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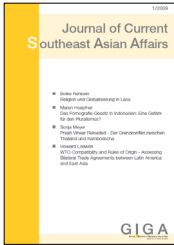
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The United States and Myanmar: From Antagonists to Security Partners?

Jürgen Haacke

Abstract: This article provides an overview both of the considerable makeover that relations between the United States and Myanmar have undergone since Naypyidaw ushered in a programme of wide-ranging reforms, and of the main policy areas in relation to which Washington remains keen to induce further change. The article also aims to explain why, notwithstanding the significant improvement in bilateral relations and the Obama administration's interest in also pursuing military engagement, progress in this field has remained rather limited. Focusing on the politics of US policymaking on Burma, the article argues that while the Obama administration was able to take the initiative on recalibrating US Burma policy, congressional resistance in particular, amid wider concerns shared by non-governmental organisations, has so far constrained the administration *vis-à-vis* US–Myanmar military-to-military relations.

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Keywords: US–Myanmar relations, US Burma policy, military engagement, congressional foreign policy entrepreneurship

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1 Introduction

Few would disagree that in the 1990s and first decade of the 2000s the United States' Burma policy was essentially driven by a combination of major human rights concerns and Washington's support for the restoration of democracy. Even in 2008, the administration of George W. Bush, like its predecessors and many members of Congress on both sides of the aisle, still sought regime change in Myanmar. Officials and activists alike, but also many academics, had by then been denying for two decades that the United States had strategic interests in the country, and they had overwhelmingly dismissed the odd suggestion that there was a geopolitical rationale for engaging Myanmar's military regime (for exceptions, see Badgley 2004; Ott 1998). That said, under President Obama US Burma policy has been revamped as a focus on engagement replaced years of efforts to isolate and shame the country's political-military leadership. While much of the administration's declaratory policy and practical focus regarding Myanmar has been on helping the country with its political transition, it is the understanding of various observers (e.g. Lintner 2011; *The Economist* 2011) that Obama's Burma policy – in the context of the US rebalance to the Asia-Pacific – has been driven by concerns about geopolitical change in East Asia, specifically the rise of China.¹ This raises the question of to what extent US–Myanmar relations may follow the path of other bilateral relationships Washington enjoys with other Southeast Asian states, particularly as regards security and defence dialogues and military cooperation. How far have US–Myanmar relations advanced? Is there a security partnership in the offing between Washington and Naypyidaw following the many years of antagonism? To address in particular this last question, the article will examine the politics of US foreign policy making towards Myanmar. Specifically, it asks how the interplay between the US administration and Congress has impacted the policymaking *vis-à-vis* “Burma” on military engagement.

The article builds on a number of very basic insights into foreign policy making in Washington. The first concerns the relationship between the executive and Congress in relation to foreign policy. The administration may often initiate and take the lead on foreign policy issues, but it is also accepted that while the president may be central to policy-making, he is not always at the centre of policymaking (Scott 1996: 12). Congress has numerous tools at its disposal, not least the power of the purse, and though some argue that it has been deferential in its dealings

1 For the argument that a sense of US–China competition over Myanmar is primarily tied to Chinese perceptions and analysis, see Sun 2014.

with the executive (e.g. Weissman 1995), the two branches of government have a history of conflict and struggle over foreign policy (Briggs 1994). Second, individual congressional foreign policy entrepreneurs play a major role in shaping US foreign policy towards particular countries (Carter and Scott 2009). This is true not least as regards human rights and democracy – issues that tend to attract bipartisan support. Third, neither the foreign policy executive nor the US Congress operates in a vacuum. Both take into account the views and positions of interest groups, think tanks as well as domestic and transnational non-governmental organisations (NGOs), including ethnic solidarity organisations. To be sure, conflict lines do not necessarily lie only between the executive branch and Congress – instead, they may involve competing clusters that consist of voices from the executive, Congress and non-governmental entities (Hersman 2000).

Bearing these points in mind, the article will first offer an overview of how the Obama administration has sought to develop US–Myanmar relations and how it aims to further influence Burmese national politics. In a further step, the article will then focus on how the politics surrounding the making of US Burma policy in Washington shape the nature of US–Myanmar ties. The main conclusions are that particularly during the first term of the Obama administration, the State Department became a key incubator and vehicle for change in US Burma policy, whereas congressional voices remained largely subdued. However, as Myanmar’s political reforms failed to advance beyond the key concessions offered by 2012, Burma has again become more of a point of open controversy between the administration and Congress. As we shall see, members of Congress, having lost influence over the making of policy towards Naypyidaw with the arrival of the Obama administration, have reasserted themselves, especially on the issue of civil–military relations. The immediate outlook is that existing congressional resistance to more substantial military-to-military relations is likely to place a ceiling on a further deepening of bilateral ties, at least until the expected formation of a new government in Naypyidaw in early 2016.

2 Beyond Sanctions and Ostracisation

Not least given the brutal suppression of the political upheaval that brought forth the end of the Burma Socialist Programme Party, the onset of renewed direct military rule, the government of Myanmar’s violent campaigns against anti-regime groups and the refusal of the military to heed the results of the 1990 elections, US Burma policy after 1988 came

to be centred on regime change (Steinberg 1999, 2007). Sanctions quickly advanced as the primary instrument to achieve this foreign policy objective. Over the years, legislation passed by Congress and various executive orders nearly brought economic exchange between the United States and Myanmar to a halt except for the limited American exports absorbed by the latter. Notably, the Bush administration even invested diplomatic resources into placing the “situation in Myanmar” on the UN Security Council’s agenda, as the State Peace and Development Council (SPDC) failed to respond to the admonishments and concerns of Western governments while the country was gripped by armed conflict, political stasis, fear and significant human suffering (Fink 2001; Skidmore 2004; Larkin 2010). In the event, however, international and regional support for America’s moral vilification of Myanmar remained limited. This was true as regards both sanctions against Myanmar and Western assessments of the country constituting a threat to regional security, which were also mostly repudiated. In January 2007, Russia and China vetoed the “non-punitive” UNSC resolution on Myanmar that the United States, alongside the United Kingdom, had pursued. Outrage in Washington over the SPDC continued of course, especially as the military regime ultimately used force to confront monk-led protest marches in September 2007, quickly dubbed the “Saffron Revolution”, and was at least at the outset unwilling to allow outside humanitarian relief to reach the Irrawaddy Delta, which had been devastated by Cyclone Nargis in early May 2008 (Haacke 2009; ASEAN Secretariat 2011).

While Myanmar’s generals were the targets of vilification by American policymakers, the SPDC leadership did not approach relations with the United States with equal loathing. To be sure, US government support for pro-democracy groups and related rhetoric engendered suspicion, frustration and even anxiety. Some accounts (Selth 2008) suggest that Myanmar’s military leaders on more than one occasion took seriously the possibility of US intervention. However, the evidence also suggests that the SPDC would have preferred a better relationship with the United States, including with the George W. Bush administration. This was just not possible, though, given the unbridgeable divide between Washington’s persistent demands and the leadership’s perceived political-security imperative, which led the military to disparage and crush its internal political opposition while positioning itself as the only institution that could defend the country against threats to sovereignty and/or national unity (e.g. Tin Maung Maung Than 1998; Selth 2002; Pedersen 2008).

Two developments have been crucial to the improvement of US–Myanmar relations: the 2009 adoption by Washington of pragmatic engagement as the outcome of the Burma policy review conducted by the incoming Obama administration, and the comprehensive reforms in Myanmar, ushered in from mid-2011 by President U Thein Sein. We shall look at both developments in turn.

2.1 The Practice of Pragmatic Engagement

The embrace in September 2009 of a policy of “pragmatic engagement” – later re-termed “principled” engagement – towards Burma was portrayed by the State Department as a response to the failure of the two main approaches adopted towards Myanmar under SPDC rule: Washington’s sanctions-heavy approach that had been in the making since the late 1980s and ASEAN’s “constructive engagement”. The key idea underlying “pragmatic engagement” was that the Obama administration should aim to influence developments in Myanmar on the basis of a political dialogue at a senior level. Notably, embarking on a direct dialogue did not imply for the administration (Clinton 2009, also see Campbell 2010) an abandonment of the main goals that had thus far characterized US Burma policy: to foster real political change (“credible democratic reform”), to improve human rights (“immediate, unconditional release of political prisoners”) and to promote national reconciliation (“serious dialogue with the opposition and minority ethnic groups”). But it did imply moving beyond the strong reliance on the instrument of sanctions. How keen the administration was to move forward with a new approach towards Myanmar becomes clear when considering that the policy review was not abandoned even when the SPDC leadership decided in May 2009 to charge and then, in August, sentence Daw Aung San Suu Kyi for harbouring US national John Yettaw after the latter unexpectedly gained access to her property in an apparent attempt to warn her about dangers to her life. Finally announced in September 2009, “pragmatic engagement” did not immediately lead to political change in Myanmar, however. Indeed, for almost two years the shuttle diplomacy undertaken by Assistant Secretary of State Kurt Campbell and colleagues paid few if any dividends as regards progress towards democracy in Myanmar. Even in 2010, the SPDC failed to initiate a political dialogue with Aung San Suu Kyi and it refused to make any concessions related to the 2010 elections, which in the United States were therefore described as a “sham”. Indeed, as congressional testimony makes clear, scepticism about political change in Myanmar still prevailed in Washington for some months after the Thein Sein-led government took office, and was expressed at least as late

as June 2011 (see Yun 2011). For Naypyidaw, however, the administration's non-abandonment of "pragmatic engagement" seems to have served as a major confidence-building measure.

2.2 Naypyidaw's Initial Reform Steps

President U Thein Sein's inaugural speech already indicated a commitment to comprehensive reforms, but it was apparently not before August 2011 that the foundation for subsequent events and developments was established. Then, an encounter between the president and Daw Aung San Suu Kyi in Naypyidaw, followed up by an invitation by U Thein Sein for her to visit him at his residence, laid the groundwork for a rapport that led the leader of the National League for Democracy (NLD) to say that she trusted U Thein Sein to undertake political reforms and would support these for the benefit of their country (Kyaw Yin Hlaing 2014a: 218–221). Thereafter, Myanmar's president took several bold decisions, without which the US government would not have begun the process of normalizing diplomatic relations or easing sanctions. These pertained to the significant lifting of media censorship; changes to the political-party registration law considered essential by the NLD; the release of political prisoners long called for; as well as a roadmap for peace between Naypyidaw and the ethnic nationalities that would begin with a series of new ceasefire arrangements. Notably, U Thein Sein's decision to allow Suu Kyi and the NLD to participate in free and fair 2012 by-elections paved the way for the latter to advance as the main opposition in Parliament.

President U Thein Sein's initial reforms led President Obama (2011) to comment positively on Myanmar's "flickers of progress" and to ask Secretary Clinton "to explore whether the United States can empower a positive transition in Burma". The reforms were perceived by the Obama administration as the first and possibly only opportunity for years to come to engender meaningful political change. Officials also estimated that for the reforms to continue, and for bilateral relations to improve, it would be necessary for Washington to respond constructively to Naypyidaw's reform steps. Undertaking her groundbreaking visit to Myanmar in late 2011, Secretary Clinton thus made clear that the United States would reciprocate under the formula of "action-for-action" (Department of State 2011). This wording spoke to the notion that while Myanmar's reforms were "real and significant", the reform process was also "fragile and reversible" (Yun 2012). In other words, the administration saw US rewards as being dependent on continued, successive reform measures. For this calibrated response to Myanmar's reforms to be

seen as legitimate, Daw Aung San Suu Kyi's endorsement was vital. The administration thus continued to closely consult with her as the Thein Sein government moved forward with reforms. Ultimately, the substantive steps taken by Washington in response in 2012 proved possible only because Daw Aung San Suu Kyi agreed with the Obama administration that the time for a new approach had come.²

2.3 Meeting "Action with Action"

Following Myanmar's release in January 2012 of approximately 650 political prisoners, including some high-profile activists, Washington announced its intention of moving towards exchanging ambassadors in line with Secretary Clinton's "action-for-action" approach. This initial implementation of the calibrated US approach also took account of Myanmar's further positive moves, not least its decision to allow the International Committee of the Red Cross access to conflict areas, its early announcement of the date for the 2012 by-elections, and the constructive interaction between the government and ethnic groups (especially the ceasefire with the Karen National Union (KNU)).

The mostly unproblematic organisation of the 1 April 2012 by-election, comprehensively won by the NLD, proved another milestone for bilateral ties. In response, Secretary Clinton outlined several action steps, which would involve sending an accredited ambassador; re-establishing an in-country USAID mission (to strengthen democracy, human rights and the rule of law, and to advance peace and reconciliation and meet humanitarian needs); creating the framework for private organisations based in the United States to commit to non-profit activity designed to assist the population at large; and facilitating travel to the United States for select government officials and parliamentarians. Secretary Clinton (2012) also suggested Washington would begin easing financial and investment sanctions, although sanctions and prohibitions would continue to apply in cases where institutions or individuals remained on the "wrong side of [Burma's] historic reforms". Following up these moves, the Obama administration announced the nomination of Derek Mitchell as US ambassador to Burma when Myanmar's foreign minister, U Wunna Maung Lwin, visited Washington in May 2012. Regarding the limitations and requirements of US investment activity in Myanmar, the US administration decided that the licence authorizing new investment would rule out investment agreements with the Ministry of Defence,

2 This argument is based on numerous discussions the author has had in Washington, DC.

state or non-state armed groups and entities owned by the above or a person blocked under the current sanctions programme.³ Moreover, reporting requirements were introduced in connection with cases where new investment by US companies exceeds 500,000 USD, in part to encourage responsible investment by US companies, not least in the oil and gas sector. According to the State Department (2014), by mid-2014, US companies, presumably including their regional subsidiaries, had apparently committed 612 million USD to investments in Myanmar.

In September 2012, on the sidelines of the UNGA meetings in New York, Secretary Clinton announced that the United States would begin easing restrictions on imports of Burmese goods. Following consultations with Congress, a relevant waiver by the State Department and a general licence by the US Treasury were issued in mid-November. The waiver was badly sought by Naypyidaw, as it was designed to help Myanmar begin to establish a viable manufacturing sector. The administration justified the step with reference to Naypyidaw's continued reform efforts, including the removal of pre-publication censorship, the passing of new laws on labour and foreign investments, and the country's efforts to join the Extractive Industries Transparency Initiative (EITI) as well as its moves to promote ethnic reconciliation.

In November 2012, President Obama visited Yangon while *en route* to the ASEAN–US Leaders' Meeting in Phnom Penh. The visit sought to lock in the Burmese government's various reform measures but it was also designed to boost the legitimacy of Myanmar's reformers given the perceived possibility of political backsliding. President Obama (2012) suggested that if the Myanmar leadership followed the United States in promoting core freedoms judged fundamental to democracy, Naypyidaw would have “in the United States of America a partner on that long journey”. As President U Thein Sein committed his country to a range of

3 President Obama also signed a new executive order that allows, for instance, the imposition of sanctions against those determined to “have engaged in acts that directly or indirectly threaten the peace, security, or stability of Burma, such as actions that have the purpose or effect of undermining or obstructing the political reform process or the peace process with ethnic minorities in Burma”; those “responsible [for] or complicit in, or responsible for ordering, controlling, or otherwise directing, or [those found] to have participated in, the commission of human rights abuses in Burma”; and those who “have, directly or indirectly, imported, exported, re-exported, sold, or supplied arms or related material from North Korea or the Government of North Korea to Burma or the Government of Burma”.

reforms,⁴ the administration announced 171 million USD in development assistance during the Obama visit. For some (e.g. Martin 2013), the change in US rhetoric regarding a partnership for democracy, peace and prosperity reflected the shift of the Obama administration from a relatively cautious approach towards Naypyidaw focusing on “action-for-action”, to a position where Washington aims to play a major supporting role in helping to deliver Myanmar’s political, economic and social reforms.

Washington has certainly sought to assist Myanmar’s reforms in many ways. These include offering policy recommendations and technical advice on new legislation, providing training and financing assistance programmes. More specifically, Washington has, for instance, made available considerable funds to promote health⁵ and also encouraged the Burmese government to quadruple its own health budget (Morrison et al. 2014). The Obama administration has, moreover, made available funding to foster economic opportunity, increase food security and meet other basic human needs to enable the population to contribute to and sustain reforms. It has also aimed to enhance human rights and civil liberties, promote the rule of law and even showcase the advantages of the US political system. USAID has put significant emphasis on political education and support measures designed to ensure free, fair and credible elections in 2015 (including political-party development and general voter education). To this end, USAID announced a three-year, multi-million dollar programme in March 2013.

When President U Thein Sein visited Washington in May 2013, the first such visit by a Burmese head-of-state since Ne Win’s trip in 1966, the two governments would also sign a Trade and Investment Framework Agreement, reflecting the interest of both countries in achieving expanded trade of products and services and an improved investment climate in Myanmar.⁶ Some sanctions remain, however. Notably, while the import ban contained in the Burmese Freedom and Democracy Act of 2003 expired in 2013, President Obama issued Executive Order 13651,

4 For instance, Naypyidaw reaffirmed its commitment to UNSC Resolution 1874, signed the International Atomic Energy Agency’s additional protocol, started a process on so-called “prisoners of concern”, signed a joint anti-trafficking plan, embraced an International Labour Organization action plan on forced labour and vowed to pursue a durable ceasefire in Kachin State as well as to prevent communal violence in Rakhine (Arakan) State.

5 In FY 2013, the US made available nearly 21 million USD for health programmes; the estimate for FY 2014 was 31 million USD.

6 Two-way trade in goods amounted to 176 million USD in 2013, with Myanmar exports to the US reaching 30 million USD.

which continued the prohibition on the importation of jadeite and rubies into the United States as well as articles of jewellery containing them, as originally mandated by the 2008 JADE Act.

Bilateral cooperation has extended to non-traditional security issues. In this regard, Secretary Clinton's 2011 visit to Myanmar is credited with achieving the resumption of counter-narcotics cooperation between the two countries. In 2013 Myanmar and the United States undertook the first opium-yield survey since 2004. The United States has also sponsored training for Myanmar counter-narcotics officials in Thailand.

2.4 The US Commitment to Making a Difference in Burma

The Obama administration has also aimed to play a constructive role in relation to the most sensitive topics: the peace process, inter-communal violence and civil–military relations.

2.4.1 Supporting the Peace Process

Washington has consistently supported national reconciliation between Naypyidaw and the ethnic nationalities in the context of Naypyidaw's efforts to bring about a national ceasefire and given both the continued disaffection of many ethnic nationalities with the 2008 Constitution and the distrust between these groups and the Tatmadaw (for an overview, see Smith 2015; on different meanings of national reconciliation, see Kyaw Yin Hlaing 2014b). As Obama has said (quoted in *The Irrawaddy* 12 November 2014), “the United States is engaging all parties to encourage a transparent, inclusive and legitimate peace process”. In view of the fighting in the wake of the 2011 collapse of the 1994 ceasefire between the government and the Kachin Independence Organization (KIO)/Kachin Independence Army (KIA), the United States has focused its attention in particular on the situation in Kachin State. For instance, Ambassador Mitchell, following a visit to Kachin State, registered strong concerns about the Tatmadaw's decision to escalate military operations in late 2012 by bombarding positions near the KIO's headquarters in Laiza involving the use of fighter planes and helicopters (*The Irrawaddy* 2013).⁷ In the absence of an active role played by the United States in subsequent peace negotiations, Gen. Gun Maw, formally the KIA's dep-

7 This use of airpower was considered “extremely troubling”. As Ambassador Mitchell declared, “Both sides have to recognize that there is no military solution to this question, and that an eye for an eye will leave everyone blind.”

uty chief of staff, visited Washington in April 2014 and outlined before a wide range of administration officials his concerns about Naypyidaw's demands and negotiation strategy in order to buttress his request for greater US involvement in the process. The symbolic significance of Obama administration officials receiving a military leader of an armed ethnic grouping in Washington should not be underestimated; but the administration seems to understand its possible contribution to the peace process as dependent upon a request or approval from both the ethnic groups and the government (Michaels 2014). For its part, the Burmese government seems content to let the United States talk to the KIO/KIA; Ambassador Mitchell thus was able to also meet with KIO leaders and peace negotiators in advance of Obama's 2014 visit to Myanmar (Nyein Nyein 2014). However, Myanmar's presidential spokesperson U Ye Htut has characterized the government's conflict with non-state armed ethnic groups as a domestic issue.

2.4.2 Exhorting the Government to Improve Intercommunal Relations

With the Obama administration committed to preventing mass atrocities and to assisting other countries in exercising their responsibility to protect vulnerable populations, it is no surprise that the United States has also reacted with concern to the violence that erupted in Rakhine State in June 2012 and again in October 2012 (Human Rights Watch 2013; ICG 2013) – violence that targeted different Muslim communities, but especially the self-identifying Rohingya – as well as to the rise of violent Buddhist nationalism or chauvinism in Myanmar more generally, as witnessed in places such as Meikhtila, Lashio and Mandalay. This violence has occurred in the context of widely shared perceptions among Burmese that Buddhism is under threat by Muslims and that the Buddhist community needs defending (Walton and Hayward 2014; Kyaw San Wai 2014). In Rakhine State, the Buddhist–Muslim divide is further complicated by Buddhist Rakhine nationalists who are resentful of their community's perceived marginalisation and take offence at the Rohingya's identity claims and political goals (Leider 2014; ICG 2014).

Notwithstanding the sensitivity of the matter, the United States has sought to promote better inter-communal relations in Myanmar and in Rakhine State in particular. Washington has warned that if political as well as religious and civil society leaders do not actively oppose the violence targeting Muslim communities, the country's broader reform process could be threatened. The 2014 US human rights report indeed describes the humanitarian and human rights crisis in Rakhine State as “the

most troubling exception and threat to the country's progress" (US State Department 2013: 1). General goals formulated by US officials for Rakhine State include achieving lasting peace and stability, rebuilding trust between the communities, allowing access for humanitarian assistance and offering the Rohingya greater freedom of movement. The United States also seeks a longer-term solution that will include addressing citizenship issues. But getting the main Burmese political actors to recognize the "Rohingya" has proved a major challenge. The government has maintained that the "Rohingya" are not one of Myanmar's indigenous national races and refers to them as "Bengalis", many of whom, it is suggested, have been crossing into Myanmar illegally for decades. Even Daw Aung San Suu Kyi, against the backdrop of tens of thousands trying to make their way from Rakhine State to other parts of Southeast Asia by boat, has been reluctant to support US exhortations and has remained relatively silent on the issue, driven apparently by electoral calculations; indeed, when the NLD leader commented on the 1982 citizenship law, which is seen by critics to unfairly deny citizenship to the Rohingya, she asked only for a review so that it meets "international standards" (Pasricha 2012).⁸

Given allegations that have surfaced concerning a massacre in Ducheeratan middle village in early 2014 that prompted local protests directed at the UN and international NGOs, the human rights situation in Rakhine State has continued to feature strongly in Washington's bilateral diplomacy. After all, President Obama had referred to the plight of the Muslim Rohingya during his inaugural trip to Yangon. Though the Burmese government has picked up some ideas to prevent a renewed outbreak of mass violence, it has focused on the perceived advantages of segregation and – in the longer term – economic development. In the meantime, the circumstances of self-identifying Rohingya in Rakhine State remain dire while Rakhine nationalists have confronted UN workers and international NGOs. Assistant Secretary of State Daniel Russel raised the issues relating to the situation in Rakhine State again during his visit to Myanmar in April 2014 and the concern expressed was also reinforced by the US ambassador to the UN, Samantha Power, when the UNSC was informally briefed on developments in Rakhine State. Even President Obama himself, speaking in Malaysia shortly thereafter,

8 In October 2013, Daw Aung San Suu Kyi fell afoul of some media commentators when she rejected flatly that what was happening in Rakhine State amounted to ethnic cleansing and also seemed to explain the use of violence by Buddhists against Muslims with reference to a "perception of global Muslim power". See, for instance, Perlez 2014.

warned somewhat obliquely that if the rights of Myanmar's Muslim population were not protected, Myanmar would not succeed. Not least the central message about Myanmar's responsibility to protect was also repeated before and during Obama's second visit to Myanmar for the 2014 East Asia Summit. In May 2015, in the context of the trafficking and deaths involved in the "boat people" crisis, US Deputy Secretary of State Antony Blinken personally appealed to President U Thein Sein to offer humanitarian assistance to migrants found adrift at sea – many of whom have claimed to be Rohingya – and to address the root causes in Rakhine State (State Department 2015) that are considered to have prompted their accelerating exodus by boat.

2.4.3 Civil–Military Relations

The Obama administration has also been keen to foster democracy and to promote major constitutional change in Myanmar. President Obama (2012) himself unambiguously emphasized the importance of freedoms and extolled the virtues of the US political system in a speech at Rangoon University in November 2012. In line with the belief that a democratic system requires civilian control over the military, the administration has indeed consistently argued that Myanmar's military should also withdraw from politics. For now, based on the 2008 Constitution, the Myanmar Defence Services currently still have a guaranteed role in the exercise of national political leadership (Art. 6f) and remain institutionally autonomous. Moreover, the commander-in-chief nominates key ministerial appointments (defence, home affairs, border affairs: see Art. 232 (b) ii). Also, the Tatmadaw maintains one-quarter representation in the Lower House (Pyithu Hluttaw) and in the Upper House (Amyotha Hluttaw), as well as one-third representation in the state and regional parliaments. This representation also gives the military a blocking minority over certain proposed constitutional changes, not least regarding the eligibility for the offices of president and vice-president. This is significant because current constitutional provisions seem to rule out Daw Aung San Suu Kyi being able to assume the presidency even if the NLD won the 2015 election. And, notably, U Thein Sein has signalled his opposition to amendments that would reduce the constitutionally sanctioned role and autonomy of the military (Gearan 2013). The commander-in-chief, Senior General Min Aung Hlaing, has similarly taken the position that it is for the Tatmadaw to protect the 2008 Constitution (Lawi Weng 2013). To be sure, even the senior general apparently believes that the participation of the Tatmadaw in Myanmar's politics will be reduced over time. However, it seems he does not yet consider the

country's political players and civilian institutions sufficiently "mature" for the military to possibly step back early.⁹

Given such resistance on the part of the post-SPDC regime to submit the Tatmadaw to civilian control, Washington has directly appealed to the self-interest of military leaders. During a visit to the Myanmar National Defence College in June 2014, for instance, the deputy commander of the United States Pacific Command (PACOM), Lt. Gen. Crutchfield, suggested that the Tatmadaw leadership would only be able to build trust between itself and society if it bowed to civilian control in line with the American model. He, moreover, pointed to the importance of strict adherence to ethical conduct and respect for human rights and also described the epitome of military professionalism as being about the armed forces' submission to civilian government. As Crutchfield (2014) put it following his intervention, "What I tried to do, and you can see in the speech, is to portray an alternate future for the Myanmar military based on the US military experience with US citizens."

The Obama administration has tied revamped civil–military relations to the prospect of a significant improvement in the bilateral relationship between Naypyidaw and Washington. As early as June 2012, then-Defence Secretary Leon Panetta suggested that Washington would strengthen military ties with Naypyidaw if political and human rights reforms continued (Baldor 2012). Following this up, PACOM commander Lt. Gen. Francis Wiercinski and Deputy Assistant Secretary of Defence for South and Southeast Asia Vikram Singh travelled to Myanmar in November 2012 as part of a larger delegation to discuss Myanmar's human rights situation. This led to dialogue and some training – particularly in the areas of humanitarian issues, human rights and greater military professionalisation – provided by the Defense Institute for International Legal Studies (DIILS). However, progress towards civilian control of the military has remained elusive to date. The question for the administration has thus been how this lack of progress should influence military-to-military relations: On the one hand, there has been increasing support for military engagement and some movement in this direction has occurred; on the other hand, there remains considerable support for the view that substantive military engagement is premature.

9 Analysts (e.g. Bünte, forthcoming) have for this and other reasons theorized Myanmar's recent political change as a protracted rather than pacted transition.

2.4.4 Steps to Engage the Tatmadaw

Even in the absence of change in Myanmar's civil–military relations, the Obama administration has shown interest in developing contacts with the Tatmadaw. At the bilateral level, beyond exchanges mentioned already, Myanmar naval officers received a tour of the USS Bonhomme in November 2012. The two sides have also been working on POW/MIA issues, as approximately 730 Americans who fought in Burma during World War II remain unaccounted for. There is also, for instance, a track-II dialogue on proliferation-related issues. Some engagement has also occurred in multilateral settings. For example, the Obama administration “agreed” to Thailand's request to allow a small contingent of Tatmadaw officers to observe certain parts (e.g. humanitarian assistance/disaster response) of the 2013 and 2014 multilateral Cobra Gold exercises, the largest Asia-based military exercise in which the United States participates. The two sides, involving then Defence Secretary Chuck Hagel and his counterpart, Lt. Gen. Wai Lwin, also met on the sidelines of the ASEAN Defence Ministers' meeting (ADMM-Plus) in Brunei in August 2013. Here the US side seemingly voiced support for Myanmar's defence-related efforts that Naypyidaw was to organize during its ASEAN chairmanship in 2014. Moreover, Myanmar has been represented at ADMM exercises (in relation to rescue, recovery and disaster-relief missions), which the United States has studiously encouraged and supported. Myanmar's defence minister also joined his ASEAN counterparts in Hawaii in 2014 for an informal (inaugural) US–ASEAN defence ministers' meeting.

Along with some think tanks and numerous analysts,¹⁰ the Obama administration has publicly recognized the value of military engagement. Not surprisingly, within the administration there have been proponents of Myanmar once again becoming a recipient of US security assistance. This can take three forms: International Military Education Training (IMET), Foreign Military Financing (FMF) (essentially, grants for the acquisition of US military equipment, services and training), and Section 1206 of the National Defence Authorization Act (NDAA), which involves the use of DOD funds to build up the military capacity of another

10 Analysts from the Center for Strategic and International Studies, for instance, have posited that “the United States has [only] a narrow window of opportunity to establish a strategic foothold in Myanmar. Increasing military engagement with Myanmar will give US policymakers a more informed view of the military, its commander-in-chief and his closest advisers, and who is likely to succeed them” (Hiebert and Phuong Nguyen 2013).

state in order for that country to participate in or support military or stability operations in which US Armed Forces are a participant. Not least because IMET proved useful and also popular with Myanmar's military in the past,¹¹ the administration has in particular been contemplating the benefits that could be derived from restoring the IMET programme. However, rather than seeking the full restoration of IMET, officials from both the Department of State (Chefkin 2013) and the Department of Defence (Singh 2013) by the end of 2013 opted to merely suggest the adoption of an expanded IMET, or "E-IMET", that would focus on education and training in areas such as the civilian control of the military, international human rights law, international humanitarian law, as well as the management of defence resources, and cooperation on counter-narcotics.

Along these lines, the State Department included in its budget request for FY2015 the sum of 250,000 USD for an IMET programme for Myanmar. Compared to funds that have been made available for Washington's other IMET recipients in Southeast Asia, this sum was very modest. The amount was also significantly less than the State Department's budget request for Burma in the areas of (1) international narcotics control and law enforcement (3 million USD) in order to deal with the legacy of the ethnic conflict and the challenges the country faces given its again-increasing cultivation of opium poppies and the corresponding uptick in narcotics trafficking, and (2) non-proliferation, anti-terrorism, demining and related programmes (2 million USD). In other words, even by the administration's designs, Washington's military engagement of Naypyidaw was to remain rudimentary. It would pale in comparison to the levels of military engagement the United States has achieved with the majority of Southeast Asian countries or even the defence ties that Myanmar has enjoyed with some neighbouring countries. In the event, the administration did not pursue even the proposed E-IMET, as in the current political context, resistance to US military engagement has been considerable and even intense.

3 The Politics of US Burma Policy

As noted earlier, Congress can significantly shape the making of US foreign policy. In relation to US Burma policy, for two decades beginning in 1988 Congress often played a leadership role. Not surprisingly, in its bid to promote democracy and human rights, a bipartisan Congress

11 For a discussion of past IMET programmes, see Riley and Balaram 2013.

has generally favoured increasing pressure on Myanmar's military government in the wake of the latter's actions against the political opposition even when parts of the executive branch sought policy flexibility. To account for not only progress achieved in US–Myanmar relations since 2009, but also the very limited nature of US–Myanmar security interactions to date, it is helpful to briefly explore the more recent politics underlying the making of US Burma policy. In what follows, the article will initially focus on the shifting balance of influence between Congress and the Obama administration *vis-à-vis* the United States' Burma policy. The remainder of the article aims to show that congressional resistance is important to understanding why military engagement is such a limited aspect of the Obama administration's Burma policy.

3.1 Making Burma Policy: The Executive or Congress?

Before the Obama administration took power, notwithstanding the personal interest that George W. Bush and the First Lady, Laura Bush, took in developments in Myanmar, US Burma policy was to a large extent shaped by members of Congress in both the House of Representatives and the Senate, as attested, for instance, by legislation and resolutions passed as well as the number of congressional hearings organized. The literature has highlighted the role of Senator Mitch McConnell in this regard, but there were in fact numerous congressional foreign policy entrepreneurs promoting policy change *vis-à-vis* Burma. Two factors seem especially relevant to account for Burma policy as made by Congress: First, most members of Congress could be easily galvanized to support a policy aiming to ostracize and pressure Myanmar's military junta in the 1990s and 2000s, as naturally they had little if any sympathy for a regime that did not transfer power to the winner of that country's 1990 election. Second, most were also aghast at the information received about Burma from human rights groups and solidarity organisations, not least as related to the treatment meted out by Myanmar's military regime to Aung San Suu Kyi. As such, there was nothing to gain politically from defending Myanmar's military junta, and everything to gain from supporting a Nobel Peace Prize laureate standing up to an "evil regime". Significantly, Aung San Suu Kyi actually enjoyed so much support in Congress that some analysts (e.g. Steinberg 2010) felt obliged to conclude that her views were key in shaping US Burma policy.

However, by the second half of the first decade of the 2000s, both the main congressional actors as well as the solidarity and human rights advocacy groups concerned with Myanmar increasingly found themselves on the defensive for a number of reasons: First, their preferred

approach involving ever-tighter sanctions against the military regime had failed – as underscored by the ultimately uncompromising SPDC response to the so-called “Saffron Revolution”. Second, the need to address the growing humanitarian crisis in Myanmar had also become more apparent to officials and policymakers in Washington, and the momentum to re-engage Myanmar received a critical boost when Naypyidaw finally allowed international aid workers into the country to deal with the consequences of Cyclone Nargis. Third, well-respected country experts (see Clapp 2010) favoured revisiting aspects of US Burma policy, in part to take advantage of the expected leadership transition to come. Against this backdrop, Secretary Clinton early on requested that former colleagues in Congress give time and space to the incoming administration to conduct and implement a Burma policy review.

By agreeing to this, established congressional heavyweights on US Burma policy in effect ceded leadership on Burma policy to those favouring dialogue and engagement both at State and even within Congress, such as Senator Jim Webb, the incoming chair of the Senate’s Foreign Relations subcommittee on East Asia and the Pacific.

While having to contend with the difficulties in extracting political concessions from Myanmar under Senior General Than Shwe until March 2011, the Obama administration stood ready to take a firmer grasp of the leadership on Burma policy following the August 2011 meeting between U Thein Sein and Daw Aung San Suu Kyi, illustrated in part by the number of executive waivers signed over the ensuing months. Indeed, compared to the administration’s application of waivers to recalibrate US Burma policy, Congress played a considerably more circumscribed role in easing sanctions. To be sure, in September 2012, Congress passed legislation that allowed US representatives to international financial institutions to vote in favour of assistance for Myanmar (H.R. 6431, 112th Congress, Pub.L.112-92). In other words, during the early period of Myanmar’s reforms it was the executive branch – notably the State Department, with support from the White House, and on a day-to-day basis above all the resident US ambassador – that played the lead role in giving form to a calibrated approach. While Congress on the whole temporarily took a back seat on shaping US Burma policy, divisions between the Obama administration and the legislative branch have been quite evident at least since 2012.

For the administration, Myanmar’s reform process has evinced model function. In advance of the 2012 Obama visit to Myanmar, the administration suggested that other authoritarian countries could learn important lessons from Myanmar’s preparedness to embrace compre-

hensive change. As Assistant Secretary Daniel Russel (2013) later put it, “Burma remains important to US interests as a demonstration of the benefits that can accrue to a nation that pursues a progressive path to change.” Moreover, President Obama has also suggested that the role the United States has played in initiating Myanmar’s political transition highlights successful American leadership in the world.¹² While acknowledging that some crucial reforms have not yet been undertaken, support for continued engagement has remained strong. To be sure, further major improvements in bilateral ties are linked to the regime’s preparedness to move forward with political reforms. As Assistant Secretary of State for Democracy, Human Rights, and Labour Tom Malinowski, who assumed his post in April 2014, articulated the conditionality,

There is the potential for a deeper partnership, even a full partnership in the future, but we can only move in that direction as the military moves towards greater civilian control, respect for rule of law, all of the different issues that we have raised (Malinowski 2014).

Significantly, the assessments of Myanmar’s transition on Capitol Hill have in the main tended to be much more critical; indeed, the Obama administration has come under significant pressure given the limited nature of Myanmar’s political reforms and the continued human rights violations. Senator Marco Rubio (FL-Rep), for instance, then the ranking member of the Senate Subcommittee on East Asian and Pacific Affairs, noted as early as 2013 Myanmar’s “significant backsliding” and insisted that Washington should not “continue to reward Burma for pledges it has not implemented” (Rubio 2013). Concerns not only centre around unlikely constitutional amendments – some Congressmen have also explicitly focused on the situation in Rakhine State. In May 2014, for instance, the House agreed to a simple resolution (H.Res.418, 7 May 2014) that calls on the Burmese government to end all forms of persecution and discrimination of the Rohingya people, to recognize the Rohingya as an ethnic group indigenous to Myanmar and to work with the Rohingya to resolve their citizenship status. The chair of the Senate Foreign Relations Committee at that time, Bob Menendez, followed this up with a publicly released letter sent to President U Thein Sein. While only form-

12 As the president (Obama 2014) said, “We’re now supporting reform and badly needed national reconciliation through assistance and investment, through coaxing and, at times, public criticism. And progress there could be reversed, but if Burma succeeds we will have gained a new partner without having fired a shot. American leadership.”

ing a minority within the Senate and the House, these outspoken congressional critics have powerfully paralleled and reinforced the condemnation of Myanmar's ruling political-military elite that has been articulated within the Washington beltway. In this regard, beyond the obvious advocacy groups that have castigated in particular the Tatmadaw's continued influence and actions, mainstream nonpartisan think tanks, too, have arrived at very mixed conclusions concerning Myanmar's reforms in advance of the 2015 elections (Morrison et al. 2014).

The administration, despite being in command of US Burma policy, has duly noted congressional and wider civil society concerns and responded to these by accommodating opposing policy preferences. Relevant illustrations include the administration's compromise that allowed responsible new investment and the decision to apply sanctions against specially designated persons seen as hindering Myanmar's reform process. Nevertheless, the Obama administration stands accused of surrendering too early the significant leverage it enjoyed over the Thein Sein government by deciding in 2012 to ease most of the many sanctions imposed over the years to extract concessions from the previous military regime (Drennan 2014). Particularly unpalatable to Congress, however, has been the possibility that the administration might pursue military engagement that would allow the Tatmadaw to benefit whilst remaining unreformed, despite the risk of greater abuses being committed against the ethnic populations. It is on this issue that congressional opinion has to date perhaps most clearly prevailed over that of the administration.

3.2 Congress and the Struggle over Military-to-Military Ties

As noted, the Obama administration has favoured engaging Myanmar's military, while recognizing that any pay-off might only be long term. Congressional critics of Myanmar have resolutely opposed this position. Towards the very end of 2013, Senator Menendez introduced legislation (S.Res. 1885; 20 December 2013) to prevent Department of Defence (DOD) funds earmarked for security assistance to Burma without the Secretary of State first confirming that Naypyidaw was taking concrete steps in a number of areas, such as civilian oversight of the armed forces, constitutional amendments and greater Tatmadaw restraint, as well as improvements in behaviour.¹³ Consultation and training on human rights

13 The Burma Human Rights and Democracy Act of 2013 allows for basic training on human rights and disaster relief.

and disaster relief would be permissible, but neither was to enhance the Tatmadaw's capabilities against ethnic minorities. A substantively identical bill in the context of the Burma Human Rights and Democracy Act 2014 (H.Res. 3889; 15 January 2014) was introduced soon thereafter in the House by Representative Joseph Crowley, a long-time critical voice on Burma, and Representative Steve Chabot, the chairman of the House Subcommittee on Asia and the Pacific at the time; subsequently, a revised version (H.Res. 4377; 2 April 2014) further clarifying the extent of the security assistance to be denied (military assistance, military education and training, and peacekeeping as per Part II of the Foreign Assistance Act of 1961) was also referred to the House Committee on Foreign Affairs. None of this draft legislation was enacted.

Nevertheless, the view held by Congress has prevailed. The State, Foreign Operations, and Related Programmes Appropriations Act for 2015 stipulated that none of the funds appropriated under IMET and FMF may be made available to Myanmar, and State Department funds would be focused instead on Washington's democracy and human-rights strategy. Also, the Carl Levin and Howard P. "Buck" McKeon National Defence Authorization Act for Fiscal Year 2015 further prescribes and delimits the scope of what the DOD can do in or with Myanmar. Essentially, engagement is limited to consultation, education and training in relation to human rights, the laws of armed conflict, civilian control of the military, the English language and disaster relief. The legislation only allows the DOD to organize courses and workshops on defence-institution reform, to grant observer status to bilateral or multilateral humanitarian assistance and disaster-relief exercises and to offer related support. In short, Congress for now does not appear to be allowing the administration to use DOD funding to do much, if anything, that has not been done already. The legislation also comes with specific reporting requirements to multiple congressional committees, touching not only on the future development of military-to-military cooperation, but also on how such engagement, for instance, supports US national security strategy and promotes Myanmar's reforms. Not surprisingly, this legislation has led some to maintain (Lohman 2014) that Congress has retaken the driver's seat on Burma policy.

That it has come to this is not a surprise. The Tatmadaw's historical record on human rights and freedoms has been most problematic, and the fighting in Kachin State entered a new phase in late 2014. Many members of Congress continue to revile the Burmese military. Put differently, the pragmatism of the Obama administration seems to jar with the principled position still held by members of the legislature. Inform-

ing the political struggle over Myanmar is also a sense of frustration *vis-à-vis* the administration. The Senate Foreign Relations Committee, for instance, had become increasingly concerned about the administration's long-standing failure to spell out its objectives in relation to the Tatmadaw. In addition, members of Congress noted that in November 2014, Aung San Suu Kyi pointedly asked President Obama not to broaden military engagement (Pennington 2014). In the absence of the major reforms members of Congress have wanted to see implemented, the idea of military engagement has had its wings clipped. Incoming PACOM commander Harry Harris, who has supported Ambassador Mitchell's approach of limited and calibrated engagement, has thus argued that "the time is not right to expand or elevate military-to-military activities" (Harris 2014).

This should not obscure the interest that continues to exist in some quarters as regards greater US military engagement in the future. It is likely that American officials and policymakers will re-evaluate their position on the matter following Myanmar's parliamentary elections currently scheduled for November 2015 and the formation of a new government. Yet a number of preconditions will in all probability need to be met for deeper and sustained military engagement to happen, including free and fair elections, public endorsement from Aung San Suu Kyi, and a comprehensive ceasefire between the Tatmadaw and ethnic armed organisations.

4 Conclusion

This paper has examined changes in relations between the United States and Myanmar primarily from the angle of US policymaking towards "Burma". The Obama administration's first term saw a major remoulding of America's ties with Naypyidaw. Breaking with the fixation of previous administrations on bringing about regime change, the Obama administration has backed Myanmar's top-down reform project. As this article has demonstrated, the administration has sought and arguably also secured a major role for itself in Myanmar's socio-economic and political transition, which has translated into an expanding US presence in the country. That said, US bilateral military engagement has not extended beyond symbolic gestures and visits, initial low-level training related to political reforms, and an emerging high-level dialogue with the Tatmadaw leadership. Crucially, thus, while the United States and Myanmar are no longer antagonists, they also fall short of being veritable security partners for the time being.

Congress was initially supportive of the administration's policy shift, but in the absence of key reforms in relation to Myanmar's future civil-military relations, poor inter-communal relations and continued military attacks and abuses by the military, controversy over US Burma policy has intensified since 2012. Congressional critics, supported by ethnic-solidarity and rights organisations, firmly believe that the balance of US Burma policy should continue to favour human rights and democracy and have therefore been quite prescriptive about the limits of any military engagement by the administration. Notwithstanding its pursuit of engagement, the Obama administration's Burma policy has been hobbled accordingly. To be sure, the future direction of US Burma policy will be very much influenced by events on the ground: Myanmar's political process in the run-up to the 2015 elections, the organisation and outcome of those elections, along with the reforms undertaken by the post-2015 government. Depending on these developments, some of the existing concerns put forward by members of Congress might be attenuated, while more realpolitik considerations might be more highly valued in the making of US Burma policy. Over the longer term, in principle, at least a more wide-ranging security partnership remains in the cards.

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