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Marco BÜNTE

GIGA Institute for Asian Studies

Clara PORTELA

Singapore Management University, claraportela@smu.edu.sg

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Myanmar: The Beginning of Reforms and the End of Sanctions

Marco Bünte and Clara Portela

On 23 April 2012, the European Union (EU) suspended its sanctions against Burma/Myanmar in response to a series of domestic political reforms that have been enacted since Thein Sein became the new president in March 2011.

Analysis

Since March 2011, Burma/Myanmar has witnessed a liberalization of the press, the release of political prisoners and the initiation of a political dialogue between the regime on the one hand and the opposition and ethnic groups on the other. The reforms culminated in by-elections on 1 April 2012, which in turn resulted in a landslide victory for Aung San Suu Kyi's National League for Democracy (NLD). Overall, political reforms in Burma/Myanmar are being initiated from "above." They are elite-driven and stem from the president and progressive members of the military-dominated party, the Union Solidarity and Development Party (USDP).

- Political reforms in Myanmar are a regime reaction to both internal and external factors. Internally, the military felt secure enough to embark on the slow liberalization of the political system. Externally, the growing economic presence of China seems to have worried the generals.
- Progress is, however, slow, uneven and very fragile. Hard-liners within the regime still threaten the reform process. Moreover, the influence of the military within the political system and the economy is still pervasive.
- The EU has responded to the reforms by suspending almost all existing sanctions, with the exception of the arms embargo and the withdrawal of trade preferences, while starting to employ "carrots" such as development aid.
- By EU standards, agreement on the suspension of the virtual entirety of sanctions has been reached remarkably swiftly. The exclusion of the arms embargo from the suspension reflects the EU's policies on armaments supply. The resumption of trade preferences will require a separate, lengthier legal process.

Keywords: Myanmar, EU, political reforms, sanctions

Authoritarianism and Political Reforms in Myanmar

Burma/Myanmar¹ is generally regarded as one of the most enduring authoritarian regimes in the world. The military has been directly or indirectly in power since the coup in 1962. The refusal of the military junta to recognize the results of the 1990 elections, which were won by the National League of Democracy (NLD), elicited the imposition of sanctions by the EU along with other Western actors such as the US, Canada, Norway and Australia. The country is also regarded as one of the most repressive regimes worldwide due to the lack of human rights and political freedoms. However, since the inauguration of President Thein Sein in March 2011, the country has been on a slow reform course, which has so far resulted in the relaxation of many authoritarian controls. This paper evaluates the progress made in Myanmar's liberalization and identifies the drivers behind this progress and the main challenges it faces on the way forward. Moreover, it analyses the EU's response to and support for the reform course.

Since the transfer of power to a civilian government in March 2011, the authoritarian country has embarked on a course of slow political liberalization "from above." The new president, Thein Sein, a former military general and a member of the military junta (SPDC), has initiated some major reforms. These have changed the country dramatically: Over 700 political prisoners were released in October 2011 and January 2012. The country's strict media regulations have been relaxed. The government has also relaxed internal censorship laws and unblocked the websites of exile radio and TV stations (Democratic Voice of Burma, Voice of America). The consequence is a much freer press, which now also covers the activities of the main opposition party. The government has also established the independent National Human Rights Commission and passed new legislation that allows for labor unions and the right to strike.

Moreover, the new president has initiated a political dialogue with both the political opposition and ethnic groups. He has met several times with opposition leader Aung San Suu Kyi, who

has described him as "an honest man [...] a man capable of taking risks if he thinks they are worth taking" (BBC 2012). The main opposition party, the National League for Democracy (NLD), which had boycotted the 2010 elections, decided to reregister as a political party in order to compete in the by-elections on 1 April 2012. The elections, which were deemed free and fair by most international observers, have resulted in a strengthened opposition movement. The president has also signed peace agreements with most of the ethnic groups that have been fighting the central government for decades.

The country's reform process is ongoing but fragile; at the moment it is impossible to say whether it will lead to real democratization or to a different form of authoritarian rule. The driving forces behind the reforms are the new president and liberal elements within the ruling Union Solidarity and Development Party (USDP). They face fierce opposition from hard-liners within the USDP and the military. Consequently, the way to democracy will inevitably be rocky and dangerous.

The Background to the Fragile Reforms

There are both internal and external explanations for the initiation of political reforms. The most important internal factor was the retirement of senior general Than Shwe in March 2011 and the establishment of a new power structure in the authoritarian regime. The resignation of Than Shwe and the senior guard of the military junta allowed for a smooth transition to a newer generation of military generals. At the same time, senior members of the former ruling military junta were given top positions in the new government. There was thus no breakdown of military rule, and the military managed to consolidate its position within a new authoritarian setting. Over several years, the military regime had drafted a new institutional framework under the banner of the seven-stage roadmap to "disciplined democracy." This roadmap was implemented between 2003 and 2011. A new constitution was drafted, a referendum was held in 2008, and elections took place in 2010. This process involved hardly any input from the opposition or ethnic groups and was completely dominated by the military; it primarily reflected the military's view of the world: the resulting state structure was rather centralist and did not mirror

¹ The military regime changed the name of the country from Burma to Myanmar in July 1989. While the EU has officially adopted the use of both names Burma/Myanmar, we use the name Myanmar for the sake of simplicity.

the country's overall heterogeneity. The military's predominant position was institutionalized in a political system that balanced military hard-liners and military soft-liners from the former SPDC in a new electoral authoritarian setting (Bünthe 2011).

Within this new power structure, the soft-liners within the new regime ultimately felt secure enough to embark on a gradual opening-up of the political system. The driving forces behind the most recent reforms have so far been President Thein Sein and the speaker of the parliament, Shwe Mann. The reforms have had the backing of the military leadership, which still plays an important role in politics. The most important ministry is the National Defense and Security Council, an 11-member body chaired by Thein Sein and the military's commander in chief, General Min Aung Hlaing, which discusses security and other major issues of national concern. The power play between hard-liners and soft-liners takes place within this body (*Bangkok Post* 2012). Reforms, therefore, are slow but are based on consensual agreements supported by the top military leadership. This minimizes the risk of a military coup. Another important factor in this respect is the seniority of the new president. Since seniority plays a huge role in Myanmar, it is important that Thein Sein is actually more senior than the current commander of the armed forces, General Min Aung Hlaing.

The most important international factor influencing Myanmar's reforms has been China's large and growing economic presence in the country, which seems to have worried the generals. Due to the huge Chinese investment in Myanmar's infrastructure and energy sectors in recent years, the regime seems to have felt the need to balance China's presence in the country. The opening-up to the West, therefore, is intended to rid Myanmar of the Chinese embrace. The reforms are meant to be a sign to the international community, especially the EU and the US, to engage with the country. A second important factor has been the clear message sent by ASEAN that it expects progress on democratization and human rights if Myanmar wants to take the chair of the regional organization in 2014. The West's sanctions can be viewed as an additional trigger, since the gradual reform of the country can only succeed with help from the outside. The question now is what remains to be done in terms of democratization and ethnic reconciliation.

Challenges for Democratization and Ethnic Reconciliation

There is still a long way to go to democratization, as the reforms have so far been very uneven. Although the media is now much freer and censorship is increasingly becoming obsolete, it still exists. In light of the political reforms and ongoing censorship, the "Reporters without Borders' Press Freedom Index 2011" gave Myanmar a slightly better ranking (169) than in the previous year (174). The new media legislation presented in early February 2012 is believed to be based on the infamous Printers and Publishers Registration Law, which was introduced shortly after the military coup in 1962. Skeptics fear ongoing censorship. There are many political topics, such as corruption, civil war and government mismanagement, that still cannot be reported on. Journalists are not allowed to attend peace talks between the government and the ethnic groups. The media is far from free, since the government so far is reluctant to amend old censorship laws. Journalists often have to work under cover and are under close scrutiny (Zinn 2012).

Another pressing issue is the release of political prisoners. Although many high-ranking prisoners have been released in recent months (for example, comedian Zanagar and 1988 student leader Min Ko Naing), a number of political prisoners still remain behind bars. According to the Assistance Association for Political Prisoners (AAPP), there are still approximately 300 political prisoners in the country. Although the concrete numbers are contested, the simple existence of political prisoners is a serious deficit in the reform process.

Additionally, there are a huge number of human rights abuses that need to be addressed. The International Trade Union Confederation (ITUC) recently insisted that the practice of forced labor be stopped before the international community lifts its sanctions (Barber 2012). Although the government has already taken some steps to end forced labor, the practice is often carried out by recalcitrant local (military) authorities over which the central government does not have enough leverage. The problem is the state's weak capacity and the lack of civilian control over the military. The latter issue was also highlighted in December 2011, when President Thein Sein unsuccessfully ordered the military to stop its offensive in Kachin State. The military, which sees itself as the guard-

ian of national integrity, continued with this action.

The other issue is the political system itself, which is heavily tilted towards the military and the military-dominated USDP party. The military holds 25 percent of the seats in parliament, while the USDP won 76 percent of all seats (in all legislatures) in the 2010 elections. Although recent by-elections have enhanced the power of the political opposition (NLD), it still has far too little power to initiate a genuine reform process. The current parliament is by no means a unified pro-reform actor. It has already voted down several reform initiatives – for instance, the liberalization of the press laws. To initiate a genuine reform process, constitutional reforms would have to be initiated and these would diminish the extreme power of the military. Most ministries (Interior, Border) are de facto reserved for former military officers, and to change this, the constitution would have to be changed. Such constitutional change, however, would require the support of 75 percent of the legislature and approval in a referendum. The military consequently has veto power over any far-reaching reform. The initiation of a genuine reform process is thus an uphill struggle, especially where the most important themes, such as military dominance and civilian control, are concerned.

Another challenge is the complex question of national reconciliation. By February 2012 initial peace agreements had been reached with most of the armed ethnic groups that have been fighting for more autonomy for more than half a century. These ceasefire agreements signal a significant break with the failed ethnic policies of the past. However, decades of civil war and human rights violations have created deep mistrust between the ethnic groups and the military. Consequently, it is possible that without a clear roadmap for political negotiations and reforms, the current peace initiative will fail and will end in renewed fighting. The president envisions the completion of the initial ceasefire agreements, followed by political talks at the national level and the discussion of key issues in parliament. The third stage of his plan envisions a new national conference, which is something many ethnic politicians have been calling for. This last stage, which could lead to a new framework for center–regional relations and true federalism, has the potential to draw opposi-

tion from the hard-liner elements in the military and could trigger a coup on their part.

A Complex Package of Sanctions

After decades of a complete stalemate in Myanmar, the West has unexpectedly found itself faced with a situation where some progress, however limited and fragile, is being made. The question of whether these limited steps should be reciprocated with the easing of existing sanctions has already been answered in the affirmative: both the US and the EU as well as other Western donors such as Australia and Norway started to unfreeze aid and reestablish diplomatic ties in early 2012. Most significantly, the EU suspended all sanctions – except for the arms embargo and the withdrawal of trade privileges – at the meeting of foreign ministers on 23 April 2012. The EU's decision to suspend the sanctions rather than lifting them altogether was motivated by a desire to recognize the reforms already initiated while encouraging further progress. The delicate nature of the phasing-out of sanctions is obvious: On the one hand, the sender aims to exert sufficient pressure throughout the process to compel the target to make concessions. On the other hand, the target needs to be rewarded with the partial easing of sanctions as an incentive to effect further reforms. But which sanctions did the EU have in place, and why have some been suspended earlier than others?

The range of sanctions imposed against Myanmar by the EU since 1991 is a heterogeneous mix. These sanctions did not result from a predesigned plan, but were rather wielded gradually and articulated in accordance with the impulses provided by a series of civil society campaigns. In response to the military leadership's refusal to hand over power to the NLD after the latter's victory in the 1990 elections, the EU imposed an arms embargo and suspended aid. These measures were supplemented with incremental upgrades in response to periodic incidents of violent repression. Over the years, the sanctions came to encompass measures such as a visa ban for high-ranking officials and a ban on the export of equipment for the timber and gems industries. According to the last Common Position, which consolidated all sanctions measures agreed upon by the EU prior to Myanmar's political opening-up in 2011 (see Common Position 2010/232/CFSP), EU sanctions against the country consisted of the following:

1) A set of measures applied only to a blacklist featuring designated individuals, mostly members of the military junta and their associates, including

- a visa ban and the freezing of assets for members of the junta and high-ranking military officers, authorities in the tourism sector, and family members.

This measure, meant to affect the targeted individuals in their personal capacity, was complemented with a traditional diplomatic sanction, namely, the suspension of high-level bilateral governmental visits.

2) A number of measures were directed at the military establishment. These included a sectoral embargo and, again, a diplomatic sanction:

- Embargo on arms and military equipment.
- Ban on the attachment of military personnel to the diplomatic representations of Myanmar in EU member states, as well as on the attachment of military personnel to diplomatic representations of the member states in Myanmar.

3) Finally, a series of measures intended to affect certain sectors of the economy, including some selective embargoes:

- The suspension of nonhumanitarian aid (with some exceptions permitted for projects in support of human rights, democracy, good governance, conflict prevention, capacity-building for civil society, health and education, poverty alleviation, and environmental protection).
- An investment and loan ban, including extensions of participation in state-owned enterprises, and a ban on the creation of joint ventures.
- A ban on the export of equipment and technology – and the provision of technical or financial assistance – to enterprises engaged in logging and timber processing and the mining of metals and precious and semiprecious stones.
- A ban on the import of round logs, timber products, metals, and precious and semiprecious stones.

4) In addition to the sanctions adopted under the Common Foreign and Security Policy (CFSP), Myanmar had its trade privileges under the Generalized System of Preferences (GSP) cut off in March 1997 in response to the practice of forced labor. Technically, the withdrawal of the GSP is not considered a sanction, given that its effect is simply to reestablish normal trade flows. Myanmar was the first instance of EU withdrawal of GSP preferences, and was

the only case until a similar decision was taken on Belarus (Portela 2010). Due to its status as one of the worlds' least developed countries (LDCs), Myanmar would normally be eligible for the EU's most favorable GSP scheme, "Everything But Arms" (EBA), if it were not under suspension. EBA provides products originating from the LDCs with duty-free access to the EU in order to promote their development and their integration into the world market.²

Phasing Out Targeted Sanctions

The Myanmar package is atypically broad compared to other EU sanctions regimes, which routinely consist of a combination of a visa ban for the leadership and an arms embargo. Many of these sanctions replicate measures adopted previously (or simultaneously) by the US, which are, for various reasons, often copied by the EU. Yet despite their broadness, the sanctions imposed on Myanmar by the EU are "targeted" sanctions. In contrast to the comprehensive trade embargoes that characterized international practice for much of the 1990s, targeted sanctions are designed to canalize harm towards specific individuals, elites, or economic sectors, rather than crippling the target's economy as a whole. Trade between the EU and Myanmar has never been fully banned. Indeed, according to recent statistics, the EU is Myanmar's ninth trading partner and its biggest trading partner outside Asia.³ Development aid has never been interrupted: the United Kingdom has long been Myanmar's main donor (although aid was obviously not channeled through the authorities). While all EU measures fall under the rubric of "targeted sanctions" they are not equally discriminating: as discussed in the above overview, some affect only explicitly blacklisted individuals, while others affect broader sections of the population (and are thus more likely to display unintended consequences).

The targeted character of sanctions has key consequences for their lifting. When full embargoes – as in Iraq or the former Yugoslavia – are removed, the sender's leverage disappears over

² See COUNCIL REGULATION (EC) No 732/2008 of 22 July 2011 for the latest arrangements. The GSP scheme is currently being revised: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:211:0001:0039:EN:PDF>> (14 May 2012).

³ See Myanmar's trade with main partners (2010): <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113423.pdf> (14 May 2012).

night. In contrast to this “all-or-nothing” scenario, targeted sanctions allow senders to negotiate a progressive lifting in exchange for concessions – precisely what the EU has been doing. The debate on sanctions against Myanmar, traditionally characterized by a sharp division between two camps holding maximalist positions (the “anti-sanctions” and the “pro-sanctions” camps), has largely failed to realize that targeted measures opened up possibilities unavailable with comprehensive sanctions. Indeed, senders have scarcely utilized the option of gradualism. When Libya started to comply with the demands of the United Nations Security Council, the latter reacted by suspending the sanctions as an intermediate measure somewhere between continuation and lifting. Interestingly, it has been in the hardly publicized exercise of aid sanctions against African, Caribbean and Pacific countries that the EU has made its most skillful use of a gradual and conditional approach to removing sanctions, whereby individual measures are progressively lifted in reciprocity for the target’s steps towards compliance with a previously agreed roadmap. In the context of the CFSP, by contrast, the gradual phasing out of sanctions has been piloted only in a few recent instances, and still needs to be matured. The EU’s phasing out of the Myanmar sanctions, while gradual, features an abrupt transition from a first easing, which entails only the suspension of the visa ban, to a daring second easing, which suspends everything but the arms embargo.

The Intricacies of EU Decision-Making

The EU’s initial reaction to President Thein Sein’s reforms was cautious and its easing of sanctions was accordingly timid. Its response combined a limited suspension of sanctions and a resumption of development aid. Already in April 2011 the EU had suspended the visa ban on selected members of the new government – those who had no affiliation with the military or were “essential for dialogue with the international community” according to Common Position 2011/239/CFSP – and allowed for the resumption of high-level meetings. In January 2012 the EU welcomed the “remarkable progress” and extended the suspension of the visa ban to the president, cabinet, and parliamentary speakers. It announced that a further easing of the measures would be made if progress continued, pointing to the upcoming by-elections sched-

uled for April 2012. Typically for the EU’s traditional strategy of combining “carrots and sticks,” the promises regarding the easing of sanctions were accompanied by pledges of aid. During his visit to Myanmar in February 2012, EU commissioner for development Andris Piebalgs promised to increase aid. The EU offered funding to alleviate poverty, to support peace initiatives with ethnic rebels, and to strengthen the rule of law and the capacity of civil society and the public administration. The sum announced by Catherine Ashton during her visit amounts to 150 million euros for the period 2012–13 (Ashton 2012). The political willingness for a rapprochement was manifested in Piebalgs’s visit, which was preceded by a visit from US secretary of state Hillary Clinton, along with several European ministers, and followed by EU High Representative Catherine Ashton’s visit to open an EU office in Yangon in late April 2012.

At first glance, the strategy followed in the easing of sanctions is not self-evident. The coexistence of sanctions with promises of increasingly generous development aid appears contradictory. The sequence followed in the imposition of the sanctions did not follow considerations of efficacy, and neither does their easing. The explanation is found in EU decision-making processes, rather than in any underlying strategic reasoning: the EU enjoys more flexibility to increase aid than to remove restrictions embedded in Common Positions. Since the latter are legal instruments that are adopted unanimously, they are normally modified once all member states have reached a consensus on whether and how to ease the measures. The result is often compromise solutions, especially in borderline cases where reforms are timid and easily reversible. In international sanctions practice, senders have often set aside the employment of gradualism: fearful of stalling reform efforts by showing apparent satisfaction with only suboptimal concessions, senders have frequently refrained from easing sanctions despite concessions by the targets. This has in turn discouraged the targets from practicing continued compliance.

Perfecting Strategies for Terminating Sanctions

A consensus among EU member states on lifting the arms embargo against Myanmar any time soon is highly unlikely. Arms embargoes are often the first measure to be imposed and the last to go. They are broadly considered to be conflict-

prevention measures that contribute to precluding the recurrence of hostilities in post-conflict situations, and the EU routinely imposes them on regimes that employ violence against civilians. In the case of Myanmar, removing the measure at the current time would still be problematic from a human rights point of view; however, this embargo hardly worries the targeted leaders, who procure arms mainly from China as well as from Russia, Ukraine or Singapore. Removing the selective sanctions affecting the economy was the most significant step the EU could take. Firstly, this step is desired more by Burmese leaders than regaining their ability to visit the West: it constitutes a powerful incentive for a leadership eager to attract foreign operators to a market largely dominated by China (Welsh 2012). In addition, easing restrictions on exchanges with Myanmar such as the commodity embargoes and the ban on investment, loans and the export of equipment could contribute to revitalizing the economy. The EU is aware of this: recognizing the “vital contribution the private sector has to make to the development” of Myanmar, it indicated that it “would welcome European companies exploring trade and investment opportunities” in its Council conclusions of 23 April 2012. By removing restrictions with a bearing on the economy (however limited), the EU has also addressed one of the most recurrent criticisms – justified or not – of its handling of the situation in Myanmar – namely, that its sanctions contribute to worsening the country’s human rights situation and to further impoverishing the population (Boisseau du Rocher 2012). If the progress of reforms is reversed in the future, the possibility of reimposing the visa ban on the government remains open.

Although the Council of Ministers of the EU indicated its support for reinstating the GSP in its conclusions of 23 April 2012, this is more difficult than removing CFSP sanctions. The resumption of trade privileges has to follow a different legal path under the Community pillar, the so-called “first pillar” of the EU which governs external trade relations, given that it is technically a trade measure. To make things worse, this mechanism has never been activated as no attempts have yet been made to reverse the only two existing cases of withdrawal: Myanmar and Belarus. However, the Burmese leadership has already made contact with the ILO in order to cooperate in the eradication of

forced labor as a first step towards the resumption of trade privileges.

In the context of EU sanctions practice, the Myanmar sanctions regime stands out as anomalous: within a little more than one year, the most far-reaching of the EU’s sanctions packages has been suspended in its virtual entirety. But in view of the small number of successes recorded in the still short history of targeted sanctions, Myanmar also emerges as a test case. Terminating sanctions wisely could have the effect of reassuring other targets – such as Belarus or Zimbabwe – of the Council’s willingness to lift sanctions if the targets conduct the desired reforms.

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■ The Authors

Dr. Marco Bünte is a senior research fellow at the GIGA Institute for Asian Studies. His research interests include issues of regime change and authoritarian stability and the role of external factors in these contexts. His main research region is Southeast Asia.

E-mail: <buenta@giga-hamburg.de>; Website: <<http://staff.en.giga-hamburg.de/buente>>

Dr. Clara Portela is an assistant professor of political science at Singapore Management University, Singapore. Her research focuses on the foreign and security policies of the EU and the politics of international sanctions. She is the author of the monograph *European Union Sanctions and Foreign Policy* (2010).

E-mail: <claraportela@smu.edu.sg>; Website: <www.socsc.smu.edu.sg/faculty/social_sciences/claraportela.asp>

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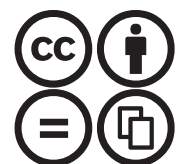
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