

# Associate Paper

11 November 2015

## The Armed Forces and Democratic Transition in Myanmar

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### Key Points

- Myanmar's armed forces (the Tatmadaw) have never seen themselves as having separate military and political roles, with the first having primacy over the second, as in Western democracies.
- Since President Thein Sein's accession in 2011, Myanmar's executive and armed forces have been in broad agreement about the way forward, permitting the Tatmadaw to step back from day-to-day politics.
- The Tatmadaw's attitude to reform and the democratic transition process will be tested by the outcome of the 8 November elections, the choice of a new president in 2016 and any attempts to amend the 2008 Constitution.
- Despite the apparent success of the opposition parties in Myanmar's recent national elections, the armed forces remain the country's most powerful political institution.
- Only the Tatmadaw can end its political role and that will depend on its view of the civilian elite that aims to replace it.
- The new administration will have to come to some kind of arrangement with the Tatmadaw if it is to govern Myanmar effectively, introduce lasting reforms and avoid setting back the democratic transition process.

### Summary

For decades, the armed forces have been the most powerful political institution in Myanmar. In 2008, this position was enshrined in a new constitution. Since 2011, the generals have been aiming for a controlled withdrawal from government, while retaining the Tatmadaw's institutional independence and a major role in national affairs. It is their firm

intention, however, to decide the time frame for a democratic transition. They seem to envisage at least one more five-year presidential term before any further transfer of power, and then only if certain conditions are met. They may be prepared to countenance a government dominated by the opposition National League for Democracy, but Aung San Suu Kyi's current confrontational approach, by claiming a position above the president, does not augur well for Myanmar's future political order. Also, the Tatmadaw is likely to be slow to accept the constraints on its power that will be required for Myanmar to become a genuine democracy. Any perceived challenges to Myanmar's unity, internal stability and sovereignty — critical factors in the minds of the country's military leaders — will inevitably delay the process. They could even halt it.

### Analysis

It is still too early to make any firm judgements about the outcome of the national elections held in Myanmar on 8 November 2015.<sup>1</sup> However, it is possible to make some preliminary observations about the Tatmadaw's current political role, and the potentially far-reaching implications of an opposition electoral victory.

#### ***The Tatmadaw and Politics***

One question often asked since 2011 has been: when will the Tatmadaw “return to the barracks”? This reflects a widespread wish for a genuinely democratic and civilian government in Myanmar, but it misses a vital point. The Tatmadaw has never seen itself as having separate military and political roles, with the first naturally having primacy over the second. Rather, it is deeply imbued with the idea that, since the country regained its independence in 1948, the armed forces alone have been responsible for holding the Union together, defeating its enemies — both internal and external — and saving the country from chaos. This has given rise to an abiding belief, strengthened by training and indoctrination programs, of the importance of “national politics”, as opposed to “party politics”. It has also led to the conviction that the Tatmadaw has both a right and duty to supersede other state institutions if circumstances demand. It was on this basis, for example, that the armed forces took power in 1962, and crushed the 1988 pro-democracy uprising. As Robert Taylor has written, after the latter upheaval the Tatmadaw ‘set out on its own to reunify or, as later termed “reconsolidate”, the country in order to create the conditions for passing authority to a constitutional government’.<sup>2</sup>

In the 2008 constitution, the Tatmadaw was recognised as an autonomous institution free from any civilian control or oversight. It was given the right independently to administer and adjudicate its own affairs, including the management of its personnel. It also has an exclusive right to set its own agenda, particularly with regard to military strategy and

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<sup>1</sup> This Associate Paper is drawn from *“Strong, Fully Efficient and Modern”: Myanmar's New Look Armed Forces*, Griffith Asia Institute Regional Outlook (Brisbane: Griffith University, 2015).

<sup>2</sup> Taylor, R.H., ‘The Armed Forces in Myanmar Politics: A Terminating Role?’, Institute of South-East Asian Studies, *Trends in South-East Asia*, No 2, 2015, p. 8.

operations. In some areas authority is shared, occasionally leading to a debate over the power of the Defence Services Commander-in-Chief (CinC), relative to the president. However, the constitution specifies that the portfolios of defence, home affairs and border affairs are filled by serving military officers recommended by the CinC. If the Vice Commander-in-Chief is included, the CinC exercises effective control over at least five of the 11 members of the powerful National Defence and Security Council. More to the point, as supreme commander of all 'Defence Services' in Myanmar, the CinC has ultimate control over the Police Force (including its 30-plus armed security battalions), Border Guard Forces, other paramilitary organisations and civil defence forces.

During Thein Sein's presidency, Myanmar's executive and armed forces seem to have been in broad agreement about the way forward. The Tatmadaw as an institution no longer runs day-to-day politics. It has been prepared to let the government formulate policy in most areas and proceed with a wide-ranging programme of economic and social reforms. It has gone from being a 'hegemonic player' to a 'veto player'.<sup>3</sup> As Renaud Egreteau has pointed out, the military appointees in parliament 'do not pursue active law-making, but rather a detailed scrutiny of legislations and motions prepared either by the executive branch or the executive bloc of the legislature'.<sup>4</sup> The 14 Regional Commanders, formerly the holders of both military and administrative powers, have tended to exercise their authority only on military matters, deferring on other issues to the local civil authorities. For its part, the government seemed content to let the armed forces manage their own affairs. Complications could arise when military and political factors coincide, as may have occurred over peace talks with some non-state armed groups, and possibly the Tatmadaw's continuing links to North Korea, but these issues appeared to have been manageable.

### **Attitude to Reform**

The armed forces' attitude to reform, and the extent to which it feels obliged to control the transition process, will be tested by a number of issues over the next few months. These include the final outcome of the national elections held on 8 November, the choice of a new president in 2016, and any future attempts to amend the constitution.

At the 2015 Armed Forces Day celebrations, CinC Senior General Min Aung Hlaing called the national elections in November 'an important landmark for democracy implementation' in Myanmar.<sup>5</sup> He gave assurances that, while the Tatmadaw would not tolerate any instability

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<sup>3</sup> Macdonald, A., 'The Tatmadaw's new position in Myanmar politics', *East Asia Forum*, 1 May 2013. <<http://www.eastasiaforum.org/2013/05/01/the-tatmadaws-new-position-in-myanmar-politics/>>.

<sup>4</sup> Egreteau, R., 'Military Delegates in Myanmar's Legislature: What Do They Do? What Will They (Continue To) Do?', *ISEAS Perspective*, No 21, Singapore: Institute of South-East Asian Studies, 2015, p. 1.

<sup>5</sup> 'Myanmar army commander pledges successful elections', *Daily Mail*, 27 March 2015. <<http://www.dailymail.co.uk/wires/ap/article-3014055/myanmar-army-commander-pledges-successful-elections.html>>.

or armed threats, it would permit the elections to be ‘free and fair’.<sup>6</sup> He has repeatedly assured the Myanmar people that the results would be respected by the armed forces, and that there would be no coup if the outcome did not favour the pro-military Union Solidarity and Development Party (USDP). However, such a policy position, if genuinely held, poses risks for the Tatmadaw. The USDP appears to have lost its dominance of the parliament, and the opposition National League for Democracy (NLD) looks set to win a majority of seats. While this will not directly affect the Tatmadaw’s constitutional position, the parliament has developed a surprisingly independent stance since 2011. If controlled by opposition parties, and influenced by strong reformers like Aung San Suu Kyi, it is not likely to be as docile or manageable as the framers of the charter probably anticipated. It could introduce legislation that goes beyond the limits tolerated by the armed forces.

The 2008 constitution is seen by the armed forces as ‘the main or mother law’ of Myanmar, protecting the Tatmadaw’s core interests and guaranteeing it a central role in national affairs.<sup>7</sup> Any proposals aimed at reducing the status of the armed forces would be resisted. They have already rejected moves to reduce their guaranteed 25 per cent representation in all national and regional assemblies. The generals have also opposed moves to amend the constitution so that Aung San Suu Kyi can stand for the presidency. They do not seem prepared to entrust the country to the civilian leader of a fractious party whose attitudes towards the armed forces and broader security issues are in their view questionable. Tatmadaw spokesmen have not ruled out future amendments to the constitution, including a reduction in the military bloc, but they have opposed such changes in the near future on the grounds that Myanmar is still a ‘young democracy’.<sup>8</sup> Concerns have also been expressed that ‘Myanmar is still in a democratic transition ... stability and reconciliation are very important in this period and democratic practices are not mature enough yet’.<sup>9</sup> Indeed, Min Aung Hlaing has suggested that the country may need another five or ten years before it can be entrusted to a fully civilian government.

In this regard, it needs to be kept in mind that the paradigm shift from a military dictatorship to a more open and liberal government is only taking place because the Tatmadaw has permitted it to do so. Contrary to the claims of some foreign politicians and activist groups, Myanmar’s military leadership was not persuaded to relinquish its tight grip on national affairs by external factors such as political pressure or economic sanctions. Nor was its hand forced by internal strife or military defeat. The decision to launch a controlled transition to a more democratic system of government was made on the basis of careful calculations as to the political state of the country, its needs in terms of social and economic development,

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<sup>6</sup> ‘Exclusive interview with the Commander in Chief of Defence Services Min Aung Hlaing’, *Eleven*, February 2015, at <http://elevenmyanmar.com/politics/exclusive-interview-commander-chief-defence-services-min-aung-hlaing>

<sup>7</sup> Wong, M., ‘Myanmar to “wait and see” on constitutional change: Army chief’, video and transcript, *Channel NewsAsia*, 21 January 2015.

<sup>8</sup> Wong, M., ‘Myanmar’s military says will not unilaterally stage a coup’, video and transcript, *Channel NewsAsia*, 21 January 2015.

<sup>9</sup> Hnin Yadana Zaw, ‘Myanmar military puts its case for hanging on to political power’, *Reuters*, 24 June 2015. <<http://www.reuters.com/article/2015/06/24/us-myanmar-politics-idUSKBN0P417N20150624>>.

and how best to manage its complex security problems, including its foreign relations. The 2008 constitution ensures that the armed forces retain their institutional independence and overall control of a top-down reform process that meets those broad requirements. The pace and degree with which the Tatmadaw steps back further will depend on the formation of an acceptable government after 2015 and the way that it manages those issues the Tatmadaw deems important.

### ***Possible Intervention***

One message given consistently by the armed forces leadership is that the Tatmadaw will always act according to the law, in particular the 2008 constitution. Given that there is a plethora of restrictive laws already on the books, some dating back to the colonial era, and the 2008 charter was written specifically to safeguard the Tatmadaw's independence, operations and national role, this is rather disingenuous. The generals will always be able to find some formal legal basis for their actions, whatever they do. Under the provisions of the constitution, for example, the Tatmadaw can return the country to full military control, if such a step is deemed necessary by the president. Given certain triggers, the CinC could simply mount another coup. Some observers have put the odds of that happening over the next few years at 20 per cent.<sup>10</sup> A few have rated the prospect of a coup as high as 50 per cent. These estimates, however, are highly speculative. A more realistic notion of the Tatmadaw's future behaviour can be gauged by examining factors involved at the national, institutional and personal levels.

At the national level, the Tatmadaw is committed to Myanmar's sovereignty, unity and internal stability, as they judge such matters. These goals were encapsulated in the former government's three "national causes" and have been enshrined in the 2008 Constitution. If they are challenged, military intervention of some kind becomes more likely. Since 2011, perceived external threats have greatly diminished. However, any attempt by the international community to exercise its "responsibility to protect", for example, on behalf of the Muslim Rohingyas, would be strongly resisted. Also, there is the potential for civil unrest to erupt over contentious political, economic or social issues. Racial and religious tensions are particularly high. In addition, there are 23 Border Guard Force battalions and about a dozen People's Militia Force units, the reliability of which are suspect. There are also about 100,000 armed personnel in Myanmar, divided among nearly 40 non-state groups.<sup>11</sup> Some have resisted efforts to place them under government control, including the estimated 30,000-strong United Wa State Army and the 20,000-strong Kachin Independence Army. Any discussion of federalism makes the Tatmadaw nervous and, while a Nationwide Ceasefire Agreement involving eight armed groups was signed last month, a more comprehensive peace treaty will be much more difficult.

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<sup>10</sup> Kurlantzick, J. and Stewart, D.T., 'Burma's Reforms and Regional Co-operation in East Asia', Carnegie Council for Ethics in International Affairs, Summer 2013. <[https://www.carnegiecouncil.org/publications/articles\\_papers\\_reports/0164.html/:pf\\_printable](https://www.carnegiecouncil.org/publications/articles_papers_reports/0164.html/:pf_printable)>.

See also 'Myanmar and Coups', ANU College of Asia and the Pacific, 16 August 2013. <<http://asiapacific.anu.edu.au/news-events/all-stories/myanmar-and-coups#.Ug3CPhZput8>>.

<sup>11</sup> Maung Aung Myoe, 'The soldier and the state: the Tatmadaw and political liberalization in Myanmar since 2011', *South East Asia Research*, Vol.22, No.2, 2014, p.233-49.

At the institutional level, the armed forces would be concerned at any attempts to deny them their special place in Myanmar's national affairs. This is not only spelt out in the constitution, but has been reaffirmed on several occasions by both the president and the CinC. Most military officers are intensely nationalistic and take seriously their role as guardians of the country, with its responsibility to step in and 'save' Myanmar, if believed necessary. The military leadership is also likely to act if the Tatmadaw itself was believed to be under threat. Since 2011, the two military-controlled conglomerates known as the Union of Myanmar Economic Holdings Limited and the Myanmar Economic Corporation have lost profitable monopolies and certain tax-exemptions, but the Tatmadaw's leadership seems to have accepted that this will not deny them the funds and materiel necessary to fulfil its duty to 'safeguard the constitution'.<sup>12</sup> Should a future president or parliament try drastically to reduce the defence budget, however, or seriously restrict the armed forces' sources of off-budget income, there is likely to be trouble.

At the personal level, many officers and other ranks would be unhappy about an attempt to remove the clause in the constitution that effectively grants them immunity from prosecution for human rights violations committed under the former government. If any local politicians, or members of the international community, revived efforts to put Myanmar military personnel on trial for such offences, that would cause considerable concern within the armed forces. One senior official has reportedly stated that the former government did not hand over power to the NLD after the 1990 elections because the Tatmadaw feared a Nuremberg-style trial.<sup>13</sup> In 2014, Harvard Law School researchers accused three senior army officers, including the then Home Affairs Minister, of war crimes and crimes against humanity.<sup>14</sup> The US has also cited officers for their links to North Korea.<sup>15</sup> Another possible scenario that deserves brief mention is an attempt by a faction within the Tatmadaw to slow down the reform process or to preserve perks and privileges that seem to be slipping away. It has been suggested, for example, that some younger officers resent the fact that current and proposed changes to Myanmar society will deny them opportunities for personal enrichment enjoyed by their predecessors.

It is difficult to see the generals ignoring a direct challenge to the constitution, as would occur if Aung San Suu Kyi rejected Article 58, granting the president 'precedence over all other persons' in Myanmar.<sup>16</sup> However, the Tatmadaw is no longer the institution it once

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<sup>12</sup> *Myanmar's Military: Back to the Barracks?*, International Crisis Group, Asia Briefing No.143, Yangon/Brussels, 22 April 2014, pp.9-10.

<sup>13</sup> Mitton, R., 'Entering the rule-of-law minefield', *Myanmar Times*, 21 May 2015. <<http://www.mmmtimes.com/index.php/opinion/14586-entering-the-rule-of-law-minefield.html>>.

<sup>14</sup> 'Clinic Investigation: Senior Myanmar Officials Implicated in War Crimes and Crimes Against Humanity', *Human Rights @ Harvard Law*, 7 November 2014, at <http://hrp.law.harvard.edu/press-releases/clinic-investigation-senior-myanmar-officials-implicated-in-war-crimes-and-crimes-against-humanity/>

<sup>15</sup> Pennington, M., 'US Blacklists Burma Firms for North Korea Arms Trade', *The Irrawaddy*, 18 December 2013. <<http://www.irrawaddy.org/burma/us-blacklists-burma-firms-north-korea-arms-trade.html>>.

<sup>16</sup> Aung San Suu Kyi has stated publicly that, even though the constitution prevents her from becoming president, she still intends to run the country in the event of a NLD victory. See 'Myanmar

was and there are significant constraints on action of the kind seen in the past. If a coup was mounted, there would be a strong reaction, both within the country and outside it. Even Myanmar's traditional friends are unlikely to welcome such a retrograde step. Indeed, it could lead to precisely the kind of external pressure and internal 'chaos' that the military leadership has long tried to avoid. The generals would also need to weigh the benefits of such a move against the possibility that it might spark a breakdown in military discipline. It is believed that some elements of the Tatmadaw support Aung San Suu Kyi and the NLD. In any case, the armed forces need not resort to anything as crude as a coup. Thanks to the 2008 constitution, the preponderance of former military officers in positions of authority, and several other factors, the CinC can exercise considerable influence on developments in Myanmar without actually assuming power.

### **Conclusion**

If Myanmar's democratic transition proceeds as planned, the Tatmadaw's grip on public life will gradually erode, but this will take time, even if there are no major setbacks. In the meantime, as Aung San Suu Kyi once conceded, the armed forces will remain the ultimate arbiter of power in Myanmar and a more democratic system of government cannot be introduced without its agreement and cooperation. Similarly, as regards the vexed question of armed non-state groups in Myanmar, no president can deliver a lasting peace agreement without the active support of the Tatmadaw. This too is known to the opposition parties. There will doubtless continue to be strong disagreements on some issues, and both the NLD and Aung San Suu Kyi herself will look for ways around the institutional obstacles they currently face. Some solutions may pose a direct challenge to the Tatmadaw. However, whatever its complexion, the new administration will eventually have to come to some kind of arrangement with the armed forces. For, unless it does so, it will not be able to govern Myanmar effectively, and will miss the opportunity it has been given to achieve real and lasting change. It could even set the transition process back years.

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election: Aung San Suu Kyi vows to be "above the president" if her party wins landmark poll', *ABC News*, 7 November 2015, at <http://www.abc.net.au/news/2015-11-06/suu-kyi-vows-to-be-above-the-president-if-party-wins/6917516>

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Published by Future Directions International Pty Ltd.  
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