Negotiating Parliamentary Oversight of the Security Sector in Myanmar

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EXECUTIVE SUMMARY

- Myanmar’s 2008 Constitution, by guaranteeing a special place and a guardianship role to the armed forces (Tatmadaw), places the entire defence sector outside civilian control.

- Despite the resounding victory of Aung San Suu Kyi’s National League for Democracy (NLD) in the 2015 elections, the military establishment continues to dominate the ongoing political process, without meaningful oversight.

- New methods and strategies can however be developed to shape an incremental legislative oversight of the security forces.

- Already, initial attempts by the Union parliament to audit and control the national defence budget have proven less futile than expected since 2011.

- Further constitutionally sanctioned, parliamentary tools can be designed, starting with the formation of defence and security committees in both chambers of the Union parliament. However, political will in that direction appears weak.

INTRODUCTION

Since the 1950s, Myanmar’s armed forces, or Tatmadaw, have developed an integrated sense of self that makes the presence of the security sector dramatically felt in the country’s social, economic, and political realms of power. Driven by multidimensional perceptions of threats and a powerful coercive apparatus, the clout of the military has reached every corner of Myanmar society. Past civilian authorities were unable to entrench any meaningful oversight mechanisms.

Modern democratic regimes uphold the principle of civilian supremacy and assume that there cannot be a full-fledged democracy without effective civilian oversight of the defence sector. In political systems where state institutions are accountable to parliament, the latter must ensure that the bodies responsible for the defence and security of the nation operate within legal parameters and do not abuse their powers and monopoly on violence. Good governance therefore requires a parliamentary scrutiny of the activities, budget, and behaviour of the defence sector. In Myanmar, the idea has been repeatedly underscored across the political landscape.1

There is widely-shared recognition of the need to place Myanmar’s defence services and broader security sector – including the police forces, intelligence community, and the legates of active or former armed rebel organizations and paramilitary units operating in the country’s war-torn areas – under civilian and parliamentary control, with the expectation that they will respect the rights and liberties of the civilian populations, accept discussion of the funds they receive out of the public purse, and be accountable for their (mis)behaviors and abuses.

There is however an equally widely-shared consensus, even in the new National League for Democracy (NLD) leadership, on the current impracticality of this goal. Be that as it may, at this stage of Myanmar’s political development, the emerging civilian policy circles can still design and strengthen parliamentary instruments for incremental legislative oversight of the security forces.

CIVIL-MILITARY RELATIONS IN A “POST-JUNTA” CONTEXT

The 2008 Constitution bestowed upon the defence services a guardianship role and full autonomy vis-à-vis the “post-junta” governmental power.2 While the military establishment has ceded the bulk of day-to-day administration to Aung San Suu Kyi’s NLD government since 30 March 2016, neither the new semi-civilian executive nor the NLD-led legislature formed after the 2015 elections are constitutionally empowered to fully check and oversee the security sector’s activities.

1 Eleven Myanmar, Peace committee demands civilian control of the army [translated from Myanmar], 3 February 2017.
The constitution has clearly placed the Tatmadaw and its associated components such as the intelligence services and police forces outside civilian supremacy. Article 6[f] literally fuses the political and military role of the armed forces, while article 20[b] allows the defence sector to comprehensively, and without oversight, administer its own affairs. The defence sector also remains largely immune to independent judicial scrutiny (article 343). Furthermore, the Ministry of Defence is directly controlled by the Tatmadaw, whose hierarchy proposes for nomination to the position of Defence Minister an active-duty senior officer. Two other significant ministries, Home Affairs and Border Affairs, follow the same pattern. A quarter of all parliamentary seats in the Union parliament and fourteen region and state legislative bodies are also reserved for military officers. They are appointed by the Tatmadaw chief at discretion.

Parliaments over the world have played key roles in upholding the principle of civilian supremacy over the defence sector, while overseeing the activities and budget of the security forces. Despite a startling resurgence since it reconvened in 2011, Myanmar’s Union parliament is as yet not in a position to design an effective civilian oversight of the security apparatus. It is not involved in discussions concerning either the formulation of the nation’s defence policy, or the definition of the concept of “state/national security”. Neither does it review the structure, size, planning and human resources management of the armed forces and police, or their weaponry and defence procurements. It cannot authorize the promotion to highest levels of senior security and intelligence officers, nor set their retirement age. Since 2011, civilian backbenchers have seldom initiated debates during plenary sessions on defence and strategic matters, much less the management of security-related crises.

This does not mean that there has been no improvement. Tatmadaw expert Dr. Aung Myoe notes that a broader civil-military dialogue has developed since the junta was disbanded in 2011. The annual defence budget is now a matter of parliamentary record and its share of the Union budget publicly known. A “white paper” on defence was released by the military leadership in 2015, after a sixteen-year hiatus from the last defence policy statement. Still, the narratives formulated in the corridors of military power in Naypyitaw have not changed. Myanmar’s defence services started to withdraw from day-to-day politics in the early 2010s, but are not ready to fully retreat to the barracks and accept the supremacy of long-distrusted civilians such as the NLD.

DESIGNING PARLIAMENTARY TOOLS FOR OVERSIGHT

There is no ‘blueprint’ for a successful parliamentary oversight of the defence sector in Myanmar. The legacies of top-down authoritarianism, weak traditions of parliamentarism, and extraordinary strength of the security sector are such that the legislative scrutiny of the military, police and intelligence services, and any other paramilitary or ethnic-based armed

4 An exception was the convening in May 2013 of a 2-day special session of the Union legislature to allow the extension of the state of emergency in the region of Meiktila, affected by communal riots three months earlier.
5 Interview, Deputy Defence Minister, Naypyitaw, February 2015.
forces, could only be superficial, if not purely symbolic, in coming years. Furthermore, without much knowledge about the concept and mechanisms of parliamentary scrutiny, most newly elected backbenchers and party whips have proven hesitant in taking up the challenge of legislative oversight of the “powers that be”. Despite a more liberal post-junta political environment since 2011, fear of the reaction of the powerful Tatmadaw, including through defamation suits, adds to the lack of enthusiasm of the new civilian leaders.

Yet, there are legislative, constitutionally-sanctioned instruments that can be used to start paving the way for better mutual understanding between Myanmar’s civilian and military spheres, and also for more accountability and financial responsibility from the security sector. Already, the Union parliament and its members have attempted tougher control of the defence budget since 2012. This is the “power of the purse” held by legislative institutions. Parliaments approve annual state budgets. They vet public expenditures, included that of the defence sector, which is supposed to be chiefly derived from public funding. Since the 2011-12 fiscal year, the annual budget of Myanmar’s defence services has been made public. Notwithstanding the many grey areas, the percentage of the state budget allotted to the three Tatmadaw-controlled ministries is now a matter of public record. Proposals for budget increases by these ministries have even been denied by parliament.

The Public Accounts Committees of each house of the Union parliament have proven relatively active in the vetting of the security-related budgets. NLD backbenchers have recently emphasized the gradual impact of the lower house’s Public Affairs Committee in scrutinizing budget documents from the military-run Ministry of Home Affairs, which controls the police forces and General Administration Department (GAD). Yet, there is still a broad lack of revenue transparency. Not much is known about the management of public funds by the armed forces, or the income generated by its conglomerates, the Union of Myanmar Economic Holdings and the Myanmar Economic Corporation (although both pay taxes). The budget scrutiny function of Myanmar’s legislature may thus well continue to be restricted to the coverage of the initial planning stage of drafting the defence budget – which is nevertheless a significant improvement from past military rules.

Three practical steps can bring efforts further, provided there is political will on the side of the current NLD-led leadership, and its successors. These moves, to be initiated in, and by, parliamentarians, would offer a more practical approach than the hypothetical instillation of alternative thinking and ideologies closer to that of liberal democracies in the minds of the country’s military leaders.

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7 It was the case, for instance, in the 2016-17 supplementary budget adopted in December 2016 (only the Ministry of Defence saw no budget cuts), “Defense takes biggest slice of greenlit supplementary budget,” Myanmar Times, December 15, 2016.

8 Interview, NLD member of that committee, Naypyitaw, March 2017.

9 Many commentators have long argued that by exposing the Tatmadaw’s present and future leaderships to the ideals of military “professionalism” and civilian supremacy through military-to-military interactions with the liberal world, Myanmar’s military elites would gradually adopt a
A first landmark initiative would be the formation of a specialized parliamentary committee on security and defence matters in the Union parliament. The 2008 Constitution (arts. 115[b] and 147[b]) provides for such a committee in each house of the bicameral legislature. For the Pyithu Hluttaw, or lower house, Article 115[b] stipulates that:

“When the occasion arises to have studies made and submitted on defence and security matters or military affairs, the Pyithu Hluttaw shall form the Defence and Security Committee with the Pyithu Hluttaw representatives who are the Defence Services Personnel, for a limited time. The Defence and Security Committee so formed may, if necessary, be included suitable Pyithu Hluttaw representatives who are not the Defence Services Personnel in accord with the volume of work”  

Unlike the four standing committees of each house, which sit permanently, the defence and security committees can convene only for a limited period of time. This is similar to any other ad hoc parliamentary committee formed by the speakers. Myanmar’s early post-independence bicameral legislatures, convened between 1952 and 1962, and the one-party socialist-led parliament set up between 1974 and 1988, never created any legislative body focusing on security affairs. In other Southeast Asian emerging democracies, notably post-Suharto Indonesia, parliamentary defence commissions (or committees) have proved to be increasingly significant bodies. Building cumulative expertise on military affairs, these committees have gradually expanded their powers, summoning high-ranking serving officers for public hearings, conducting open investigations on misbehaviors and abuses by security forces, and tentatively scrutinizing the military’s purse.

The formation of such committees is, however, still not a priority in NLD-led Myanmar. There does not seem to have been any discussions about them within ruling party circles. The reluctance of the military MPs to even potentially join a defence committee, to which they would be summoned, is also manifest. Nevertheless, the parliamentary rules of procedures allow the speakers to form whichever ad hoc committee they want – a fortiori one already mentioned in the constitution. There is a handful of retired military officers, familiar with security affairs, among the ranks of NLD backbenchers elected in 2015; a few more can be found in the ranks of the now main opposition party, the Union Solidarity and Development Party (USDP). Tatmadaw retirees-turned-legislators could well be involved

10 English translation is the official one provided by the Myanmar government in 2008. Article 147[b] reads likewise for the upper house, or Amyotha Hluttaw.
11 They are the (1) Bill Committees, the (2) Public Accounts Committees, the (3) Hluttaw Rights Committees, and the (4) Governments’ Guarantees, Pledges, and Undertakings Vetting Committees.
12 These ad hoc parliamentary committees usually have a one-year duration.
13 Although Jakarta’s version of parliamentary oversight still remains sketchy and dependent on the whims and interests of the members of the House of Representatives’ defence sub-committee.
14 Interview, Deputy Speaker of the upper house, Naypyitaw, March 2017.
15 Interview, Brigadier-General, MP in the lower house, Naypyitaw, March 2017.
in legislative discussions on military affairs and security policy and be appointed to these committees.16

Second, more open discussion in parliament on existing security-related legislations can be initiated. The speakers, both NLD members, decide the daily order of business in both chambers, and can ask a committee to look at any matter of concern. This can start with a debate on the 1959 Defence Services Act, which was (slightly) updated in 1989 and 2010. A 250-page document, the Act has shaped the management of the country’s defence sector and other military services since General Ne Win’s caretaker government (1958-60). There are other laws guaranteeing a large immunity, as well as special, uncheckable budgets for the armed forces (e.g. the 2011 Special Funds Law) that would likewise necessitate a thorough, yet doable, legislative review.

A third matter of concern that can be debated in parliament is the military establishment’s monopoly over the formulation of defence and security policy. The Tatmadaw’s 2015 “White Paper” on defence was not discussed by any civilian authority – neither during its preparation nor after publication.17 The emerging civilian leadership’s participation in the formulation of Myanmar’s national strategy and security goals notably requires consideration of: (1) the definition of Myanmar’s place in the region and the world, and the role of the defence sector in influencing the country’s foreign policy, and (2) the formulation of domestic threat perceptions and the role of the defence sector in the country’s protracted internal conflicts and decade-long civil war. Beside closed-door committee debates, the ritual of parliamentary questions to defence and security officials is commonly construed as a meaningful instrument for legislative inputs to policy formulation.

CONSTRAINTS

Even the above practical steps would not create sufficient conditions to establish effective civilian control of the security sector in Myanmar. Experiences in post-Suharto Indonesia or post-Marcos Philippines have pointed to other broader long-term prerequisites for better practices and critical behavioral changes. In polities dominated by interventionist military forces, civilian administrative and political authorities must also project effective governance and good leadership in statecraft. They must prove knowledgeable, accountable, and efficient to win popular support and subsequently perform an oversight that can be perceived as both legitimate and necessary. The development of legislative scrutiny, particularly the budgetary control, is intimately linked to broader questions of state and parliament capacity. Despite recent capacity-building efforts and the funding by international donors of numerous legislative strengthening programmes, Myanmar’s new breed of parliamentarians still lacks valuable expertise in – and understanding of – oversight and other legislative mechanisms.

16 Interview, retired army captain and NLD legislator, Naypyitaw, November 2016. Although this is contrary to the spirit of civilian control, these committees must constitutionally count military-appointed MPs among their ranks.
Moreover, the defence budget control, which Myanmar MPs are empowered to perform, will long remain superficial, given the existence of hidden budgets for the security forces, starting with opaque funds provided by military-owned conglomerates. In emerging and mature democracies alike, parliamentary defence committees function under extremely limited transparency and openness. Calls for more transparency often collide with the necessary secrecy under which the defence sector must operate. Armed forces and intelligence services are commonly reluctant to disclose data and tend to provide only partial information to the public, including in budgetary matters, for “reasons of state”. Myanmar is no different. The efficiency of legislative committee work will also rely on the whims and capacity of Tatmadaw-appointed representatives in the Union parliament. They more often than not tend to oppose public criticism of their mother institution and resist open investigations.

When the NLD took control of parliament early in 2016, expectations for more scrutiny and broader opposition to the military’s special place ran high. In March that year, the swift adoption of the State Counsellor Bill designed for Aung San Suu Kyi – the first law passed by the NLD legislature – bolstered optimism about the possibilities for circumventing the military’s political sway. The move met with staunch military opposition. Army delegates in parliament even stood up in protest when the bill was adopted. Yet, after this initial bold move, the NLD leadership has not pushed for further parliamentary measures circumscribing the defence sector’s prerogatives and influence. Recent interviews have revealed a lack of interest from the new civilian administration, and also a reluctance to openly address security-related issues in parliament for fear of jeopardizing the ongoing, relatively stable dialogue established between the NLD leadership and the military top brass after the 2015 general elections.

CONCLUDING THOUGHTS

Placing Myanmar’s powerful defence sector under effective civilian control will remain a long and arduous task. The Tatmadaw is neither ready, nor willing to be put under civilian supremacy. Its hierarchy still relies on enduring ideals of military tutelage and guardianship of the Myanmar nation. Its doctrine remains grounded on the defence of the state institutions through a sophisticated, constitutionally-sanctioned involvement in policymaking, and a guaranteed freedom from civilian oversight. Reversing that trend will be challenging, particularly if upcoming civilian leaderships do not design, and promote, more checks and balances on the military’s power and autonomy, beyond a partial defence budget control.

The signs are not promising. Yet, newly empowered parliamentarians now have a space to use legislative instruments to move forward in demanding more accountability from the defence sector while avoiding a collision course with the military. There is in Myanmar a widely-shared recognition of the necessity for the armed forces to meet international standards of professionalism and to establish a working relationship with the civilians.

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18 Interview, army major, MP in the Yangon regional parliament, Naypyitaw, March 2017.
19 Interview, military MP, Naypyitaw, June 2016.
20 Interview, NLD representative in the lower house, Naypyitaw, March 2017.
Over the past few years, dozens of workshops on that topic have been organized in Yangon or Naypyitaw by international NGOs and foreign donors. Through bolder initiatives, Myanmar’s new parliament could be credited with instilling basic principles of accountability and budget transparency that can shape a new form of public scrutiny of the defence sector and deepen the post-junta liberalization in years to come.