitution and the delays in the promulgation of the election law suggests otherwise.

⁶⁰ Winston Set Aung, "Illegal Heroes and Victimless Crimes: Informal Cross-border Migration from Myanmar," Institute for Security and Development Policy, *Asia Paper* (December 2009).

A more likely scenario is that the generals are doing as most suspect. That is, they are attempting to give the appearance of democratic change, all the while keeping a tight grip on power via military rule. However, this does not necessarily mean that this will be the case. For example, the political agenda of the leaders may change with the re-distribution of power and the side-lining of important leaders. There are certain connections that exist between current regime members, ethnic leaders and important economic connections to businesses that will be shaken up during election time. This gives the opportunity for new relationships to develop, and in an uncertain context, different priorities can arise. These priorities can be related to basic self-preservation instincts or to more philanthropic ideals. Either way, the important point to remember is that the regime has tried to create an impression of change, which unintentionally creates the idea that change may be possible.

It is not logical or realistic to believe that an immediate transition towards democracy will occur. What is more likely is that the uncertainty that follows the elections will create new power structures where some leaders will be given the opportunity to address social, ethnic and individual concerns that are being brought up internally and externally, all the while retaining powerful positions and personal wealth. This would mean that the regime would gain better international legitimacy and appease some members of the population. This would benefit the regime as there would be less of a chance of internal strife and more probability of the lifting of sanctions. It is reasonable to assume that if members of the regime took steps in this direction, the reaction of Europe would become more open, and would in particular allow room for discussion on the topic of sanctions. Although this is of course not an ideal situation, it would be better than the current one.

An Ideal Situation

An ideal situation for the EU would be that the government of Myanmar would bow to all domestic and international expectations. Although this will certainly never occur, it is still necessary to contemplate this scenario to illustrate the fact that the military regime is, and will be for the foreseeable future, a necessary and vital institution in the Union's functioning. Consider

the following scenario: The Generals get a sudden change of heart and begin a genuine democratization process towards national reconciliation, with the re-writing of the constitution under more democratic means with the inclusion of all ethnic groups. After this, they hold a general election and give power back to a civilian government. Anybody in Europe, who *thinks* they know anything about Myanmar, would probably conclude that the famous Aung San Suu Kyi will take up position as head of state, and the long road to development will begin. Europe would embrace this change.

An Ideal Situation Gone Bad

If the above scenario was to occur, the same previous difficulties would re-appear as they have in the course of Myanmar's history. The re-writing of the constitution under more democratic means, with the inclusion of ethnic leaders, would lead to many difficulties. The power sharing provisions between the different ethnic minorities in the states and division would be the main focus of the constitution. The ethnic disparities in the states and divisions of Myanmar would mean that different ethnic majorities would demand different amounts of power, which would lead to problems with the minority groups. Recall that this was the main source of conflict in the years following independence, and some of these conflicts are still alive today. This on-going problem with power provisions in the constitution would take many years to draft and has the main potential for conflict.

This is the main problem that needs to be focused on in Myanmar before the government (in our ideal world) thinks of handing power back to a civilian government. It is these issues and the conflict that ensued, that made it necessary (in the eyes of the military) to seize power in 1958 and 1962. The civilian government simply did not have the capacity to deal with the different voices coming from the huge amount of ethnicities. I believe that it is the General's beliefs that the only way to keep the Union from chaos is to do as they do now; this added to the personal gain, although I believe the former is a stronger factor.

Suggestions for Europe

One Voice

As can be seen from the previous sections, there are many different expectations coming from Europe and also from within Myanmar. Logically, Europe should address this issue. Europe needs to come to an accepted consensus on how to behave towards Myanmar. When this is achieved, the expectations from Europe should be delivered in a consistent voice. Clear expectations for the electoral process and the constitution need to be laid down and presented to the junta. These expectations should focus on the problems with the process and constitution and show exactly how, and why, they do not meet international standards. Suggestions on how these areas can be improved should also be discussed and assistance to rectify these issues should be offered and be widely available. There also needs to be a more united front on the issue of Aung San Suu Kyi, the release of political prisoners and the sanctions.

Sanctions

It is clear from reading the previous section (Section 4: “Sanctions” in this report) that the sanctions are not effective. There are two reasons for this: European leaders are either afraid to stop investment from companies that can actually harm the regime, or they are simply un-aware that the sanctions are not effective. The second reason is that countries like China, India and Russia are interacting with Myanmar in ways that Europe will not and it is quite clear that they will continue to do so. Europe therefore has a number of options facing them:

1. Europe can continue to demand ASEAN countries and Russia to adopt sanctions, which of course will never happen due to fundamental differences in principles of non-interference. Therefore, this is a useless path to pursue, and it will increase Chinese (and others) economic and political influence in Myanmar while minimizing European influence.

2. Europe could continue to sanction the generals, but this time actually put into effect sanctions that will really harm them. For example, France could demand a complete withdrawal of Total and Britain could investigate investment that reaches Myanmar through its dependent territory; however this will obviously never happen, as the governments of these countries simply make too much money from such endeavours.
3. Europe could realize that the sanctions are useless and have not had any serious impact on the generals in the past and will probably continue to do so. The realization of this would mean that negotiation and quiet diplomacy is the next path to pursue, where some sort of engagements could be established and some positive developments could take place.
4. Europe should also admit that there is a highly concentrated emotional bond between Myanmar and some of its member states (for example Britain), which keeps the moral argument active and the ineffective sanctions in place. When Burma was granted independence, there were huge expectations as stated earlier. It was supposed to be a model where great political and financial development would occur. The British emotional attachment to Myanmar is particularly strong. There were high hopes, but in reality it was the one that got away, which is why the British stance is usually so rigid.

Diplomatic Relations

Europe should also be more engaging when it comes to normalising diplomatic relations. It has not proved effective in the past in Myanmar to ignore the only powerful functioning institution in Myanmar. They are the government and they are in charge whether Europe likes it or not, and Europe's opinion does not seem to sway the generals. If it did, then the generals would behave in a manner that is acceptable to Europe. Discussion and negotiation is the alternative to ignoring them. Europe should therefore become more open and take the first step in the normalization of relations. In order to facilitate this, Europe will need to stop all travel restrictions on members of

the government. Officials could use the potential loosening of restrictions as a bargaining tool.

Boarding the Obama Train

The Obama administration is loosening their approach on Myanmar with its new smart policy. Rather than following on from Bush's ignorant lead of non-engagement, Obama is approaching the situation from a far more practical stance that has undertones of the Chinese use of quiet diplomacy. As pointed out by Xiaolin Gou, the aim, of which is a peaceful transition to democracy in Myanmar, remains the same, but the method to achieve this aim has altered. It would be wise for Europe to follow consider the new US approach.⁶¹ The past approach has not changed anything for the better in Myanmar, so a new approach is needed. It does however seem that some in Europe are already aligning their view with the US. This is a more productive path, but more engagement with the regime should be explored, and Europe needs to take bigger steps away from its ideological base and towards a more realistic one. The fact is that the European approach in the past has done little to add to any positive development in Myanmar.

Mediation

In some circumstances, it may be better to engage the regime through indirect channels.⁶² In particular, Europe should focus on the impact home grown businesses can have on the attitudes of the regime. The problem with using powerful business persons is that they too may be "cronies" like members of the regime. However, every business in Myanmar does not have the same level of corruption in place, and some could be approached. A trade of between the level of corruption and the sphere of influence would have to be made. Other mediums that could be utilized can be found in civil soci-

⁶¹ Xiaolin Guo, "'Smart U.S. Policy toward Myanmar/Burma: Timing, Logic, and Impact,'" Institute for Security and Development Policy, *Policy Brief*, No. 11, November 18, 2009.

⁶² The regime may not have the capacity to even interact with Europe in ways they are accustomed to. Previous examples have shown that by using civil society as mediator between Europe and the generals may be a useful tool.

ety organizations such as embassies and foundations where they could be assisted in forming informal advisory groups that could act as a link between members of the regime and European diplomats. This type of group has proved influential in the past. For example when Senator Webb had his visa application rejected by the regime in August, an informal advisory group was able to influence the government to such an extent that the decision was turned around and a visa was issued.

Development Aid

The EU should continue to provide humanitarian and development support to ethnic regions and especially autonomous areas. These areas should be broadened to get more finance to include education and health. It should be kept in mind that over one third of the people in Myanmar live below the poverty line and the country received just “US\$4 per person in overseas development assistance; less than any of the poorest 50 countries, according to the Organization for Economic Cooperation and Development (OECD). Cambodia and Laos - countries with similar poverty levels - received \$47 and \$68 respectively for the same period.”⁶³ It is important to note and make changes to rectify this situation. Europe should also be prepared to respond quickly to opportunities to reform or rebuild political and economic institutions. That is, there should be plans in place now, so if an opportunity does arise to reform these institutions, politicians will not be caught fumbling around with red tape. Instead, action can be taken instantly. It is also important to note that democratization aims can be separate to development aims and both can run in parallel at different rates.

Generational Change and Room for Improvement

Many of the leaders of the current regime will soon be handing over power to a younger generation. Europe should view this as a huge opportunity for change. Most, if not all of the up coming generation have far superior levels

⁶³ “MYANMAR: Analysis: US reignites debate over Myanmar sanctions,” Reuters, September 3, 2009, <http://www.alertnet.org/thenews/newsdesk/IRIN/d368a45d4d552971ca862f77c9fc5e41.htm> (accessed on December 15, 2009).

of education and better international exposure in comparison to the older generation, and therefore have better capacity for change. This generational change added to the uncertainty surrounding the up-coming election, the change to a constitutional system with a "parliament," and increased political space offer many areas where Europe can contribute positively to change in Myanmar. One of the most basic principles of behavioural psychology has to do with reinforcing good behaviour to promote good behaviour and this should not be ignored in the case of Myanmar. Any positive response Europe gets from the regime should be rewarded. This, however, has not been the case in the past. For example, when the regime failed to act during cyclone Nargis, it was met with harsh criticism. But when the regime became more open with regards to international support and aid, there was no public recognition, rather there was continued reference to past behaviour and any openness was ignored. This sends the message that only negative behaviour will be reinforced.

To sum up and conclude, the behaviour of the EU towards Myanmar in the past has not changed a whole lot in the country. The generals are still getting rich while the general population are the ones suffering. Over the past two decades the same path has been pursued by the EU albeit with varying levels of severity. The EU can continue to pursue this path or an alternative path can be explored. It seems that the US has already begun to change its course, and hopefully the powers that be in Europe will too see the opportunity for positive change. The road is not straight or smooth, but crooked and broken, and only open minded, forward thinking leaders can navigate it correctly.