

Myanmar's Post-Election Landscape

I. OVERVIEW

The November 2010 elections in Myanmar were not free and fair and the country has not escaped authoritarian rule. Predictably, in such a tightly controlled poll, the regime's own Union Solidarity and Development Party (USDP) won a landslide victory leaving the military elite still in control. Together with the quarter of legislative seats reserved for soldiers, this means there will be little political space for opposition members in parliament. The new government that has been formed, and which will assume power in the coming weeks, also reflects the continued dominance of the old order with the president and one of the two vice presidents drawn from its ranks and a number of cabinet ministers recycled.

Nevertheless, it would be a mistake to conclude that nothing has changed. The top two leaders of the former military regime have stepped aside, and a new generation has taken over. A new constitution has come into force, which fundamentally reshapes the political landscape, albeit in a way that ensures the continued influence of the military. A number of technocrats have been brought into the cabinet, and at the local level ethnic groups now have at least some say in the governance of their affairs.

These changes are unlikely to translate into dramatic reforms in the short term, but they provide a new governance context, improving the prospects for incremental reform. This moment of relative change in a situation that has been deadlocked for twenty years provides a chance for the international community to encourage the government to move in the direction of greater openness and reform. But this opportunity can only be seized if the West changes its failed policies of sanctions and isolation. These policies are counterproductive: they have a negative impact on the population and on the prospects for dialogue and reconciliation – and by reinforcing the siege mentality of Myanmar's leadership, they undermine the chances that the new generation of leaders will break with the isolationist and authoritarian direction of the previous regime.

Improved policies must start with the recognition that sanctions have had counterproductive effects and caused ordinary people to suffer, and have impeded the country's development. To redress this, restrictions on development assistance should be immediately lifted and levels of aid

increased. Restrictions on technical assistance from international financial institutions should also be removed. These bodies should be encouraged to work on pressing concerns such as poverty alleviation, social and economic policy reform, education, and capacity building. Restrictions that hold back the United Nations Development Programme (UNDP) and other UN agencies should be lifted. Broad-based economic sanctions such as those imposed by the U.S. on imports and the EU's denial of trade privileges should also go.

A new approach urgently needs to be adopted, one that provides much greater support for Myanmar's people and for the socio-economic reforms that are essential for improving their lives, while convincing the leadership that a renormalisation of relations with the West is possible if they embark on a process of significant political reform. In its reporting over recent years, Crisis Group has set out some of the elements of such an approach: structured regional and international engagement; a normalisation of aid relations; opportunities to promote reform and greater openness at a key moment of political transition; and giving greater priority to peaceful resolution of the ethnic issue.

II. THE NOVEMBER 2010 ELECTIONS

The first elections in Myanmar since 1990 were held on 7 November 2010.¹ The pre-election playing field was tilted heavily in favour of the USDP.² The vote was peaceful, and in most places few polling irregularities were reported on the day.³ The election was marred by what appears to

¹ See Crisis Group Asia Report N°144, *Burma/Myanmar: After the Crackdown*, 31 January 2008; Asia Report N°161, *Burma/Myanmar After Nargis: Time to Normalise Aid Relations*, 20 October 2008; Asia Report N°174, *Myanmar: Towards the Elections*, 20 August 2009; Asia Report N°177, *China's Myanmar Dilemma*, 14 September 2009; Asia Briefing N°105, *The Myanmar Elections*, 27 May 2010; Asia Briefing N°112, *China's Myanmar Strategy: Elections, Ethnic Politics and Economics*, 21 September 2010.

² See Crisis Group Asia Briefing N°105, *The Myanmar Elections*, 27 May 2010; and "Unlevel Playing Field: Burma's Election Landscape", Transnational Institute, October 2010.

³ "Preliminary findings report", 8 November 2010, issued by an independent and politically neutral local association based in Myanmar. The report was based on observations by 175 volun-

have been a massive manipulation of the vote count, as well as other irregularities. The military government-backed USDP won a huge majority of the seats – 80 per cent of lower house elected seats and 77 per cent of upper house elected seats (complete results are provided in Appendix B). With the 25 per cent bloc of reserved military seats factored in, the USDP still has a majority of almost 60 per cent in both houses (detailed statistics are provided in Appendix C).

1. Manipulation of the vote count

The most obvious manipulation occurred with so-called “advance votes” – votes cast in advance of election day by those who for various reasons (defined in law) were unable to vote on the day. Despite comments shortly before polling day by the chairman of the election commission that the number of advance votes was “small”,⁴ Crisis Group analysis of the official results shows that there were around 6 million advance ballots, representing some 10 per cent of all votes cast.⁵ Advance votes were collected in a non-transparent way, with allegations of serious irregularities. The distribution of advance votes among candidates varies markedly from the distribution of votes on polling day, giving further credence to such allegations.⁶

Manipulation of advance votes alone cannot account for the USDP landslide. These votes only changed the outcome of contests in 64 seats (out of 1,154), almost all in favour of the USDP.⁷ There were also allegedly other blatant forms of manipulation. Candidates reported that in some unmonitored polling stations, the votes went overwhelmingly to the USDP. In a couple of cases, it has been claimed that the authorities simply changed the results to ensure that certain high-profile USDP candidates won, and

demanding that other candidates sign off on the amended results.⁸

In addition, the first-past-the-post system gave a significant inherent advantage to the USDP. This party obtained 58 per cent of the total votes cast for all assemblies (national and regional), which translated into 77 per cent of the seats. The second-largest party, the National Unity Party (NUP), got 23 per cent of the vote, but this translated into only 5 per cent of the seats.⁹ (This is similar to what happened in the 1990 elections, when the National League for Democracy’s (NLD) 60 per cent of the vote gave them 81 per cent of the seats, compared with the NUP’s 21 per cent of the votes and 2 per cent of the seats.)

On one rather crude measure of popularity – the average number of votes per candidate – the National Democratic Force (NDF) came second after the USDP, with 20,000 votes per candidate, as compared to over 30,000 for the USDP. This does not take into account distortions in the vote count and advance votes, and therefore underestimates the real popularity of the party. The NDF was formed by some senior NLD leaders who disagreed with that party’s decision to boycott the election.

Ethnic parties fared relatively well in most of the seven ethnic state assemblies. The USDP together with the military bloc forms a majority in all these assemblies, but other parties form significant minority blocs. This gives opposition parties in many states potentially important legislative powers, such as the ability to call special sessions of the legislatures, and the right to initiate and block impeachment proceedings against regional public office holders.

2. Reactions to the results

The massive landslide of the USDP, together with the blatant way in which some of the results were manipulated, further undermined elections that already lacked credibility. This will inevitably have an impact on the legitimacy of the new government, domestically and internationally.

teer observers in many different parts of the country who had been trained in international standards on election observation methodologies.

⁴At a briefing on 18 September in Naypyidaw for diplomats and the media, the chairman of the election commission stated in reply to a question that: “The numbers of those casting advance votes are compiled by the township Election Commission. The categories include those under hospitalisation, those in detention, military personnel on duty and training and those abroad. These numbers are small”.

⁵The total electorate is about 30 million, but voters cast three separate ballots – one each for the upper house, the lower house and their region or state assembly.

⁶Crisis Group analysis of official voting figures (in Burmese), which recorded separately the number of votes and advance votes received by each candidate. The USDP received a large majority of these advance votes.

⁷Crisis Group analysis of official voting figures. 63 of the 64 seats changed in favour of the USDP candidate.

⁸The vote count took place in each polling station at the close of voting, in the presence of candidates or their representatives; however, given the large number of polling stations (in some constituencies, one per 500 voters), it was difficult for most candidates to have representatives in all of them. Crisis Group interviews, December 2010 and January 2011.

⁹Crisis Group analysis of official voting figures. Comparisons of votes and seats are only meaningful for these two parties, since they were the only parties to contest a majority of seats, and there were large variations in voter populations across constituencies. The NUP is the political party associated with the pre-1988 socialist regime – it is an “establishment” party, but not a proxy of the military regime.

Non-government parties that contested the elections did so not on the expectation that they could win a significant proportion of seats, but rather to ensure that opposition views were at least represented in the legislatures. Ethnic parties wanted to ensure that they could have a say in the governance of their areas. While most are disappointed with the conduct of the elections, all those parties that won seats have decided to participate in the political process to take advantage of the limited opportunities available.

International reactions have reflected pre-existing divergences in approach to Myanmar between the West and Asia. Vietnam, in its capacity as chair of the Association of Southeast Asian Nations (ASEAN), issued a statement welcoming the elections “as a significant step forward” in the implementation of Myanmar’s “roadmap to democracy”.¹⁰ China said it was a “critical step” carried out in a “steady and smooth manner”.¹¹ By contrast, the U.S. stated that the elections “were neither free nor fair and failed to meet any internationally accepted standards” and “missed an opportunity to begin genuine transition toward democratic governance and national reconciliation”.¹²

III. THE NEW GOVERNMENT

Following the elections, a series of laws were promulgated governing the transition to the new constitutional order and government. At the time this report was finalised, transfer of power had not yet taken place, but was expected in late March or early April, at which point the ruling State Peace and Development Council (SPDC) would dissolve. Most of these new laws merely repeat the corresponding sections of the 2008 constitution – a procedural step necessitated by the fact that the constitution did not come into force until the joint session of the national legislatures had met. Bylaws were also issued under several of these laws, stipulating detailed procedures for such matters as the election of the president and vice presidents, convening of the legislatures, and so on. In addition, two new military laws were gazetted, without being publicly announced (discussed below).

The first sessions of the new legislatures were called on 31 January at 08:55, an auspicious date and time.¹³ “Thura” Shwe Mann (a former general and the third-ranking member of the SPDC) was elected speaker of the lower house, and Khin Aung Myint (former minister for culture) was elected speaker of the upper house, in which position he will also serve as speaker of the combined national legislature. Speakers were also elected in each of the fourteen region/state assemblies. All speaker and deputy speaker positions in all legislatures, national and local, went to USDP representatives. The combined national legislature also had its first session on 31 January, which formally brought the new constitution into effect on that day.¹⁴

The 25 per cent of legislative seats reserved for military appointees were filled with mostly low-ranking officers (majors and captains), who attended the sessions in uniform. The choice of low-ranking military legislators has symbolic as well as practical aspects. Symbolically, in a context where rank and protocol are extremely important, it demonstrates a disdain on the part of the military for parliamentarians.¹⁵ This disdain is deeply rooted in the historical role played by post-independence MPs, whom the military regarded as fractious, self-serving and corrupt. Practically, a preponderance of lower-ranking officers led by a small number of colonels helps to ensure that the military bloc remains cohesive and compliant with the wishes of military superiors.

On 4 February, the Presidential Electoral College (made up of all members of the combined national legislature) chose Thein Sein, the SPDC prime minister, as president,

¹³This date and time were chosen for numerological reasons. The numerals in the time 08:55 add up to nine (8+5+5=18, 1+8=9) as do the numerals in the date 31/1/2011 (3+1+1+2+1+1=9). The date of the elections themselves was chosen for the same reason (7/11, 7+1+1=9). The number nine has been associated with the regime for decades, with former dictator Ne Win even issuing currency notes in denominations that were multiples of nine (45 and 90 kyat notes).

¹⁴The convening of the lower house, upper house and combined national legislature on the same day avoided the need for the more lengthy and complicated process apparently required by the constitution – which provides that the first regular session of the lower house shall be convened by the SPDC only after the constitution comes into force, and therefore only after the first session of the combined national legislature. However, the legality of convening all legislatures simultaneously has been questioned by one Myanmar political party (Union Democratic Party, Statement 1/2011, 20 January 2011); a commentary in the *New Light of Myanmar* on 7 February stated that the convening was legal since the constitution provides that “the preparatory work done by the SPDC ... shall be deemed to have been carried out in accordance with this constitution”.

¹⁵In Myanmar, ministers are considered equivalent to major-generals, and deputy ministers equivalent to brigadier-generals; majors are a further three steps down the rank order.

¹⁰“Statement by the Chair of ASEAN on the 7th November General Elections in Myanmar”, Hanoi, 8 November 2010.

¹¹Regular press conference by Chinese Foreign Ministry Spokesperson Hong Lei, 9 November 2010. Available at <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t768001.htm> (accessed 2 March 2011).

¹²“Statement by President Obama on Burma’s November 7 Elections”, The White House Office of the Press Secretary, 7 November 2010; and “Statement by Secretary Clinton on November 7 Elections in Burma”, U.S. Department of State Office of the Spokesman, 7 November 2010.

with “Thiha Thura” Tin Aung Myint Oo (Secretary-1 of SPDC) becoming vice president 1 and Dr. Mauk Kham becoming vice president 2.¹⁶ All three are elected representatives of the USDP. The constitution stipulates that they must resign from their legislative seats on assuming office and must not take part in party-political activities during their five-year term of office. Brief profiles are as follows:

□ *Thein Sein*. Born April 1945. He graduated from the prestigious Defence Services Academy (ninth intake) in 1968. He rose steadily through the ranks, commanding a light infantry division in 1988 (as a major), then transferring to a War Office position under Than Shwe in the early 1990s (as a colonel). In 1996 he was promoted to brigadier-general, and assigned to lead a newly formed regional command in the “golden triangle” in Shan State. In 2001 he was appointed adjutant-general (with the rank of major-general), and then became prime minister, initially in an interim capacity, in 2007 (as a full general). He has headed the convening commission of the National Convention, the War Veterans organisation, the Police Reform Committee, the committee charged with preventing recruitment of children and the National Disaster Preparedness Committee. He retired from military service in 2010, along with many other senior military officers, in order to contest the election and head the USDP (he retained the post of prime minister). He is regarded as relatively capable, approachable and non-corrupt. His health is somewhat frail (he suffers from heart disease), and it is rumoured that in 2007 he was not eager to take on the post of prime minister on a permanent basis.

□ *“Thiha Thura” Tin Aung Myint Oo*. Born May 1950. Like Thein Sein, he is a graduate of the Defence Services Academy (twelfth intake). “Thiha Thura” is Myanmar’s second-highest military honour, which he was awarded in 1980 for valour on the battlefield against Communist Party of Burma troops. By 1990, he was a battalion commander, then headed a tactical operations command, before being promoted to brigadier-general and then made a regional commander. He was appointed quartermaster general in 2002, and promoted to lieutenant-general. He was then made Secretary-1 of the SPDC in 2007, and subsequently promoted to full general. He retired from the military in 2010 in order to contest the elections for the USDP. Known to be foul-

mouthed and abrasive, he is regarded as a key hard-liner. He is also alleged to be extremely wealthy and highly corrupt, having used his position as head of the Trade Council to enrich himself, his family business and his business allies.¹⁷

□ *Dr. Mauk Kham*.¹⁸ Born in 1950 in the border town of Muse (in Shan State). He is a medical doctor, who has for many years run a well-regarded private clinic in the town of Lashio, and manages a private hospital there. He is the chairman of the Shan Literature and Culture Association in Lashio; a number of other prominent members of this association are leaders of the Shan Nationalities Democratic Party, the most successful ethnic party in the elections. He was convinced by the USDP to run as their candidate.

34 ministries have been designated by the president, two more than the previous number. The cabinet is made up of 30 ministers, the same as the previous number, with four ministers having dual portfolios.¹⁹ In accordance with the constitution, the ministers in charge of the key security ministries (defence, home affairs and border affairs) are military appointees. The rest of the cabinet is a mixture of new and old faces. About one third of ministers have been reappointed from the previous cabinet, mostly with the same portfolios. A number of technocrats have been appointed to run social service ministries, an encouraging development. The education minister is a former university rector, the health minister is a medical doctor and former medical university rector, the minister for hotels and tourism is a businessman, and the minister for industrial development is a former head of the Myanmar Chambers of Commerce. The foreign affairs minister was most recently the ambassador/permanent representative in Geneva; he has a military background, rather than being a career diplomat, but is not inexperienced, having served in several bilateral and multilateral ambassadorial postings.

Leadership of the military is also changing. Generals Than Shwe and Maung Aye are expected to retire in the coming weeks, making way for a new generation of officers who are more than twenty years younger. The new commander-in-chief is tipped to be Lt-Gen Min Aung Hlaing (the current chief of staff).

The National Defence and Security Council is the most important executive organ provided for in the constitution. It will include:

¹⁶ In accordance with the constitution, three vice-presidential nominees are chosen – one by the elected representatives of the upper house, one by the elected representatives of the lower house and one by the military appointees of both houses. The electoral college then votes on the three nominees: the one receiving the highest number of votes becomes president, and the other two become vice presidents 1 and 2, respectively.

¹⁷ Crisis Group interviews, January-February 2011.

¹⁸ “Sai”, which sometimes precedes his name, is a Shan honorific, equivalent to “Mr”.

¹⁹ The new ministries are Ministry of the President’s Office, allowing a cabinet-level appointment as the president’s chef de cabinet, and Ministry of Myanmar Industrial Development.

1. President (Thein Sein), chair
2. Vice President 1 (Tin Aung Myint Oo)
3. Vice President 2 (Mauk Kham)
4. Lower House Speaker (Shwe Mann)
5. Upper House Speaker (Khin Aung Myint)
6. Commander-in-Chief
7. Deputy Commander-in-Chief
8. Minister for Defence (Lt-Gen Ko Ko)
9. Minister for Foreign Affairs (Wunna Maung Lwin)
10. Minister for Home Affairs (Maj-Gen Hla Win)
11. Minister for Border Affairs (Maj-Gen Thein Htay)

While the council is led by the president, the military has effective control under the current configuration, since the commander-in-chief de facto controls six of the eleven positions: in addition to his own vote, he appoints one of the vice presidents, the deputy commander, and the ministers for defence, home affairs and border affairs.

IV. POST-ELECTION DYNAMICS

The elections and transition to a new constitutional system might appear at first glance to have changed little: the SPDC prime minister has been re-cast as the president, the SPDC secretary-1 as a vice president, and the legislatures are presided over by a former four-star general and a former minister. However, in terms of the underlying power dynamics, the changes will have a profound impact. Five key elements can be identified.

A. GENERATIONAL TRANSITION

Than Shwe has maintained very tight personal control over decision-making in Myanmar for almost twenty years. While he will no doubt continue to have strong influence in the short term, a new generation has taken over the key positions in the country. Although many are familiar faces from the old order, the significance of this transition should not be underestimated. As the suprema in a regime that made its own rules, and who personally regarded himself more as a monarch than as a chairman of a military junta, much of Than Shwe's effort was aimed at neutralising possible pretenders to his "throne" – and at financing the patronage networks that supported him. The new, more predictable power arrangements, including defined five-year terms for legislative and executive positions within a constitutional framework, should change this. While patronage will still be important, and corruption unlikely to decline much, it is likely that decision-making will be less ad hoc, less idiosyncratic, potentially more coherent and possibly more effective.

These changes are not predicated on the new generation of leaders being inherently more capable or open than their

predecessors. There are some reasons to think that the opposite may be the case. These leaders have been groomed by Than Shwe not because they are necessarily the brightest and the best, but because they were the least threatening to him and his legacy. While these leaders started their careers in the 1970s, which was the most isolated period in the country's recent history, they do have a much more realistic grasp of the situation in Myanmar. It will now be their responsibility to find ways to address some of the longstanding problems of the country. In the past, when all power was concentrated in the hands of Than Shwe, everyone within the administration was scared of him (and specifically of imparting bad news), and did everything they could to curry favour with him. The new power holders are neither feared in the same way nor will they be able to wield power as capriciously. They are more likely to be given bad news as well as good and will be more in touch with the realities in the country, which may lead to more rational policymaking.

B. DIFFUSION OF STATE POWER

All legislative, executive and judicial power had previously been in the hands of Than Shwe. Like any authoritarian leader, he had the difficult challenge of how to retire without facing an existential threat from whoever succeeded him. The fate of Myanmar's last dictator, Ne Win, who came to an ignominious end at Than Shwe's own hands, must have weighed heavily on his mind.²⁰ In a deliberate effort to ensure that no new strongman succeeded him, power is now divided between different institutions and individuals. This diffusion of authority was vital for Than Shwe's exit strategy – enabling him to more easily protect himself, his family, their business interests and his political legacy. It will have a significant impact on the new political landscape.

There are now four key centres of power in Myanmar: presidency, military, parliament and party:

- *Presidency.* Under the new constitution, "the president of the Republic of the Union of Myanmar takes precedence over all other persons throughout the Republic".²¹ He wields supreme executive power as both head of state and head of government, and appoints the cabinet and the chief ministers of the fourteen regions and states. He chairs, but does not necessarily control, the powerful National Defence and Security Council.

²⁰ Ne Win retained some influence after his resignation in 1988, but was arrested together with his family in 2002 on Than Shwe's orders, had his family's business empire dismantled and died under house arrest with no state funeral.

²¹ 2008 Constitution, §58.

- *Military.* The military's power rivals that of the president. They hold 25 per cent of reserved legislative seats, ensuring that they can block changes to the constitution. The legislative power of the military has been somewhat weakened, at least on paper, by the USDP's landslide. With almost 60 per cent of seats in both houses of the national legislature, the USDP has a comfortable working majority and controls lawmaking. Had the party secured less than 50 per cent of the seats, it would have had to form an alliance with the military bloc (or another party) in order to have a majority, giving the military greater legislative influence. In the short term, it is unlikely that the interests of the military and the USDP will diverge significantly (indeed, many USDP legislators retired from the military in order to run), but that may change over time. The military also has considerable executive authority, since it appoints one of the presidential/vice-presidential candidates, and the commander-in-chief appoints serving military officers to be the ministers of defence, home affairs and border affairs. In addition, the commander-in-chief will have effective control of the National Defence and Security Council.
- *Parliament.* It is not yet clear how regularly, or for what length of time, the legislatures will meet. It is therefore difficult to predict what possibilities may exist for more dynamic and innovative lawmaking, but the balance of power does not give much cause for optimism. The legislatures certainly have a key role in the power structure: they choose the president and vice presidents, can potentially block certain presidential appointments, can impeach public office-holders and debate key bills such as the budget bill. A powerful former general (Shwe Mann) is the lower house speaker, and he will undoubtedly be the de facto locus of legislative power.
- *Party.* The USDP controls well over half the seats in both houses of the national legislature, and does not need support of the military bloc for legislative decisions that require a simple majority (that is, most decisions). It also chooses two of the three presidential nominees, and with its present majority can choose who of the three nominees becomes president. It does not quite have the two-thirds majority in both houses needed for successful impeachment action; but with the support of some military representatives (or several other parties), it would have the power to remove the president or any other public official from office.

The question going forward is how these different power centres will interact with each other. The inevitable political competition between them can have positive and negative implications: there may be incentives to gain political credit for addressing issues of public concern; but it may also lead to different power centres trying to under-

mine each other, to the detriment of effective governance. In addition, there have clearly been both winners and losers in the transition, which could cause friction – an obvious example is Shwe Mann, who was long tipped to be president, and who now finds himself with the important but much less powerful role of lower house speaker.²²

The architects of the new constitutional system have been careful to ensure that no individual or power centre can become all-powerful. This is the key to Than Shwe's exit strategy. The commander-in-chief acts as a check on the power of the executive branch, by appointing one presidential/vice-presidential nominee, three key security ministers, and through the effective control this gives him in the National Defence and Security Council. In a state of emergency, the constitution also confers broad powers on the commander-in-chief. The main source of influence that the president has over the military is his control of the national budget (and the Financial Commission that prepares it), including allocations to the military. The USDP, given its majority, has control over legislative affairs. The legislative branch also has influence over the USDP, since the speaker of the lower house (Shwe Mann) is also a patron of the party – along with Than Shwe and Maung Aye – ensuring their continued influence.

It is highly significant that power is now more diffused than at any time in the last 50 years. This new multipolar landscape represents a change from the preceding system of absolute, and capricious, governance by a single authoritarian leader.

C. DECENTRALISATION

For the first time, legislative and executive power in Myanmar is being partly decentralised. Each of the fourteen regions/states has its own legislature, together with a local government headed by a chief minister. Six self-administered areas have been delineated for certain ethnic groups (the Danu, Kokang, Naga, Palaung, Pao and Wa), giving them a degree of autonomy within the ethnic states concerned.

While the legislative and executive powers of regions and states are limited, this shift holds out the prospect that governance can be more informed about, and responsive to, local concerns. Even if the structures remain authoritarian, local decisions will be taken by people from that

²² One such "loser" has reportedly already vented his frustration. Reports from the exile media claim that "Thura" Myint Aung, a three-star general who was tipped to take over from Than Shwe as commander-in-chief or deputy, refused to accept the less powerful position of defence minister, and as a result was dismissed from the army and placed under house arrest. (See "Myint Aung dismissed, placed under house arrest", *Irrawaddy*, 10 February 2011.)

area, sitting in a parliament or government located in the region/state concerned. The impact of this change will be felt most strongly in some of the ethnic states (Chin, Kayin, Mon, Rakhine and Shan) where ethnic political parties have sizable minorities, and whose representatives will be included as ministers in the local governments.

There will continue to be strong central control. The USDP dominates all the region assemblies and one state assembly (Kayah), and has sizable minorities in all the others – ensuring that, together, the USDP and the military appointees form a majority. All speakers and deputy speakers in these assemblies, and nearly all chief ministers, are USDP representatives.²³ This ensures that the USDP/military will control decision-making on issues of national concern. On local issues the possibilities are more promising as a proportion of USDP representatives at this level are respected local figures. They were pressured to run on a USDP ticket as part of the party's election strategy and do not necessarily hold the same views as the party.

D. ROLE OF THE MILITARY

It had been clear from the beginning of the constitution-drafting process that the military would have a powerful political role: one of the key constitutional principles laid down by the regime in 1992 was the "participation of the Tatmadaw [military] in the leading role of national politics of the state".²⁴ Beyond the considerable influence of the commander-in-chief, constitutional and legislative steps have been taken to secure the military's position and autonomy of action in the new context. The constitution provides that the military has the right to administer and adjudicate all affairs of the armed forces independently. This includes judicial affairs, through a system of courts martial that deals with cases relating to military personnel, including those holding civil-service positions, and on which decisions of the commander-in-chief are final and conclusive.

The constitution also provides that the military, with the approval of the National Defence and Security Council, has the authority to "administer the participation of the entire people in the security and defence of the Union".²⁵ This is particularly relevant in the context of a new military law that has been gazetted, but not yet brought into force: the 2010 People's Militia Act. Similar to a 1959 act with the same name and similar provisions that never took effect, the 2010 act contains a provision stating that

it shall come into force when a notification is issued by the chairman of the SPDC; no notification has so far been made.²⁶ If it does come into force, the act provides that eligible citizens may be called up for two years' military service (or three years' for those with technical skills).²⁷ It envisions not universal military service, but rather the creation of lists of eligible people who may be called up as and when required. The intention is probably to ensure a recruitment stream for the military. For many years the number of voluntary recruits has been less than the number leaving the military, leading to forced recruitment practices that violate domestic and international law, particularly with respect to recruitment of minors.

These constitutional, legal and procedural steps to ensure the military's continued autonomy and political influence have been interpreted by some observers to indicate that the future heralds continued military rule in a different guise. While steps have been taken to perpetuate military influence, and many ex-military officers have assumed key legislative and executive posts, overall the changes curtail significantly the institutional role of the armed forces. As noted above, ensuring that no institution or individual is all-powerful is a crucial aspect of Than Shwe's exit strategy. It is precisely because the military will hand over much of its previous administrative and governance duties to new institutions that it has felt the need to put certain protective guarantees in place.

E. CONTINUED INFLUENCE OF THAN SHWE

The impact of the generational transition, the diffusion of state power, decentralisation and a changing role for the military may not be felt immediately. Now that he has stepped back from a day-to-day leadership role, Than Shwe will continue to influence events from behind the scenes. Changes are likely to be gradual and initially felt in areas that do not represent a perceived threat to his position or his legacy.

It is likely that Than Shwe will take the position of Patron of the USDP (probably together with his long-time deputy Maung Aye, and perhaps also "Thura" Shwe Mann). This would allow Than Shwe to exert considerable influ-

²³The only chief minister who is not a USDP member is the one for Kayin State, who is one of the military appointees.

²⁴State Law and Order Restoration Council, Order No.13/92, 2 October 1992.

²⁵2008 constitution, §340.

²⁶It is likely that an "adaptation of expressions" law will be issued by the new government, since a number of laws refer to positions, such as SPDC Chairman, that do not exist in the new constitutional order. It is likely that the power to bring the act into force will pass to the president.

²⁷Eligible citizens are men between the ages of eighteen and 35 (or eighteen and 45 for professionals with certain technical skills), and women between the ages of eighteen and 27 (or eighteen and 35 for certain technical professionals). Certain exemptions are provided, including for members of religious orders and housewives.

ence over the party's policies and activities. It is likely that, despite the nomenclature, the patrons of the party will be its peak policymaking body (as was the case with the USDA mass organisation that gave rise to the party). Because of the USDP's dominant position, this would give Than Shwe continued legislative and executive influence. As patronage networks have been an important element of political power in Myanmar, Than Shwe's accumulated wealth, and access to economic rents for him and his business cronies, will underwrite his ongoing influence. Recently privatised state assets have been acquired by businessmen with links to Than Shwe or other senior leaders. This ensures their power will endure even when out of office. The previously-dominant military holding companies (Union of Myanmar Economic Holdings and Myanmar Economic Corporation) have been largely sidelined in these sales.²⁸

In addition to dividing power between different institutions, there will also be significant rivalries within those institutions, perhaps intentionally. In the executive there is likely to be tension between the relatively moderate President Thein Sein and the hardline Vice President Tin Aung Myint Oo. In the military, the older commanders have now retired (and generals Than Shwe and Maung Aye are expected to do so shortly), which will leave those in the top ranks all about the same age and seniority.²⁹ There will likely be considerable rivalries between officers, and jockeying to be in line for future promotions to the top leadership posts in the military.

A second new military law that has been gazetted, the 2010 Myanmar Reserve Forces Act, potentially provides a way to rein in the military top brass.³⁰ This law provides that members of the military, on retirement, become members of the reserve forces for a period of five years. In that capacity, they may be recalled for active duty at any time, serving at their previous rank (a promotion may also be possible). This means that, in addition to the ability to boost military strength as and when needed by recalling those who have retired from the lower ranks, it is possible to recall members of the top brass that recently retired, to

their original rank or a more senior position. This even could apply to Than Shwe himself, allowing him to resume leadership of the military if he felt the need.³¹

The challenge facing Than Shwe is to maintain behind-the-scenes influence, which is notoriously difficult. Over time, the new appointees to the senior positions will consolidate their authority and develop their own patronage networks. Those who actually control promotions and appointments will come to command greater loyalty than even a powerful predecessor. This means that while Than Shwe will probably be prominent during the immediate transitional period, his influence will wane. A time will come, certainly after his death but possibly before, when his family and their business interests will no longer have political protection. None of his family members occupy senior posts and he has made no attempt to create a dynasty. He likely hopes that by establishing a constitutional framework, and a less autocratic system of power, his relations can avoid the fate that he imposed on Ne Win and his family.

V. PROSPECTS FOR REFORM

Myanmar is in dire need of social, economic and political reforms. This is the result of numerous factors, including 50 years of isolationist military rule and civil war; an obsessive focus on state security; chronic underfunding of social services and civilian institutions; economic mismanagement and corruption; and an emphasis on "hardware" (dams and bridges) rather than "software" (human resources development). The current transition holds out at least some prospects for reform, although changes are likely to be uneven and incremental.

The transition that Than Shwe has engineered is an extremely cautious one. It is intended as an exit strategy rather than a move towards reform or liberalisation. This is clear from the constitutional and political framework that has been put in place and the retention of many power-holders from the SPDC government. While the underlying power structures have shifted significantly, dramatic change is highly unlikely in the short term, particularly while Than Shwe continues to influence developments behind the scenes. Change will be gradual, but will accelerate over time.

The armed forces have controlled all aspects of governance and policy for the last twenty years. In the new dispensa-

²⁸ Crisis Group interview, prominent Myanmar businessman, January 2011.

²⁹ There are sixteen three-star (Lt-Gen) army posts, two four-star military posts (General and Vice-Senior General) and one five-star post (Senior General). In contrast to the past, the officers who will now occupy these nineteen posts differ in age by only a few years, and all graduated within six years of one another (they are all from Defence Services Academy intakes eighteen to 23, or in a couple of cases from equivalent intakes of the Officer Training School).

³⁰ Law 28/2010, 4 November 2010. Like the 2010 People's Militia Act, this law contains a provision stating that it shall come into force when a notification is issued by the chairman of the SPDC.

³¹ If and when the act is brought into force, the defence ministry is charged with administering it. Since the defence minister is a military appointee under the constitution, it seems unlikely that this act could be used by the executive to rein in the military.

tion, the military will have a direct role in the defence and security sectors, but not the social and economic sectors. Its previous control of economic policy-making (in general, and specifically through Maung Aye's, and then Tin Aung Myint Oo's, chairmanship of the Trade Council), combined with its virtual stranglehold on key parts of the economy, seriously constrained economic reform. This will now change. The constitution provides for a Financial Commission, under the control of the president and with such "advice from financial experts" as may be necessary, with no institutional participation of the military. This provides at least a possibility of more rational and effective economic policymaking; what happens in practice remains to be seen.

The military has never prioritised or had much interest in the social sector. The result has been chronic underfunding and a breakdown of social service delivery. Now that this sector is under greater technocratic control policy reform and greater government investment are possible, particularly as the national budget will be debated in cabinet and by the Financial Commission, and is supposed to be publicly available for the first time in many years.

The establishment of legislative and executive structures at the local level is perhaps the area where change will be felt most quickly and clearly. While the USDP has a strong presence in these structures, social and cultural aspects of governance will change noticeably, particularly in ethnic areas. In most ethnic state legislatures, ethnic parties have sizable minority blocks, and in most of the state governments there will be several ministers drawn from the ranks of these parties. While key economic and security issues will still be under central control, in other areas there will be local-level policymaking that could have a genuine impact on people's lives and the promotion of ethnic culture. The overriding constraint will probably be one of capacity.

One of the most damaging aspects of the last decades of military rule has been that decision-making was in the hands of a single, authoritarian leader – Ne Win, and then Than Shwe.³² This has led to governance that was autocratic, capricious and idiosyncratic. It was also highly inefficient, because too many decisions had to be taken by one person and officials were scared to bring up controversial issues. Subordinates focused on things they thought would please the leader rather than what was necessary. While the new power-holders may not have a more expansive vision or capacity, they have less power and engender less fear, which should open some space for greater discussion of policy issues.

Also significant could be the enhanced role of ministers in the new system. In the past, ministers were more like senior civil servants – in charge of implementing policy, but not of setting it. In most sectors, there was a high-level committee that set policies, chaired by a senior regime figure with the relevant minister only as a member.³³ With ministers now sitting in the two peak governance bodies – the National Defence and Security Council and the Economic Commission – it seems likely that ministers will have an enhanced policymaking role. It remains to be seen whether Vice President Tin Aung Myint Oo will seek to maintain his grip over state policies, which in the past has been lucrative (particularly through the Trade Council) and has given him a channel for implementing his hard-line views. If he does seek to maintain his previous grip, it will potentially weaken the president, and heighten tensions between them.

Generals Than Shwe and Maung Aye, who have held the top two positions in the regime for almost two decades, are stepping down. The transition to a new generation of leaders does not automatically imply change for the better. There is no particular reason to think that any of the people who will take over the top positions are reform-minded "Young Turks" (nor are any of them particularly young). Nevertheless, this is the best opportunity in years for new thinking to be introduced and for reforms to be considered on their merits rather than being seen automatically as a challenge to the top leader. It is very hard to know what these new leaders think, and what their real capacity is, since they have not been free to demonstrate this while under Than Shwe's shadow. But they will be looking to make their mark as the first leaders in a new political era for Myanmar; and they will realise that they do not have the luxury of ignoring many of the longstanding challenges facing the country. This presents a critical opportunity to encourage Myanmar's leaders down a path of greater openness and reform. It should not be wasted.

³²There was a short and tumultuous gap in-between, from 1988 to 1992.

³³Thus, for example, there was the Foreign Affairs Policy Committee, the Trade Council, the Education Committee and the National Health Committee (all chaired by Tin Aung Myint Oo in his capacity as Secretary-1 of SPDC).

VI. A COUNTERPRODUCTIVE SANCTIONS REGIME

Critical to the question of how the West should engage with Myanmar's new leaders are sanctions. The recent political developments in Myanmar have prompted renewed debate on this and Western policymakers are taking a fresh look at the issues. Aung San Suu Kyi has adopted a more flexible position and the key opposition parties that won seats in the elections have called for the lifting of the measures. The NLD itself has called for discussions with the U.S., EU, Canada and Australia on how and when the sanctions might be modified "in the interests of democracy, human rights and a healthy economic environment".³⁴

These "sanctions" are a patchwork of measures, implemented at different times by various Western countries, with divergent objectives and diverse impacts. Taken as a whole, Crisis Group has long believed that sanctions are highly counterproductive.³⁵ There is an urgent need for a complete overhaul of these measures.

A. THE CURRENT SANCTIONS REGIME

There are no multilateral sanctions against Myanmar. Those measures that are in place have been imposed exclusively by Western countries, and fall into three broad categories:³⁶

³⁴ "Sanctions on Burma: A Review", NLD, 8 February 2011.

³⁵ In a 2004 report, Crisis Group stated its position as follows: "The most basic problem with sanctions as a dominant strategy for change is that they freeze a situation that may not contain the seeds of its own resolution. The military, despite its many policy failures, has stayed in power since 1962, and there are no indications that the past fifteen years of external pressure have changed its will or capacity to continue for the foreseeable future. On the contrary, sanctions confirm the long-standing suspicion of nationalist leaders that the West aims to exploit Myanmar and thus strengthen one of their main rationales for maintaining power. Perversely, sanctions may be helping sustain military rule. The generals have learned to live with isolation, internal dissent and the economics of survival in a poor, strife-torn country. The real threat to reactionary leaders is the modernity and development that might come from more involvement with the outside world". Crisis Group Asia Report N°78, *Myanmar: Sanctions, engagement or another way forward?*, 26 April 2004.

³⁶ In addition to the sanctions discussed below, most Western countries have also imposed arms embargoes. While denying arms to a military engaged in a brutal counter-insurgency campaign is fully justified, some forms of military-to-military contact might be useful in understanding dynamics and exposing Myanmar officers to more progressive thinking. An initial step could be for European countries to restore defence attachés in

1. Suspension of development aid and technical assistance

After the army's brutal crackdown on demonstrators in 1988, most Western countries (and Japan) suspended bilateral development aid. While some humanitarian assistance continued to be provided, 22 years later there remain obstacles to the provision of assistance to the Myanmar people. Legal constraints include the provisions of the EU Common Position (and a range of similar restrictions by other Western countries);³⁷ a prohibition on assistance to Myanmar by the international financial institutions (World Bank and IMF);³⁸ as well as mandate restrictions imposed on the United Nations Development Programme and some other UN agencies.³⁹ But it is arguably the political signal sent by these measures that has had the biggest impact – politicians in Western capitals are reluctant

Yangon, bringing European policy into line with that of the U.S. – which has never withdrawn its defence attachés, arguing that in a country dominated by the military, such contacts are all the more important.

³⁷ Article 3 of Council Common Position 2006/318/CFSP of 27 April 2006 renewing restrictive measures against Burma/Myanmar reads as follows: "Non-humanitarian aid or development programmes shall be suspended. Exceptions shall be made for projects and programmes in support of (a) human rights, democracy, good governance, conflict prevention and building the capacity of civil society; (b) health and education, poverty alleviation and in particular the provision of basic needs and livelihoods for the poorest and most vulnerable populations; (c) environmental protection and, in particular, programmes addressing the problem of non-sustainable, excessive logging resulting in deforestation . . ." [*Official Journal*, L 116, 29.4.2006, p. 77].

³⁸ Section 5 of the "Burmese Freedom and Democracy Act of 2003" inter alia requires the Secretary of the Treasury to "instruct the United States executive director to each appropriate international financial institution in which the United States participates, to oppose, and vote against the extension by such institution of any loan or financial or technical assistance" to Myanmar. Since Myanmar is in arrears to the World Bank, no new lending would be possible until agreement was reached on that issue; but the country is also prevented from receiving a range of much-needed technical assistance, including on poverty reduction. As for the Asian Development Bank, the U.S. does not have a controlling vote on the board, so assistance is not ruled out, but the ADB has until now been cautious.

³⁹ UNDP has been operating in Myanmar with a restrictive mandate since 1993. The restrictions were initially introduced in U.S. legislation, and later adopted by the UNDP Executive Board (Decision 93/21), such that all assistance must be at grassroots level. UNDP operations in Myanmar are also subject to a U.S. certification process to ensure, inter alia, that they do not provide any "financial, military and political benefit to the SPDC". Given the lack of clarity as to what would constitute such a benefit, in practice UNDP severely limits any engagement or dialogue with the government.

to increase aid, fearing negative political consequences from pressure groups at home.

2. Investment and trade bans

The U.S. has a broad range of economic sanctions against Myanmar. Since 1997, it has prohibited new investment by U.S. individuals or entities. In 2003, it imposed a ban on imports of all Myanmar products as well as a ban on the export of financial services to the country – which means that Myanmar is excluded from the international U.S. dollar-based clearing system.⁴⁰ In 2008, the U.S. also banned the import of Myanmar precious stones (rubies and jade), regardless of whether they were processed in a third country.⁴¹

The EU introduced economic sanctions in 2007 against three of Myanmar's commercial sectors: logging and timber products; mining of metals and minerals; and precious and semi-precious stones. These sanctions prohibit the import into the EU of any of these items from Myanmar. They also prohibit the export to Myanmar of relevant equipment and technology destined for enterprises engaged in these sectors, as well as related technical and financial assistance. New investments in enterprises in Myanmar engaged in these industries are also prohibited.⁴² The detailed lists of targeted enterprises were lifted verbatim from the corresponding sections of the Myanmar Yellow Pages business directory, with apparently no effort to verify the information (or, indeed, to cross-check with other Myanmar business directories).⁴³

The EU has also denied Myanmar access to preferential tariff rates normally applied to goods from developing countries (under the Generalised System of Preferences).⁴⁴ This serves as a de facto economic blockade, putting Myanmar products at a significant competitive disadvantage in European markets; only one other eligible country has been denied these preferences (Belarus).

⁴⁰ These measures were imposed under provisions of the Burmese Freedom and Democracy Act of 2003.

⁴¹ Measures imposed under the "Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act" of 2008.

⁴² Council Common Position 2007/750/CFSP of 19 November 2007 (*Official Journal*, L 380, 24.11.2007, p. 1 ff.).

⁴³ This point was made by several observers when the EU list was published in 2008; it has yet to be amended. (For example, a direct comparison can be made between the Yellow Pages listing at www.networkmyanmar.org/images/iscos.jpg and the corresponding section of Council Common Position 2007/750/CFSP, 19 November 2007, p. 29.)

⁴⁴ Council Regulation 552/97, "Temporary Withdrawing Access to Generalized Tariff Preferences from the Union of Myanmar". *Official Journal*, L 85, 27.3.1997, pp. 8-9. The U.S. has also denied Myanmar access to its GSP scheme, although this is moot now that it has banned all imports.

3. Diplomatic and financial measures

In addition to restrictions on aid to the people of Myanmar, and broad-based economic sanctions, most Western countries also have sanctions against specific individuals and entities in Myanmar, and restrictions on diplomatic contacts.

The U.S. downgraded its level of representation in Myanmar to that of chargé d'affaires in 1990. The EU, under its "common position", has a ban on visits to Myanmar by ministers and senior officials of EU member states.⁴⁵

Both the U.S. and the EU have imposed visa bans and asset freezes on several hundred designated individuals and entities in Myanmar, including senior military and government figures, and some members of their families, as well as financial institutions, enterprises and business people seen as close to the government.

4. Informal sanctions

There are a number of other informal measures, including "recommendations" by a number of governments against trade, investment and tourism. Such advice, together with the statutory measures in place, have been used by lobby groups to support a well-organised boycott and disinvestment campaign targeting companies with any business ties to Myanmar – including publication of a "dirty list" of such companies.⁴⁶

B. THE IMPACT OF SANCTIONS

Twenty years of sanctions have failed to achieve their objectives in Myanmar, as political leaders in the U.S. and Europe have recognised.⁴⁷ Beyond being ineffective, they have had clearly counterproductive effects, which is why a fundamental rethinking of the sanctions regime is urgently required.

⁴⁵ Article 6 of Council Common Position 2006/318/CFSP of 27 April 2006.

⁴⁶ See www.burmacampaign.org.uk/index.php/campaigns/dirty-list/3/117.

⁴⁷ U.S. Secretary of State Hillary Clinton has been forthright in pointing out that sanctions have failed, saying in 2009 that "clearly, the path we have taken in imposing sanctions hasn't influenced the Burmese junta" (see "Shift possible on Burma policy", *Washington Post*, 19 February 2009). Senator Jim Webb went much further, saying the result of sanctions "has been overwhelmingly counterproductive" (Jim Webb, "We can't afford to ignore Myanmar", *International Herald Tribune*, 25 August 2009). French Foreign Minister Bernard Kouchner stated that with regard to Myanmar "sanctions are useless, and everyone recognises that" (see "Aung San Suu Kyi meets ambassador for sanctions talks", *The Times* (London), 10 October 2009).

1. Sanctions have a significant negative impact on the Myanmar population

Sanctions are not primarily responsible for the poor state of the Myanmar economy; it is in bad shape mostly due to government mismanagement, which has not improved much over the years. The country has suffered from limited growth, little independent wealth generation, and increased poverty and income disparities. Until recently, the limited foreign direct investment has mainly gone to extractive industries, providing direct income to government and lessening the pressure for broad-based reforms that would stimulate growth and increase tax revenues. The economy has evolved under sanctions and it is impossible to say how it would have developed had they not been in place. Sanctions have certainly reinforced the negative effects of the government's poor policymaking. It is also clear that Western sanctions have impacted negatively several labour intensive sectors including the garment, tourism, seafood processing and wood product industries, causing significant job losses and resultant hardship.⁴⁸

In addition to the direct impact of sanctions on existing commercial activities, the opportunity costs must also be factored in. Any analysis must consider not only the jobs lost, but also those never created as a result of sanctions and boycotts. Comparisons with Cambodia and Vietnam are instructive. The Cambodian garment industry has expanded greatly in the last fifteen years, whereas Myanmar's has declined. In the early 1990s, prior to the boycott campaigns and economic sanctions against Myanmar, the country was attracting similar levels of foreign direct investment as Vietnam.

Sanctions have also affected the population in other ways. 22 years after the suspension of development assistance, overall levels of aid to Myanmar remain extremely low compared with other developing countries. The country receives less than \$6 per capita, compared with \$62 per capita for Laos, \$52 for Cambodia and \$42 for Vietnam.⁴⁹ There is no objective reason why the people of Myanmar should be denied such assistance given the overwhelming needs. Such chronically low levels of aid are scandalous, and have contributed to considerable and unnecessary

loss of human life.⁵⁰ In 2008, Crisis Group called for a normalisation of aid relations with Myanmar, a call that has largely gone unheeded.⁵¹

2. Sanctions undermine vital economic reforms

Sanctions create a disincentive to much-needed economic reforms by fostering a self-reliance mentality among the government; promoting more liberal policies would arguably increase the economy's susceptibility to sanctions. Sanctions also provide a convenient excuse for the government's own policy failures, reducing the pressure for reform. Furthermore, the additional transaction costs they impose on business in Myanmar works to the advantage of crony businesses.⁵²

Perhaps more damaging in the long run is the impact that sanctions have on technical capacity. Any government in Myanmar, whether authoritarian or democratic, will rely on the same civil service to implement its policy agenda. By blocking technical assistance from the international financial institutions, and capacity-building efforts more generally, sanctions are a major impediment to improving the economic conditions for the Myanmar people. Denied access to capital markets, technology, information, best practice corporate models, and models of good governance and environmental stewardship, Myanmar's economy will fall further behind those of other ASEAN members.

In a situation where Myanmar's economic development is already lagging far behind other ASEAN countries, a sanctions policy that further damages its prospects for growth could have negative impacts for decades to come.

3. Sanctions polarise a situation that requires reconciliation

Sanctions allow the regime to portray those who advocate them, especially Aung San Suu Kyi, as being "lackeys" of "neo-colonialist" Western powers, and as damaging the interests of the nation and its people. While most people still revere Suu Kyi, to the extent that many of them

⁴⁸ For example, a detailed study by the Institute of Developing Economies estimated that 70,000 to 80,000 jobs were lost in the garment industry in Myanmar as a result of sanctions, with the impact disproportionately on small and medium-sized firms. (Toshihiro Kudo, "The impact of United States sanctions on the Myanmar garment industry", Discussion Paper No. 42, Institute of Developing Economies.)

⁴⁹ OECD International Development Statistics database, 2009 data. See also "Myanmar: ODA shrinks post-Nargis", IRIN, Yangon, 24 January 2011.

⁵⁰ Levels of aid increased temporarily following cyclone Nargis; but, like assistance levels in general, the affected population in Myanmar received only about one tenth of the assistance provided to Aceh in Indonesia after the 2004 tsunami, a tragedy of comparable scale and impact.

⁵¹ Crisis Group Asia Report N°161, *Burma/Myanmar After Nargis: Time to Normalise Aid Relations*, 20 October 2008.

⁵² Crisis Group interviews, Myanmar businessman and economist, January 2011. Thus, it is those companies that have high profit margins (usually as a result of monopolistic privileges) and overseas connections (for example, to set up holding companies in Singapore) that are best able to absorb the higher transaction costs and/or find ways to circumvent the sanctions, precisely the entities that are the supposed targets of the measures.

do feel that sanctions have had a negative impact, they are increasingly questioning her political tactics. Within highly nationalistic military circles, these negative portrayals of Suu Kyi are widely accepted.⁵³ For this reason, it has been argued that sanctions undermine the chances of reconciliation within Myanmar.⁵⁴ They also create a disincentive for nationalistic leaders to comply with the demands of those who imposed them, since no such leader can be seen to be bowing to external pressure.

Sanctions have also polarised international debate on Myanmar. Divergences between most Asian countries and the West on the issue have constrained the possibility of more coordinated, and therefore potentially more effective, approaches to Myanmar. And even within Europe, divergences over the sanctions issue have created unhelpful tensions. There are very few Western lawmakers and politicians who believe that sanctions are effective. The support for sanctions – genuine, and often passionate – stems from other considerations: the desire to support Aung San Suu Kyi, and the wish to take a moral stance against the abuses of the government. But there are many others whose support for sanctions is based more on domestic political considerations and the reluctance to draw fire from powerful domestic Myanmar lobby groups.

These exile and activist lobby groups have expended enormous energy lobbying for sanctions, and undermining or vilifying those who take a different view. In the absence of any real progress in Myanmar, sanctions have instead been pursued as an end in themselves; in many quarters the strength of the sanctions regime has been taken as a proxy indicator of “progress” or “success”. But given that almost everyone agrees that sanctions have been a dismal failure, this is nonsensical; the enormous effort and resources expended on this issue would be much better spent elsewhere.

4. Sanctions reinforce dangerous imbalances in Myanmar's external economic and diplomatic relations

By closing off economic and diplomatic engagement with the West, sanctions have pushed Myanmar economically and politically closer to China, and also diplomatically closer to “pariah” states such as North Korea, Belarus, Sudan and Zimbabwe.⁵⁵ This is not a traditional or natural

diplomatic posture for Myanmar. It has always been acutely aware of its geostrategic location – squeezed uncomfortably between India and China. It has managed this by a traditional commitment to multilateralism. It had always been an engaged member of the UN, producing the first Asian Secretary-General, and was a founder of the Non-Aligned Movement. Many Myanmar leaders feel very uncomfortable about being too close to China, fearing economic and political domination by their powerful neighbour. Sanctions and isolation by the West have left them little alternative.⁵⁶

Massive regional investment flows in recent years highlight this. China is building a multi-billion dollar energy corridor through Myanmar – a deep sea port in Kyaukpyu (near Sittwe) on its Indian Ocean coast, and parallel gas and oil pipelines and highway.⁵⁷ The gas will come from offshore deposits, and the oil will be brought by tanker, mostly from the Middle East and Africa, for transshipment across the country. The corridor will be a major strategic asset for China, carrying some 10 per cent of the country's total oil imports, and a significant volume of gas. Similarly Thailand, which already relies on gas from Myanmar for a major part of its energy needs, is embarking on a \$58 billion project – the Dawei Development Project – including a 250 sq km industrial estate with a petro-chemical hub, a modern deep-sea port and road and rail links to Thailand.⁵⁸

These huge projects, and the other regional investments that will piggyback on them, will transform the economic landscape in Myanmar, and will give its neighbours a major stake in the country's political stability. But they will likely do so at significant social and environmental cost; and by further unbalancing external relations, they could place serious constraints on how Myanmar can position itself diplomatically in the future.⁵⁹ The region, and par-

⁵³ Crisis Group interviews, several influential intellectuals and politicians in Myanmar, January and February 2011.

⁵⁴ For a detailed argument by a respected Myanmar exile and former member of the armed opposition, see Aung Naing Oo, “Time to lift economic sanctions”, *Irrawaddy*, 25 January 2011.

⁵⁵ Myanmar re-established diplomatic relations with North Korea in 2007. It established relations with Belarus in 1999, Sudan in 2004 and Zimbabwe in 2009.

⁵⁶ Of course, China is a growing presence in many regional and global markets, and tends to particularly dominate resource rich authoritarian pariah states that the West often shuns for political or security reasons. However, China's presence is of particular concern to many in Myanmar given not only fears of economic dependence, but also profound distrust of Beijing due to its past support to the Communist Party of Burma and its continuing ties with border ethnic groups.

⁵⁷ See Crisis Group Asia Report N°177, *China's Myanmar Dilemma*, 14 September 2009; and Asia Briefing N°112, *China's Myanmar Strategy: Elections, Ethnic Politics and Economics*, 21 September 2010.

⁵⁸ The first phase of the project will be about \$12 billion and 100 sq km. See “Thai-Burma deep sea port project”, *The Bangkok Post*, 11 December 2010.

⁵⁹ Imbalances in major infrastructure projects and resource extraction will be extremely difficult to correct later on, since these projects typically involve very large sunk costs and finite opportunities.

ticularly China, feels that the status quo – continued authoritarian rule with some political reform at the margins and better economic management – is the best guarantee of stability and therefore serves its interests better than the uncertainties and possible turbulence associated with democratic and liberal reforms.

C. THE WAY FORWARD

Aung San Suu Kyi, in her audio message to the World Economic Forum in Davos in January 2011, acknowledged the need for innovation and diversification of the economy if Myanmar is to catch up with the rest of the world. She encouraged investment, but called on foreign investors to “put a premium on respect for the law, on environmental and social factors, on the rights of workers, on job creation and on the promotion of technological skills”.⁶⁰ This reiterated the points made in a 4 January statement setting out the NLD’s economic policies.⁶¹

Such calls for renewed and responsible investment are incompatible with continued economic sanctions: it is Western companies that are most likely to meet such corporate social responsibility standards; but these are the very companies that are prohibited or dissuaded from investing in Myanmar by sanctions and boycott campaigns. The absence of Western companies will continue to be exploited by businesses in the region, which have enthusiastically filled the gap created by sanctions, but which cannot offer the same quality of resource flows and knowledge transfer as the West.⁶²

All of the major national and ethnic parliamentary opposition parties – including the four largest opposition parties (Shan Nationalities Democratic Party, Rakhine Nationalities Democratic Party, All Mon Regions Democracy Party and National Democratic Force) – have called for sanctions to be lifted.⁶³ ASEAN has also made a specific call

for the removal of sanctions.⁶⁴ Internationally, calls for lifting the sanctions have been growing.⁶⁵ The NLD has issued a statement on the results of its internal review of the matter, which comments on the impact of sanctions, and concludes that lifting the measures should be contingent on progress in democratisation and release of political prisoners. This review should be seen as a statement of a political position, rather than as a credible evaluation of the impact or efficacy of sanctions.⁶⁶

The main argument that has been put forward internationally against lifting sanctions is that this would somehow “reward” the regime when it has not taken sufficiently convincing steps to warrant this, or would send the “wrong political signal”. But these are not sound reasons for maintaining the status quo. If, as is widely recognised, sanctions have not been effective, then changing such a policy can hardly be a reward for the regime. A failed – and indeed counterproductive – policy is also not the way to send a strong political signal; rather, it sends the signal that the West is not really interested in pursuing its stated goals in Myanmar and that the real focus is on domestic political considerations.

2001, reported in “Chin party urges lifting of economic sanctions on Burma”, *Khonumthung News*, 25 January 2011; “Announcement 3/2011 by the National Democratic Force”, Yangon, 5 February 2011; and a statement by Democratic Party-Myanmar reported in “Movement builds to end all non-targeted sanctions”, *Mizzima*, 20 January 2011.

⁶⁴“ASEAN calls for lifting of sanctions on Myanmar”, Associated Press, 16 January 2011.

⁶⁵See, for example, Philip Bowring, “End sanctions on Myanmar”, *International Herald Tribune*, 31 December 2010; “The European Union should reassess their policy on sanctions”, *Network Myanmar*, 18 January 2011; “Ramos-Horta tells US, Europe to lift Myanmar sanctions”, Agence France-Presse, 15 November 2010; Brahma Chellaney, “Lift sanctions burden from Burma”, *Washington Times*, 27 November 2010; Lee Jones, “Burma: Sanctions won’t work”, *Le Monde Diplomatique*, November 2010.

⁶⁶Thus, the statement suggests that sanctions have not impacted on ordinary people, stating that “available evidence indicates that economic conditions within the country have not been affected by sanctions to any notable degree” without providing any evidence to support this assertion, which is in direct contradiction to the views of two respected economists in Myanmar interviewed by Crisis Group (in January and February 2011), and to numerous pieces of evidence set out herein. The technical credibility of the report is further weakened by statements such as that financial sanctions cannot have had any impact on the population “since the average Burmese citizen doesn’t have a bank account”, and that trade sanctions can likewise have had no impact on ordinary people since the majority of the population lives in rural agricultural areas; it is in fact rural areas that are arguably worst-hit by a lack of investment and job creation, since there is a considerable rural labour surplus outside of the key planting and harvesting periods. (See “Sanctions on Burma: A Review”, NLD, 8 February 2011.)

⁶⁰The audio is available at www.youtube.com/watch?v=TO5uUedqxJk (accessed 31 January 2011).

⁶¹“Analysis of the economy”, Central Executive Committee statement, 4 January 2011 (unofficial translation).

⁶²Crisis Group interview, respected Myanmar economist in Yangon, January 2011.

⁶³A joint statement by ethnic parties states that “The economic sanctions that the United States and European Community have taken the lead in applying upon the Union of Myanmar have led to problems in trade, investment and acquisition of modern technology which are important for the development of the ethnic regions which have been underdeveloped throughout history. Not only that, they also diminish the prospects for the future. Therefore we ethnic brethren parties collectively make a request that the sanctions regime led by the United States and European Community be reviewed and lifted”. (“Joint Statement by Ethnic Brethren Parties”, 15 January 2011, unofficial translation.) See also Chin Progressive Party statement January

VII. CONCLUSIONS

The longstanding and serious failures of the Myanmar government have resulted in a country that faces multiple crises. But international policies are also failing Myanmar and its people. Chronically low levels of aid, a lack of vital technical assistance and capacity building, and a stubborn insistence by some within the West to cling to failed policies of sanctions and isolation, have only served to exacerbate the negative impacts of poor governance.

As Myanmar enters a new political phase and General Than Shwe hands over power to the next generation of leaders, there is a critical window of opportunity to encourage greater openness and reform. Unfortunately, this opportunity is likely to be squandered. A small number of influential countries place a higher priority on appearing “tough” on the Myanmar issue, rather than on being effective – satisfying unrepresentative domestic lobby groups at the expense of developing sound policies. Continuing the same old approach will reinforce longstanding suspicions among the country’s leaders about the intentions of the West. On the ground, much is changing, but the Myanmar government is unlikely to break quickly or dramatically with 50 years of authoritarianism, and will give ample reasons for Western policymakers to justify a hardline approach. The result will be continued deadlock, which will be to the detriment of the Myanmar people, and to Western interests in the country. Now is the moment for a new approach.

First, do no harm. Improved policies must start with the recognition that sanctions have counterproductive effects, some more obvious than others. As a first step, restrictions on development assistance should be lifted, and levels of aid dramatically increased, in line with donor standards on accountability and fiduciary responsibility. Restrictions on technical assistance from international financial institutions should be removed. These institutions should actively engage on the full range of pressing concerns such as poverty alleviation, social and economic policy reform and capacity building. Mandate restrictions on UNDP and other UN agencies should be lifted. Broad-based economic sanctions – particularly the U.S. import ban, the EU’s sectoral sanctions and the denial of GSP – should be immediately lifted.

Lifting sanctions and promoting trade and investment are not magic bullets. This easing of measures should therefore be accompanied by active engagement with the authorities on issues of economic reform and governance, and provision of capacity building support. Beyond this, the West must robustly engage the new Myanmar government at the highest level, on a full range of issues, including political reform and human rights. Such high-level contacts are critical in order to make international con-

cerns clear, and to make a convincing case that a renormalisation of relations is possible if those concerns are addressed. If the new government comes to the conclusion that megaphone diplomacy and sanctions from the West will continue regardless, there will be no incentive for it to try to improve relations. This will leave the people of Myanmar squeezed between a failing government and the failed policies of an ineffectual sanctions regime.

Jakarta/Brussels, 7 March 2011

APPENDIX A

MAP OF MYANMAR



APPENDIX B

ELECTION RESULTS BY PARTY

	Party	Upper House	Lower House	State/Region	TOTAL	%
1	Union Solidarity and Development Party	129	259	496	884	76.6%
2	National Unity Party	5	12	45	62	5.4%
3	Shan Nationalities Democratic Party	3	18	36	57	4.9%
4	Rakhine Nationalities Development Party	7	9	19	35	3.0%
5	All Mon Regions Democracy Party	4	3	9	16	1.4%
6	National Democratic Force	4	8	4	16	1.4%
7	Chin Progressive Party	4	2	6	12	1.0%
8	Pao National Organisation	1	3	6	10	0.9%
9	Chin National Party	2	2	5	9	0.8%
10	Phalon-Sawaw [Pwo-Sgaw] Democratic Party	3	2	4	9	0.8%
11	Kayin People's Party	1	1	4	6	0.5%
12	Taaung (Palaung) National Party	1	1	4	6	0.5%
13	Wa Democratic Party	1	2	3	6	0.5%
14	Inn National Development Party	–	1	3	4	0.3%
15	Unity and Democracy Party of Kachin State	1	1	2	4	0.3%
16	Democratic Party (Myanmar)	–	–	3	3	0.3%
17	Kayan National Party	–	–	2	2	0.2%
18	Kayin State Democracy and Development Party	1	–	1	2	0.2%
19	National Democratic Party for Development	–	–	2	2	0.2%
20	88 Generation Student Youths (Union of Myanmar)	–	–	1	1	0.1%
21	Ethnic National Development Party	–	–	1	1	0.1%
22	Lahu National Development Party	–	–	1	1	0.1%
	Independent candidates	1	1	4	6	0.5%
23	Democracy and Peace Party	–	–	–	0	
24	Kaman National Progressive Party	–	–	–	0	
25	Khami National Development Party	–	–	–	0	
26	Kokang Democracy and Unity Party	–	–	–	0	
27	Modern People Party	–	–	–	0	
28	Mro or Khami National Solidarity Organisation	–	–	–	0	
29	National Development and Peace Party	–	–	–	0	
30	National Political Alliance	–	–	–	0	
31	Peace and Diversity Party	–	–	–	0	
32	Rakhine State National Unity Party, Myanmar	–	–	–	0	
33	Union Democratic Party	–	–	–	0	
34	Union of Myanmar Federation of National Politics	–	–	–	0	
35	United Democratic Party	–	–	–	0	
36	Wa National Unity Party	–	–	–	0	
37	Wunthanu NLD (The Union of Myanmar)	–	–	–	0	
	TOTAL	168	325	661	1154	

APPENDIX C

BALANCE OF POWER IN THE NATIONAL LEGISLATURES

	TOTAL	Military	USDP	NUP	NDF	Ethnic	Independent
<i>Upper House elected</i>	168		129 (76.8%)	5 (3%)	4 (2.4%)	29 (17.3%)	1 (0.6%)
<i>Upper House total</i>	224	56 (25%)	129 (57.6%)	5 (2.2%)	4 (1.8%)	29 (12.9%)	1 (0.4%)
<i>Lower House elected</i>	325		259 (79.7%)	12 (3.7%)	8 (2.5%)	45 (13.8%)	1 (0.3%)
<i>Lower House total</i>	435	110 (25.3%)	259 (59.5%)	12 (2.8%)	8 (1.8%)	45 (10.3%)	1 (0.2%)
<i>Combined congress elected</i>	493		388 (78.7%)	17 (3.4%)	12 (2.4%)	74 (15%)	2 (0.4%)
<i>Combined congress total</i>	659	166 (25.2%)	388 (58.9%)	17 (2.6%)	12 (1.8%)	74 (11.2%)	2 (0.3%)

APPENDIX D

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in fourteen additional locations (Baku, Bangkok, Beirut, Bujumbura, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh,

Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia and Turkey; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Lebanon, Morocco, Saudi Arabia, Syria and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

Crisis Group receives financial support from a wide range of governments, institutional foundations, and private sources. The following governmental departments and agencies have provided funding in recent years: Australian Agency for International Development, Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Belgian Ministry of Foreign Affairs, Canadian International Development Agency, Canadian International Development and Research Centre, Foreign Affairs and International Trade Canada, Czech Ministry of Foreign Affairs, Royal Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Commission, Finnish Ministry of Foreign Affairs, French Ministry of Foreign Affairs, German Federal Foreign Office, Irish Aid, Japan International Cooperation Agency, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Agency for International Development, Royal Norwegian Ministry of Foreign Affairs, Slovenian Ministry of Foreign Affairs, Swedish International Development Agency, Swedish Ministry for Foreign Affairs, Swiss Federal Department of Foreign Affairs, Turkish Ministry of Foreign Affairs, United Arab Emirates Ministry of Foreign Affairs, United Kingdom Department for International Development, United Kingdom Economic and Social Research Council, U.S. Agency for International Development.

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March 2011



International Headquarters

149 Avenue Louise, 1050 Brussels, Belgium · Tel: +32 2 502 90 38 · Fax: +32 2 502 50 38
Email: brussels@crisisgroup.org

New York Office

420 Lexington Avenue, Suite 2640, New York 10170 · Tel: +1 212 813 0820 · Fax: +1 212 813 0825
Email: newyork@crisisgroup.org

Washington Office

1629 K Street, Suite 450, Washington DC 20006 · Tel: +1 202 785 1601 · Fax: +1 202 785 1630
Email: washington@crisisgroup.org

London Office

48 Gray's Inn Road, London WC1X 8LT · Tel: +44 20 7831 1436 · Fax: +44 20 7242 8135
Email: london@crisisgroup.org

Moscow Office

Belomorskaya st., 14-1 – Moscow 125195 Russia · Tel/Fax: +7-495-455-9798
Email: moscow@crisisgroup.org

Regional Offices and Field Representation

Crisis Group also operates out of over 25 different locations in Africa, Asia, Europe, the Middle East and Latin America.

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