chapter 1

Soldiers as Lawmakers?: Assessing the New Legislative Role of the Burmese Armed Forces (2010–15)

Renaud Egreteau

> Both houses of parliament have 25 per cent of unelected armed-forces representatives. The reason for that was that there was a fear that there would be a one-party dictatorship inside the parliament. So soldiers who are not involved in party politics [only in national politics] were added to balance [the parliamentary debates].
>
> —U Khin Aung Myint, Speaker of the Upper House (*Amyotha Hluttaw*), August 2013[1]

Introduction[2]

Antagonism and mutual distrust between the Burmese armed forces (or Tatmadaw) and the civilian sphere have long characterized Myanmar's post-independence politics. Since the 1950s, Tatmadaw publications

[1] Interview with author, Naypyitaw, 15 Aug. 2013.

[2] Acknowledgements: The author thanks IRASEC for the funding received for this study, as well as Mary Callahan, Maung Aung Myoe, David Steinberg, Andrew Selth, Morten Pedersen, Carine Jaquet and Romain Caillaud for their on-the-ground help and encouraging comments on earlier drafts of this article.

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and official discourses have routinely accused civilian politicians, and parliamentarians in particular, of having drawn the country from one crisis to another (Mya Win 1992; Min Maung Maung 1993). In its own words and propaganda works, the Tatmadaw likes to position itself as the sole cohesive, dedicated and disciplined state institution able to safeguard the unity of the nation, protect its integrity and bring about political stability (Selth 2002; Callahan 2000, 2009; Kyaw Yin Hlaing 2009; Maung Aung Myoe 2009; Nakanishi 2013). Across time and place, the contempt for disruptive and chaotic parliamentarian politics as well as the divisive essence of civilian affairs has long been underscored by civil-military scholarship as a legitimate incentive for the intervention of coup-prone or "praetorian" armies (Huntington 1957; Finer 1975; Nordlinger 1977). In modern polities, praetorianism commonly refers to the unhealthy political influence of the military and the control soldiers seek to exert over allegedly "untrustworthy" civilians.[3]

With the disbanding in March 2011 of the Burmese junta (or State Peace and Development Council, SPDC), the Burmese armed forces moved down the spectrum of praetorian intervention (Callahan 2012; Egreteau 2014a; Bünte 2014). The Tatmadaw indeed initiated a partial withdrawal from day-to-day politics, but did not fully disengage from the new state institutions formed henceforth. The military-written Constitution ratified in 2008 unveiled a series of legal instruments as well as institutions through which the army can still exert its political sway in the "post-military" landscape of the 2010s, and much beyond. Among these new state structures are a national bicameral parliament[4] (*Pyidaungsu Hluttaw*, composed of an upper house called *Amyotha Hluttaw* and a lower house called *Pyithu Hluttaw*) and 14 provincial assemblies (state and region hluttaw). In all legislative bodies, the armed forces have constitutionally secured a quarter of the parliamentary seats. The military establishment has

[3] For more recent discussions on praetorianism and the concept of the praetorian state, see Alagappa (2001) and Egreteau and Jagan (2013: 20–30).

[4] The terms "parliament", "legislature", "legislative assembly" and "legislative body" will hereafter be used interchangeably. In Burmese language, though, the conventional term is *hluttaw*, or parliament.

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therefore potentially retained a significant influence over the post-SPDC law-making process.

This article intends to question this assumption. It examines the most recent legislative intervention of the Tatmadaw as well as its role in the new parliamentary system that took shape after the 2010 elections, and the subsequent transition from direct military rule to a quasi-civilian "hybrid" regime. There has been, among academics and Burma watchers, a growing interest about the way parliamentary affairs have re-emerged in Myanmar since the first session of the new national parliament was convened in January 2011 (Horsey 2011; ICG 2013b; Kean 2014; Egreteau 2014b). This study takes its cue from this emerging literature as well as the scholarship on civil-military relations and post-authoritarian legislative politics, and attempts to enquire into the new legislative functions the Burmese armed forces may seek to perform in the "post-junta" context of the 2010s.

The research draws on a series of in-depth interviews of Burmese parliamentarians and political party leaders carried out in Naypyitaw and Yangon between February 2013 and July 2014. About 40 civilian MPs from both Amyotha Hluttaw and Pyithu Hluttaw, with different personal profiles, ethnic background and party memberships were interviewed, mostly in English. Each discussion ranged from one to two hours. Some MPs were interviewed more than once. Only a couple of military MPs were available for discussion (in February 2015). The difficulty of getting direct access to Burmese army officers, and more generally to obtain reliable information about the Tatmadaw, has long been underlined by the scholarship on Burmese contemporary military politics (Selth 2002; Callahan 2003; Maung Aung Myoe 2009). Army personnel, and therefore military parliamentarians, need authorization from their hierarchy if they are to speak out; obviously they are seldom—if ever—granted it.

Yet military MPs now do interact and work alongside their civilian colleagues in the parliament in Naypyitaw, whether in the corridors, libraries and restaurants of the 31-building complex, or more critically within the 40-odd parliamentary committees that have been set up in both chambers since 2011. The interviews I have so far carried out with elected national MPs—who were very willing to talk after each regular session or during the weekends spent in their assigned hostel

compound in Naypyitaw, in bungalows or rooms they rent outside, as well as in their own constituencies—have therefore been focused on how they have established (or not) a constructive dialogue with their non-elected military colleagues; how they work together in committees; how military MPs intervene and on what subjects; what questions they ask; how they participate or vote during debates; what proposals they submit for discussion to their civilian counterparts; how they check the drafts submitted by the executive branch; and so on. Civilian MPs with a military background were also interviewed, including graduates from early batches of the elitist Defense Services Academy (DSA) and ex-senior army officers who retired to be elected as MPs or fill out the ranks of the dominant Union Solidarity and Development Party (USDP).

This article looks at how military representatives have initially behaved in the first post-SPDC legislature (2010–15), and considers the implications of both their presence and their performance in the new parliament. I limit the analysis to the national level, to which I was granted access, and leave aside the 14 decentralized assemblies (save for a few selected anecdotes), as there is still not sufficient data available on the latter. In particular, drawing on the scholarship on legislative politics, this research focuses on a set of four types of core legislative behaviour and functions performed by the military MPs: vetoing, checking, lawmaking and networking. The underlying proposition is that, despite the undemocratic character of the presence of men in uniform in all post-SPDC legislative bodies, the military appointees have so far not been the blunt obstructive force many observers thought they would be. More than a mere defender of the interests of the *ancien régime*, the Tatmadaw may rather intend to serve in the new legislature as an "arbitrator" regulating parliamentary debates and safeguarding the Constitution it has inspired. This is perfectly in line with the self-appointed "guardianship" role the Burmese armed forces—the "sentinel" (Prager Nyein 2011)—and their internal propaganda have been promoting since the 1950s.

Halfway through the first post-SPDC legislature, the level of the Tatmadaw's legislative activities has obviously remained low. Far from proving an active lawmaking force in parliament, the military

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appointees may be under instruction to merely fulfil their traditional "tutelary" function, as mere "arbitrator" of Burmese legislative affairs and protector of the 2008 Constitution, as mentioned in the latter's article 20(f). Given the fact that over the past six decades this "guardianship" role of the Tatmadaw has become an end in itself, and that the current military leadership still does not seem to have matured beyond this phase, conclusions will be drawn on the distant and bleak prospects for an incremental withdrawal of the Burmese military from parliament, and more broadly from the country's political affairs.

Armed Forces and Parliaments

Armed forces have long been defiant of civilian control under all regimes, authoritarian and democratic alike. Since Huntington's seminal research (1957), the scholarship on civil-military relations has extensively explored the many areas of contention between military and civilian state institutions. In particular, the relations between armed forces and elected legislative bodies have received particular attention since the 1970s (Welch 1976; Kornberg and Pittman 1979; Mezey 1983; Desch 1999; Trinkunas 1999, 2005; Cottey et al. 2002; Feaver 2003). Two core issues can be identified when examining this dual relationship between military and parliamentary institutions, according to the maturity of the democratic system in place as well as the extent of military intervention in state politics. First, is the direct involvement of the armed forces in the lawmaking process, commonly observed through seat reservations in elected assemblies and the straightforward participation of army officers in legislative activities. Second—when soldiers do not populate legislative bodies—is the degree of autonomy that elected civilian parliamentarians enjoy vis-à-vis the military when exerting their oversight function over the security apparatus. In particular, scholars of Southeast Asia have built on this extant literature and comparatively examined the oversight function exerted by civilian legislators in various Southeast Asian emerging democracies (Case 2011; Mietzner 2011b), their influence over transitional processes (Rüland et al. 2005; Ziegenhain 2008) and their capacity to control their respective armed forces (Croissant and Kuehn 2009; Croissant et al. 2013).

The legal presence of army officers in national and local parliaments has been a relatively rare institutional arrangement. Very few modern coup-prone armed forces indeed bother to have a physical presence in civilian legislative bodies. Soldiers often construe the latter as arenas of divisive and damaging parochial politics, in which the armed forces should not be involved. Yet in some cases, especially in the context of a transition from a direct military rule to a civilian one, armies appear willing to play by the parliamentary rule albeit with a few core prerogatives initially guaranteed. Among them, seat reservations in elected assemblies are a significant instrument of policy control and influence a military institution may choose to adopt. For instance, Red Army delegates have long peppered the Supreme Soviet (the state legislature in the heyday of the Soviet Union) whilst representatives from China's People's Liberation Army still form a significant contingent in the current legislature in Beijing.[5] Ten seats (out of 375) are reserved for military officers in Uganda's current national assembly, which was last elected in 2011.[6] In Tanzania, the People's Defence Forces long had seats in the parliament reserved for their personnel until a new constitution withdrew this prerogative in 1992 (Luckham 1994: 45). On its side, the Indonesian army enjoyed legislative power until 2004. Under General Suharto's regime (1965–98), army officers were commonly seconded to all national and provincial legislative assemblies as well as the civilian bureaucracy, according to the state doctrine of *dwifungsi* (dual function). Between 1977 and 1997, 20 per cent of the seats in the national assembly in Jakarta were reserved for senior officers. The number of military representatives was, however, reduced from 100 (out of 500) to 75 in 1997 (Rüland and Manea 2013: 127) and military MPs were eventually fully withdrawn in 2004.

Through this presence in lawmaking bodies, politicized armed forces intend to keep an eye on the legislative process, beside other

[5] There were 268 out of 2,987 delegates (9 per cent) in the 12th National People's Congress formed in February 2013: Xinhua, "PLA Deputies to National Legislature More Diverse, 28 Feb. 2013.

[6] Although they participate in the legislative process, Ugandan military MPs are, however, not allowed to criticize the executive within the walls of the assembly (Makara 2010: 85).

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channels of influence they may have captured in the state bureaucracy, in ministries and in any other policymaking structures. Military MPs are generally appointed by their hierarchy (in particular when soldiers do not enjoy voting rights, as in Indonesia under Suharto), but they can sometimes be chosen by a military electorate. The representation of the military in parliament reinforces the image of the army as a special (and privileged) caste of decision-makers. This is particularly manifest in a political system in which the armed forces like to play a decisive policy role and be part of all governing structures but without fully controlling state institutions. This is characteristic of the "guardian" military ruler, defined by Nordlinger through a threefold typology of military intervention (1977).[7] Between the "praetorian" ruler (which aims to control all state structures and usually denies the parliament its very existence) and the "moderator" army (which is reluctant to be directly involved in government but has enough clout to topple civilian leaders and decisively influence policymaking), the "guardian" armed forces commonly seek to safeguard their own interests by sharing power with the civilians and by, among other institutional arrangements, anointing themselves legislators—as observed in Myanmar since 2011.

The Burmese Armed Forces in the Post-SPDC Legislature

What the 2008 Constitution Provides

Whilst allowing a "civilianization" of the state institutions, the provisions of Myanmar's Constitution, ratified in 2008,[8] essentially extend and legalize the political and legislative intervention of the Burmese armed forces (Prager Nyein 2009; Crouch 2014; Williams 2014). In particular, its article 6(f) states that one of the consistent objectives of the country is to ensure that the defence services are "able to

[7] Alagappa adds a fourth ideal type (the "referee") to the three already defined by Nordlinger, but also retains as a focal point the "guardianship" role of a praetorian army (Alagappa 2001).

[8] An official English version is available at http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf [accessed 4 Aug. 2015].

participate in the national political leadership role of the State". In short, the Tatmadaw is expected to continue to intervene in "national" (but not "party") politics for the good of the nation, as the natural "saviour" of the latter as well as the guardian of the Constitution (article 20f). This is perfectly in line with how a praetorian military likes to think of itself.

Since the immediate aftermath of the 1988 coup d'état, which suspended the 1974 Constitution, the Tatmadaw leadership has painstakingly attempted to guide the constitution-drafting process. From the early promises to write a new constitutional document, which were given in 1989 by General Saw Maung (then head of the post-Ne Win junta), to the adoption of the final text in 2008, the Burmese military establishment has managed to impose its objectives and supervise the whole process. Two "national conventions" were formed and specifically commissioned to prepare a draft along the lines previously defined by the Tatmadaw—or the "six national objectives" and "104 basic principles" (Min Maung Maung 1993; Williams 2009). The process was not dissimilar to other instances of military-guided constitution drafting observed around the world. In Chile, the 1980 Constitution was imposed by the armed forces in power since the 1973 coup and provided the military with a series of key political prerogatives (Ensalaco 1995). In 1982, the new Turkish constitution was also prepared under military rule, two years after the latest military coup in Ankara (Hale 1994: 256–9).

Since the early 1990s, Tatmadaw ideologues have relentlessly insisted on the need for the Burmese armed forces to remain "eternally involved in national politics", but to avoid unruly and divisive "party politics" and the wider partisan struggle they considered a recipe for disintegration and political decay (Mya Win 1992: 5–7). This might have been, therefore, one of the incentives for the army leadership to secure a "balancing" or "moderating" military presence in all new national and local legislative bodies envisioned by the new constitution. The Tatmadaw representatives indeed represent a quarter of each chamber of the national parliament, which was shaped for the first time after the controversial elections held on 7 November 2010. The army can enjoy a maximum of 110 seats in the lower house (Pyithu Hluttaw, article 109[b]) and 56 seats in the upper house (Amyotha Hluttaw,

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article 141b).[9] In the 14 provincial assemblies, the number of army appointees is equal to one-third the number of elected representatives, which mathematically roughly corresponds to a fourth of the total number of MPs (article 161[d]). Therefore, 222 army officers currently sit in the 14 state and regional legislatures. And contrary to seats designed for elected civilian politicians, all parliamentary seats constitutionally reserved for the Tatmadaw have always been filled since 2011.

The Opaque Process of Appointing Military Delegates in Parliament

Civilian MPs are elected by universal and equal suffrage of all Burmese citizens above 18, but military MPs are directly nominated by the Commander-in-Chief of the Tatmadaw. According to article 33 of the Pyithu Hluttaw Election Law, article 33 of the Amyotha Hluttaw Election Law and article 33 of the Region Hluttaw or State Hluttaw Election Law, the Commander-in-Chief need only inform the Union Election Commission (UEC) of the new nominations. The UEC then makes the new appointment public, without any possibility of vetoing the choice put forward by the military hierarchy. The duration of the mandate of the military MPs is not pre-delineated; they can be removed and replaced (or not) at will during the five-year legislature mandate, and this without any possibility of control by their civilian counterparts, the government or the electorate. This absence of oversight tools for the elected legislative and executive powers considerably hinders the institutionalization of democratic civilian control over the armed forces, a prerequisite to any meaningful democratization (Welch 1976; Desch 1999; Born 2010).

Yet this institutional arrangement imposed by the Tatmadaw reflects the enduring lack of trust between civilians and the military in the country (Mya Win 1992; Min Maung Maung 1993; Callahan

[9] The Constitution stipulates that "not more" than 110 military representatives should sit in the lower house (that is, the Commander-in-Chief can thus legally appoint less than 110 military MPs, without changing the Constitution). For a sociological analysis of the 166 military legislators who were appointed by mid-2012 (many have, however, since been substituted since), see Egreteau (2015).

2000, 2003). The military deputies sit in parliament to represent the armed forces as a coherent institution with corporate interests. In Pyithu Hluttaw especially, they do not represent an electorate, but a social group and a singular state organization, the military.[10] Their mission seems thus to radically differ from that of other civilian legislators as their loyalty appears to stand in a different place. As observed in other places and contexts, an army officer indeed first owes loyalty to his/her state, and subsequently to his/her military hierarchy, and is consequently not supposed to develop intimate and political ties with his/her home and place of origin (or any electorate that needs to be cultivated).

The first post-SPDC legislature was convened on 30 January 2011. Ten days earlier, 388 military delegates had been commissioned to the two chambers of the national parliament as well as to the 14 state and regional assemblies.[11] Out of these first-time appointees, there were only three army colonels in the Pyithu Hluttaw and two colonels in the Amyotha Hluttaw while one army colonel led the military delegation in each of the 14 local parliaments, with the exception of Kayin (Karen) state, where a brigadier-general had been nominated (he would thereafter be appointed chief minister of that state). All other military appointees were of lower ranks: army and air force majors and captains as well as navy commanders. Commentators then argued that the nomination of mid-ranking junior officers was deliberate, apparently to ensure that the military group remained cohesive and under the control of a few key senior officers within their respective assemblies (ICG 2011: 3).

However, three weeks after the historical election of Aung San Suu Kyi to the lower house in April 2012, the substitution of 59 army majors and captains, with as many brigadier-generals and colonels as new military appointees in the national parliament, underscored an evident policy change from the Tatmadaw establishment (Min Zin 2012a).[12] This indicated the increasing significance the parliament had gained

[10] In Amyotha Hluttaw, however, each of the 14 states and regions are supposedly represented by four military MPs (article 141[b]).

[11] Their names and ranks were released in the state media: *The New Light of Myanmar*, 21 Jan. 2011, p. 9.

[12] For their names and ranks, see *The New Light of Myanmar*, 23 Apr. 2012, p. 1.

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in the eyes of Vice-Senior General Min Aung Hlaing, who succeeded Than Shwe as the army's supreme chief in April 2011 (Callahan 2012: 128). Since then, the guard has been changed repeatedly, with army representatives being substituted on a regular basis. In the year 2013 alone, for instance, more than 70 military delegates were removed and replaced in all assemblies—almost a fifth of their total number. For instance, in the Pyithu Hluttaw alone, new officers were nominated in January, June and September 2013.[13] On 1 August 2013, the Union Election Commission announced the second-biggest reshuffle of military MPs since April 2012: 36 representatives from the 14 provincial assemblies were substituted (more than one out of six).[14] Replaced army delegates have usually been swapped for officers of the same rank, and originating from the same force. This was, however, not the case in January 2014, when two army majors were substituted in Pyithu Hluttaw with two lieutenant-colonels who, as a matter of fact, happened to be the first military women MPs ever nominated by the Tatmadaw.[15]

Assessing the Tatmadaw's Initial Legislative Behaviour

Extant scholarship on contemporary legislative politics has defined legislative behaviour as the way members of parliament "behave" while in office. "Behaving" consists of an array of activities MPs can perform while in parliament, including voting, preparing and submitting draft bills, asking questions to the relevant authorities, scrutinizing white papers and budgets, investigating, debating and networking (Hopkins 1970; Norton 1990; Müller and Saalfeld 1997; Rush 2001). Building on this series of legislative activities, how do Burmese military representatives behave in the newly formed parliament? Most observers anticipated the military MPs to act as a powerful obstructive parliamentary bloc, merely serving a veto function in local and national

[13] See, for details, the printed editions of *The New Light of Myanmar* of 3 Jan., 8 Jan., 13 June, 25 June and 28 Sept. 2013.
[14] *The New Light of Myanmar*, 2 Aug. 2013.
[15] *The New Light of Myanmar*, 10 Jan. 2014, p. 16.

assemblies, and protecting, just as Cerberus, the core interests of the *ancien régime*'s military elite and the quasi-civilian successors of the SPDC. A few empirical studies have already underscored that this has not been the case (Horsey 2011; Egreteau 2013a, 2014b; ICG 2013; Kean 2014). Recent interviews I conducted in Naypyitaw have revealed even more that the legislative behaviour and wider political significance of the army representatives in the national parliament (though for now far less in the provincial legislatures) have gradually evolved since the first session held in January 2011. I propose to focus on a set of four core legislative activities that the Burmese military MPs have—or have not—developed to various degrees: (1) vetoing, as many commentators expected them to act merely as a veto force intended to safeguard the Constitution and the interests of the army; (2) checking and scrutinizing of bills proposed by their civilian colleagues and the government, and of policy decisions taken by the post-junta executive branch; (3) direct lawmaking and the submission of bills; and (4) networking and the gradual establishment of a dialogue with elected civilian MPs and politicians.

Vetoing: Military MPs as Veto Players

For many observers, the primary objective of the military appointees in the national parliament was to ensure the Tatmadaw a non-negotiable veto power. As safeguarding the Constitution is one of the major tasks assigned to the defence services (article 20[f]), military delegates appear indeed to be assigned the task of checking that all reform proposals put forward by civilian MPs or the government are formulated according to the basic principles already enshrined in the text. Yet only in matters of constitutional amendment have the military MPs an effectively "absolute" veto. Indeed, more than 75 per cent of the legislators are required to pass any amendment to the Constitution, and consequently, with 25 per cent of the seats institutionally secured, the armed forces have a decisive say. But this is not the case in the regular legislative process, where military MPs represent "only" a fourth of the national and regional assemblies, in which only a simple majority is needed to adopt new legislation, reject draft bills or approve budgets.

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In the first four years following the first regular session held in January 2011, never have the military representatives had the opportunity to exert their absolute veto. However, constitutional reforms have been the talk of the day since the National League for Democracy (NLD) and Aung San Suu Kyi joined the parliament in April 2012 (Min Zin 2012b). One of the key electoral promises made by the NLD before resigning itself to entering the by-elections campaign in 2012 was to amend the Constitution that most party leaders and sympathizers have long refused to recognize.[16] Many ethnic MPs elected in 2010 also soon started lobbying for constitutional revision from within the parliament walls, albeit with different ultimate goals than the NLD; they are indeed primarily militating for more devolution of power.[17] Even members from the dominant party, the Union Solidarity and Development Party (USDP), have recently proved not as reluctant as anticipated to discuss constitutional matters (Tha Lun Zaung Htet 2013). Subsequently, the Speaker of the lower house, Shwe Mann, announced in July 2013 the creation of a special parliamentary committee tasked to debate constitutional reform and draft amendment proposals. Out of its 109 members,[18] 25 were military MPs while 52 came from the USDP and seven from the NLD. On 31 January 2014, the committee submitted a lengthy report on amendment proposals, following a month-long public consultation. Proposals came from a wide range of Burmese individuals, political parties, civil-society groups, public institutions and international academics. Even the Tatmadaw itself sent proposals out to the committee.[19]

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[16] Interviews with NLD legislators from the Amyotha Hluttaw and the Pyithu Hluttaw, Naypyitaw, Aug. 2013, and Jan. and July 2014.

[17] Interviews with MPs from the All Mon Regions Democracy Party (AMRDP), Shan Nationalities Democratic Party (SNDP), Chin Progressive Party (CPP), Unity and Democracy Party of the Kachin State (UDPKS) and Rakhine National Party (RNP-ex-RNDP), Naypyitaw, Aug. 2013, and Jan. and July 2014.

[18] One hundred and eight members from Nov. 2013: one MP from the USDP passed away and was not replaced.

[19] Interview with a USDP MP chairing one of the five subgroups subsequently formed out of the 108 members, Naypyitaw, Jan. 2014.

Soon after, a new parliamentary committee was formed with only 31 representatives including seven military MPs.[20] The committee was assigned the task of preparing a proper draft bill on constitutional change (Ei Ei Toe Lwin 2014). It is doubtful, however, that dramatic revisions will be adopted before the end of the legislature in 2015. It took 14 years—between 1993 and 2008—for the military establishment to write and ratify the third constitution of the country. What is more, there are in reality not so many differences between the first draft proposed by the SLORC in 1993 and the final document adopted through a controversial referendum in 2008. As a matter of fact, the Speaker of the upper house, Khin Aung Myint, recently corroborated by arguing that, "if we look at the specific provisions [of the Constitution] there are no problems as such; there are only a few minor details [that need to be addressed]". There are indeed only a few technicalities that the special committee will have to deal with, he further stated, in particular on state-periphery relations: "(…) if we look at it from the point of view of ethnic harmony and unity, then I believe there are sections to be changed".[21] Indeed, more than the seat reservations for the military and the clause barring from the presidency any Burmese individual with a foreign parent, spouse and/or foreign children (article 59[f]), it is the burning issue of decentralization and the devolution of power that may receive greater attention in the near future.

The Tatmadaw leadership seems, nonetheless, quite concerned by the mounting pressure the national parliament has increasingly been facing regarding a potential constitutional overhaul.[22] Military MPs have pushed for more discussion on the matter.[23] For instance,

[20] Interview with the Chin Progressive Party MP sitting on the new review committee, Naypyitaw, Jan. 2014.

[21] Interview with author, Naypyitaw, 15 Aug. 2013.

[22] As recent public declarations by two senior military MPs from the Pyithu Hluttaw exemplified. See Myanmar Information 2014.

[23] Interview with a former senior army officer, now a USDP MP at the Amyotha Hluttaw, Naypyitaw, Jan. 2014.

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an 18-member commission on political, economic and legal affairs was formed in August 2013 in the Amyotha Hluttaw.[24] A top-ranking military MP, Brigadier-General Kyaw Oo Lwin, was designated as its chairman. This commission did not get the status of a parliamentary committee per se, and was meant to remain as only an informal group tasked to discuss current affairs, including constitutional amendment. This, however, revealed how apprehensive the Tatmadaw has become about the probability of a swift constitutional revision. The anxiety already mounted as Aung San Suu Kyi herself began to challenge the status quo in parliament and openly called for a prompt and thorough revision of the constitutional document she increasingly labels as "undemocratic" (Reuters 2012; Stearns 2013). When she toured Europe, Australia and the USA in 2012 and 2013, she publicly lobbied western governments to seek their support on the matter (Selth 2013). A popular campaign was carried out by the NLD in the central parts of the country, where party sympathizers conducted polls and held meetings throughout 2013 and 2014 (Mann 2013; Ferrie and Aung Hla Tun 2014). Tasked to make charter amendment recommendations, the committee for constitutional review gathered both military and elected MPs and was chaired by the Deputy Speaker of the lower house, Nanda Kyaw Zwa.[25] Interestingly, military representatives came with proposals of their own, highlighting that the constitutional text can in fact be reviewed, and that the army would not object to altering the Constitution per se. It was only on a few non-negotiable matters—such as the amendment procedures or article 59(f) that bars Burmese citizens with foreign links from running as presidential candidates—that the Tatmadaw would be ready to throw its veto right on the table (Kyaw Kha 2014). As a matter of fact, when a first amendment bill was eventually proposed in parliament in June 2015, the military bloc vetoed all proposals save one (Hnin Yadana Zaw 2015).

[24] *The New Light of Myanmar*, 6 Aug. 2013, p. 16.
[25] Interview with author, Naypyitaw, July 2014.

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Yet, constitutional amendments apart, military MPs cannot impose a decisive "veto" on any other new legislative activities. This was, for instance, observed during the procedure of impeachment of the Constitutional Tribunal, which was initiated by the parliament in August 2012. Elected MPs from the Amyotha Hluttaw started a process to impeach all nine members of the Tribunal, nominated a year-and-a-half before by President Thein Sein.[26] Civilian MPs from both the USDP and the NLD had objected to a decision of the tribunal that denied parliamentary committees the status of Union-level bodies. On 28 August 2012, all elected MPs from the Amyotha Hluttaw voted to impeach the tribunal, while all military MPs present opposed the bill (Win Ko Ko Lat 2012). Then the lower house (Pyithu Hluttaw), under the aegis of both Aung San Suu Kyi and Speaker Shwe Mann, formed an investigatory committee to advance the impeachment process. On 6 September, the same scenario was reproduced in the Pyithu Hluttaw with all elected MPs also voting in favour of impeachment, while 101 military MPs opposed (*Myanmar Times* 2012). The nine members of the tribunal promptly resigned on the very same day to avoid a humiliating formal impeachment. This was therefore a case of all civilian MPs moving together—the USDP, the NLD and ethnic parties along the same lines—whilst the military MPs did not have sufficient legislative instruments to effectively "veto" the move by their civilian colleagues. Furthermore, the military establishment did not opt for the use of extra-constitutional instruments to prevent the impeachment (Nardi 2012). Therefore, if army appointees retain a critical right to veto what they may deem "unacceptable" alteration to the 2008 Constitution in the parliament, they cannot boast any decisive veto on other basic legislative procedures.

Regulating and Checking: Military MPs as "Arbitrators"

Since the first plenary session held in early 2011, military appointees have progressively showed their skill at participating in parliamentary

[26] In Feb. 2011, their nomination was approved by the parliament without discussion. See FTUM 2012.

debates. It is true that a substantial majority of them tend to remain quiet in sessions and keep a low profile in all assemblies, as most interviews with their civilian colleagues have revealed. Some content themselves with a few questions or basic remarks on draft bills from time to time. Many favour abstention over a "yes" or "no" when they appear to have no expertise whatsoever on the topic dealt with by the proposed bills, or during committee discussions. This irritated the Speaker of the upper house—a former two-star general—who in July 2013 openly criticized the military appointees in the Amyotha Hluttaw for too frequently not providing enough feedback to the Speaker on draft proposals. Khin Aung Myint declared,

> When the Speaker is asking whether you agree or disagree, you need to reply. I've already warned about this several times before. If the whole group does not want to answer back, the Speaker can order them out of the Parliament during the session. […] I know who has answered and who hasn't because we have TV records (Myanmar Informations 2013).[27]

This is a consequence, I argue, of the Tatmadaw now potentially aiming to position itself as an "arbitrator" or "referee" in all post-SPDC elected bodies—if we are to follow the typology of intervention-prone soldiers defined by Nordlinger (1977) and Alagappa (2001). Theoretically, military MPs may be intended to serve as mere "moderators", intervening only when issues of national interest are at stake or when partisan power struggles lead to parliamentary stalemate. "Soldiers, who are not involved in party politics [only in national politics], were added to balance [the parliamentary debates]," claimed Khin Aung Myint when I last interviewed him.[28] Regulating the parliamentary scene and mediating between competing civilian forces in assemblies therefore means that military MPs may be tasked by their hierarchy to perform meaningful oversight.

In classic parliamentary systems, MPs indeed routinely perform two basic functions: checking what the executive branch is doing or proposing; and making new laws (which I will address in the next

[27] See also RFA 2013c.
[28] Interview with author, Naypyitaw, 15 Aug. 2013.

subsection). As far as the classical parliamentary oversight function is concerned, Tatmadaw MPs have proved increasingly involved in scrutiny activities since 2011. They first check proposals put forward by their civilian colleagues or any civilian institutions empowered to draft proposals, such as the Union Election Commission. Army representatives in both houses of the Union parliament tend indeed to methodically request clarification when a draft dealing with Union-level issues is submitted in parliament by their civilian colleagues.[29] Discussions within the 40-odd parliamentary committees of both chambers of the parliament appear to be far more straightforward than when MPs are convened altogether in assemblies in front of journalists and television screens. In committees, recalls one NLD deputy from Pyithu Hluttaw, military representatives give numerous comments, sometimes show less disdain than some of their USDP colleagues and even bring some valued expertise when they happened to have been previously involved in matters addressed by the committee.[30] Yet they function as a corporate institution and therefore seem to receive orders on how to vote, and are not as autonomous as their civilian counterparts may be; even when the army hierarchy wants them to vote according to their own judgement (on matters perceived as more trivial), they reportedly receive the top-down order to do so.

Army MPs also appear to have been generally far more supportive each time a draft has been introduced by the executive branch: President Thein Sein's office and the ministerial cabinet, including of course, the three "army ministers".[31] A few civilian MPs have started complaining that the military appointees too often side with the executive against the legislative branch to which they belong (Htet Naing Zaw 2013). But the support and alignment of military MPs towards the executive, and the presidency in particular, is not systematic. As an illustration, the ongoing peace process between the country's major armed ethnic groups

[29] Interviews with civilian MPs from the Amyotha Hluttaw and the Pyithu Hluttaw, Naypyitaw, Feb. and Aug. 2013, and Jan. and July 2014.

[30] Interview with author, Naypyitaw, Jan. 2014.

[31] Three core ministries of the central government are left under the sole authority of the Tatmadaw: Home Affairs (Interior), Defence, and Border Affairs, according to articles 232(b) and 234(b) of the 2008 Constitution.

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and the central government has mostly been driven by the President's Office and Thein Sein's close advisor and special envoy, ex-general Aung Min. But military MPs have asked more and more questions in parliament regarding the development of these peace talks. This may be interpreted as a way for the some sections of the armed forces to be fully kept in the loop, especially the delegations of senior officers commissioned in parliament (RFA 2013c). These active-duty officers might have felt sidelined by the presidential initiatives (or their own hierarchy) since the negotiations with ethnic rebels were first proposed in late 2011 by President Thein Sein and his entourage of civilian experts and retired army officials.[32]

Sometimes the political interests of military and civilian representatives coincide. When amnesty proposals were discussed by the parliament in August 2011, two delegations of army MPs voted in favour of a draft urging the president of the Union to continue ordering amnesty orders for all political prisoners, including ex-army officials purged during the SLORC-SPDC era. Two proposals were submitted by a then National Democratic Force (NDF) representative from Yangon, Thein Nyunt, supported by a few military MPs who might certainly have in mind, when voting, ex-Military Intelligence chief Khin Nyunt and other former intelligence officers jailed or put under house arrest after a massive purge in 2004 (Ko Htwe 2011).[33] This move exemplified how military representatives will sometimes not vote as a bloc. Other military MPs voted against or abstained.

Finally, military MPs showed they could also stand against all their civilian colleagues in parliament, including the USDP and the Speaker of the lower house, Shwe Mann, himself. In 2012, for instance, a proposal was drafted by the Union Election Commission (UEC) to clarify a procedure enshrined in the 2008 Constitution to allow civilian MPs to be removed after investigation, if the UEC receives complaints about their bad performance while in office from

[32] Interviews with Shan and Chin MPs (Naypyitaw, Aug. 2013), Karen and Rakhine party leaders (Yangon, May 2013 and Jan. 2014), and Kachin and Rawang MPs (Naypyitaw, Jan. 2014).

[33] Khin Nyunt was effectively released in January 2012, after seven years spent under house arrest.

at least 1 per cent of their constituents. It generated such an intense debate between a few prominent figures of the USDP and the military appointees that Shwe Mann decided to suspend the discussion during the seventh plenary session in August 2013 (Win Ko Latt 2013). The "Recall Bill" was eventually adopted by the Pyithu Hluttaw in March 2014, but the military MPs criticized the procedure regarding the investigation potentially conducted on themselves (as opposed to elected MPs) (Htoo Thant 2014). Scrutiny and oversight therefore appears a relatively easy function for Tatmadaw MPs to perform, and this might be the area in which their role may be the most constructive in the near future, at least if a concrete and frank dialogue is established with other civilian MPs as well as the elected executive branch, and if they consider their parliamentarian job not as a demotion but a serious assignment.

Ruling: Military MPs as Lawmakers?

Lawmaking and the preparation of new legislation is a complicated business, at least for an army institution that has long been accustomed to rule by unchecked decrees and regulations. Above all, as the 2008 Constitution has shaped a presidential system, the elaboration of new laws and the proposition of new policies are chiefly left to the Burmese executive (the president), including the three cabinet ministers left to the sole authority of the Tatmadaw, or "army ministers". Military MPs are therefore likely to let the bureaucracies of these army ministries formulate proposals and draft bills on key policy matters, especially the state defence policy and other national security affairs, in which the Tatmadaw still has a decisive say.[34]

During the first plenary session of the new parliament held in early 2011, none of the military representatives were nominated to key parliamentary committees—there is indeed no obligation for that

[34] Dealing with a vast array of issues—basic civic freedom, law and order, corruption, police, human trafficking and prisons—the new Home Ministry, headed by Lieutenant-General Ko Ko, seems to be particularly active. Its senior bureaucrats often stand in parliament to answer questions from MPs, as recent interviews have shown.

mentioned in the Constitution.[35] The parliamentary committees are, however, key legislative bodies, as they discuss and prepare new legislation. This strategy was nevertheless soon corrected by the army hierarchy and from 2012, military MPs were to populate most committees in both houses of parliament. They have there often just an observing role.[36] They indeed, as stressed by their civilian colleagues, tend to act as "observers", making known, when needed (or when they know), the perspectives of the Tatmadaw on the topic discussed by the committee they sit on.[37]

A few leading senior Tatmadaw officers have, however, proved quite proactive in parliament.[38] They have keenly discussed proposals in public, asking for clarification and calling for informal discussions (AFP 2012). After all, this is their duty and they have been receiving training to enable them to fulfil their legislative functions adequately—including bill drafting and proposal formulation. Political-science teaching is now compulsory at the prestigious Defence Services Academy (DSA) based in Pyin U-Lwin (Sandar Lwin 2012). As a matter of fact, in February 2012, two military MPs (Colonel Thein Nyunt and Colonel Aye Maung) publicly asserted that the officers of the Tatmadaw had received the appropriate foundation in various fields, not only in military affairs, so that they can "rightfully take the leading role in civilian affairs" and therefore in the legislative process (Ba Kaung 2012). This is coherent with the long-standing official discourse and propaganda of the Tatmadaw about the deep-seated commitment of military officers and the dedication of Burmese soldiers to public service, including in parliament as lawmakers.

Yet only a few draft bills have been directly submitted by military MPs since 2011. Most proposals dealing with security affairs—including the sacrosanct defence budget—are formulated entirely by

[35] See, for instance, Shwe Yinn Mar Oo and Soe Than Lynn (2011) and *The New Light of Myanmar*, 4 Mar. 2011, pp. 8–10.

[36] Interviews with MPs from the Pyithu Hluttaw's Bill Committee and Public Account Committee, and the Amyotha Hluttaw's International Relations Committee and Investment and Trade Committee, Naypyitaw, Aug. 2013, and Jan. and July 2014.

[37] Ibid.

[38] Interview with a brigadier general sitting in the upper house, Naypyitaw, Feb. 2015.

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the executive branch, especially the military-appointed Ministry of Defence or the Home Ministry, but not by military MPs in the Union assembly. The 2008 Constitution also stipulates that Defence and Security parliamentary committees can be formed in both houses of the parliament (articles 115[b] and 147[b]) to discuss urgent security and military-related matters. As of early 2014, however, neither the Pyithu Hluttaw nor the Amyotha Hluttaw has convened any of these security committees. Among the very rare draft bills elaborated by military appointees in the parliament, some appear quite trivial with regard to the usual national security and military-related affairs with which the Tatmadaw has long been concerned. They often, however, reflect the army's deep-seated nationalism. For instance, in September 2011, MP Major Soe Hein Naung submitted, during the second session of the Pyithu Hluttaw, a proposal urging the government to "supervise the orthography of Myanmar language in local media".[39] Two weeks later, Colonel Htay Naing also submitted a draft to "use the word Myanmar in works of writing, compiling and publishing with the aim of promoting the national prestige […] and prohibit use of the word in unsuitable place and usage, including use of the word as a brand".[40] In October 2013, a proposal to amend the Union Judiciary Law in order to empower the admiralty and maritime jurisdiction was put forward by Brigadier-General Khin Maung Aye, one of the highest-ranking officers sitting in Pyithu Hluttaw. He submitted a draft urging the Supreme Court of the Union, which has jurisdiction in piracy and other offences committed in international waters, to assign mandates regarding all types of maritime issues outside its jurisdiction in order to avoid legal controversies. The proposal was pushed by the navy, anxious at not having a legal say in offences and crimes occurring at sea; the assembly as a whole agreed to discuss the military-backed proposal.[41]

Nevertheless, besides the de facto supremacy of the executive branch (especially the three "army ministers"), military MPs face many other

[39] *The New Light of Myanmar*, 9 Sept. 2011, p. 10.
[40] *The New Light of Myanmar*, 28 Sept. 2011, p. 8.
[41] *The New Light of Myanmar*, 22 Oct. 2013, p. 16.

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challenges that impede them from being more actively involved in lawmaking functions. They are hardly "lawmakers" and have instead so far remained mere "arbitrators" or "law checkers", and might not move beyond these basic roles in the future. Furthermore, as soldiers they tend to obey and look for advice and guidance from their superiors. It thus remains difficult for a mid-ranking officer, such as an army captain or major, to take a blunt individual initiative in parliament, especially in the presence of a direct superior. Senior army officers seem to have more room for manoeuvre (Verbruggen 2014). In August 2013, for instance, one of the eight brigadier-generals standing in parliament stopped a long-lasting discussion on local land grabbing by the Tatmadaw; no lower-rank army MP would have dared to do so (Lawi Weng 2013). As for region and state hluttaws, the role of military MPs remains unclear, although the same pattern may be observed. Army delegates are in parliament to be heard and to listen, but at least for now not to take bold initiatives and lead the lawmaking process, leaving the matter to army representatives of the local executive branch and, potentially, civilian MPs.

Networking or the Establishment of a Dialogue with Civilians

Last, a functioning parliament is a fine place to create and expand networks, even under semi-democratic rule. If one considers the past six decades of Myanmar's postcolonial history, observing senior army officers, former political prisoners, ethnic leaders, retired bureaucrats, teachers, businessmen and Yangon politicians discussing and debating within the same assembly or in closed-door committee rooms is rather good news. Soldiers and civilians have found in the huge parliamentary complex in Naypyitaw (in the meeting halls, never-ending corridors, restaurants, libraries and even computer rooms) a new public arena in which to meet and exchange views, especially informally.[42] This is much needed if reconciliation is to be consolidated between the Burmese military and the country's established and emerging political elite.

[42] Author's observations in the 31-building parliament complex (2013–14).

A few parliamentarians from the NLD and various ethnic parties have underscored how they have progressively attempted to establish some sort of friendly dialogue with their military colleagues, especially the mid-ranking officers.[43] One has to note, however, that because the great majority of civilian MPs reside in separate hostel compounds in Naypyitaw, they cannot freely mingle outside the parliament with Tatmadaw delegates, who go back to their military barracks to the north of Naypyitaw after each working day. But discussions within the premises of the parliament have appeared far more forthcoming than initially expected (ICG 2012). The NLD seems, however, to face more difficulties than other parties: NLD MPs have tried to set up both formal and informal meetings with the military to discuss policy and voting matters but without much success so far. Being a young and popular Burmese artist-recently-turned-NLD-parliamentarian does not help dialogue either, even with younger military MPs.[44]

USDP members have proved more successful in conducting discussions with the military appointees: "We come from the same boat," explained a retired Myanmar airforce officer now sitting as a Yangon representative in the Amotha Hluttaw.[45] Some USDP MPs, but not a substantial majority, do indeed boast a military background.[46] Other MPs promote informal dialogue with military appointees in the corridors of parliament, during breaks between sessions or in the restaurants. Military appointees have seldom taken the initiative: in March 2013, during the debate on the annual defence budget (now made public), some approached their non-USDP civilian colleagues behind closed doors to convince them not to vote against the budget prepared by the Ministry of Defence. They asserted that the budget

[43] Author's interviews with MPs from the NLD, Shan Nationalities Democratic Party, National Democratic Force, All Mon Regions Democracy Party, Chin Progressive Party and Rakhine Nationalities Development Party, Naypyitaw and Yangon, Feb., May and Aug. 2013.

[44] Interview with a 32-year-old Pyithu Hluttaw MP from the NLD, Naypyitaw, Jan. 2014.

[45] Interview with author, Naypyitaw, Jan. 2014.

[46] According to the profiles every MP has made public, and a few interviews I conducted to confirm it, less than 15 per cent of the national civilian MPs (Amyotha Hluttaw and Pyithu Hluttaw) have a military background (*The Parliaments of Myanmar* 2013).

for the armed forces was one of the lowest in Southeast Asia and that a drastic reduction would hurt the country's "national security". As a result, only 60 civilian MPs voted for a reduction during a vote in the Pyidaungsu Hluttaw (Tha Lun Zaung Htet 2013a). If more frank, frequent and cooperative discussions between military and civilian MPs are yet to be established, there is nonetheless hope that the post-junta legislature may become a place where Burmese soldiers and civilians have a dialogue, and in the end reconcile, whilst long-lost mutual trust is being restored.

Concluding Remarks

The shaping of the post-SPDC legislature has offered a unique opportunity for the Burmese military and a wide range of civilian bodies (MPs, civil society and ethnic groups) to establish a new form of dialogue. This is to be welcomed, especially as the new generations of high-ranking Tatmadaw officers and opposition (including ethnic) leaders now sit in the same legislative arenas. If increasingly considered as legitimate institutions (for instance, once free and fair elections are regularly held, especially after the first post-SPDC legislature ends in 2015), the Burmese parliament might also become a place where new opportunities may emerge for the non-military elite, and where new avenues of social mobility and political elite recruitment may be strengthened (Steinberg 2014b). As other settings have highlighted in the recent past—post-military Turkey and Brazil or post-Suharto Indonesia, for instance—in societies where civilian politicians and parliamentarians have consolidated their power and gradually proved in position to oppose and contradict once powerful men in uniform, "eroding" the latter's influence and progressively marginalizing the armed forces as a major policy-making institution, praetorianism has receded (Hale 1994; Hunter 1997; Mietzner 2011a). A stronger legislature and more powerful parliamentarians tend to strengthen democratization processes and force military institutions out of the forefront of politics (Fish 2006).

However, a prompt disengagement of the Tatmadaw from post-SPDC politics (and therefore a withdrawal from all elected assemblies)

remains highly unlikely. The Burmese armed forces still continue to outline the very same internal and external threat perceptions as during the heyday of direct military rule by the SPDC and construct a self-image of "saviour" of the nation and "guardian" of the state and its institutions. As highlighted by a recent state media editorial, "the Tatmadaw, due to traumatic experiences of the early parliamentary democracy period, worries that the nation would be thrown into turmoil by bigoted egocentric politicians engaged in fierce power struggle".[47] As long as this self-appointed guardian role continues to be officially and publicly defended (and effectively practised) by the Burmese army elite and the institutions or individuals in their nexus, any military disengagement from policymaking will remain premature in the country. This is indeed a "second-generation" problem of a post-military transition (Cottey et al. 2002). For now, post-SPDC Myanmar is still preoccupied with "first-generation" challenges in the reform of its civil-military relations: among others, de-politicization of a leviathan-type military, consolidation of a transition from direct army rule towards a "transit regime" and hybrid government and the gradual (but still chimerical) political control of the armed forces.

The fact that the presence of soldiers in parliament remains problematic, or at least extra-ordinary, is increasingly being acknowledged by both Tatmadaw officials and retired army officers (including President Thein Sein himself). The possibility of a gradual withdrawal of military MPs is being increasingly regularly addressed by state officials as well as the Tatmadaw's commanding heights. In the same editorial of *The New Light of Myanmar* issue quoted above—and published on the occasion of the 67th Armed Forces Day in 2012—the Indonesian example was highlighted to counter critics on the quarter of parliamentary seats constitutionally reserved for the Tatmadaw.[48] It was only in the early 1990s that the mandated presence of the Indonesian armed forces in Jakarta's parliament began to be seriously debated; military parliamentarians were eventually withdrawn from the national and local legislature in 2004 (Ziegenhain 2008; Mietzner 2011a).

[47] *The New Light of Myanmar*, 27 March 2012, p. 8.
[48] Ibid.

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President Thein Sein acquiesced along the same line of argumentation during an interview given to *The New York Times* in September 2012. He stated that a gradual disengagement of the Tatmadaw from the national and local legislatures might be possible "as things change", and brought in the Indonesian example:

> (…) over time the percentage of the representatives of the armed forces might decrease. You can see a similar situation in Indonesia. The number of military representatives decreased over time. A similar thing should happen in our country as well (Keller 2012).

As in Indonesia, however, a withdrawal may have to come from the military establishment itself. In the late 1990s, it was a much divided Indonesian army officer corps that prompted a gradual withdrawal from the legislative assemblies. This was to avoid the military institution being pressured, or even humiliated, in the highly uncertain times of General Suharto's succession in 1998. The military hierarchy published a sort of "blueprint" (*Paradigma Baru* or New Paradigm) to start the retreat from active politics by army officers. This was first initiated by voluntary retirement or the mere resignation of many high-ranking officers from most state and territorial institutions to which they had been seconded, including the legislature. They were soon replaced with civilian bureaucrats. It took a few more years to withdraw fully the Indonesian army from all legislative bodies, as the generals themselves appeared quite divided between those who wanted the military to remain a "referee" in national politics and those who thought that the army should only remain in the background as a powerful institution able to influence policy (Rüland et al. 2005: 105). Internal debates within the parliament proved productive as they led to the full disengagement in 2004, after first a reduction of the number of military MPs in 1999 (Mietzner 2011a; Rüland and Manea 2013: 128).

But in post-SPDC Myanmar, the army establishment still seems to see no incentive to promptly withdraw from institutions in which it still could potentially play a decisive policy-and-scrutiny role. The Tatmadaw and the policy and economic circles in its nexus are still in a position of strength. A non-confrontational and long-term strategy may be the best solution to prepare for this long awaited military disengagement.

But given the fact that since the 1950s the "guardianship" role of the Tatmadaw has obviously become an end in itself, and that the post-Than Shwe rejuvenated military leadership still does not seem to have matured beyond this phase, the prospects for an incremental withdrawal of the Burmese military from parliament, and more generally from the country's political affairs, remains distant, if not bleak.

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