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Burma: Time for Change?

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SUMMARY

In November 2011 Burma's National League for Democracy (NLD) decided to reregister as a political party and return to electoral politics. Yet while changes to the Burmese political landscape over the past year appear dramatic, the cause of the different moves and their likely impact remain contested, both within the country and internationally. Evidence to explain the drivers behind the changes and the likely end-point is scant. The change in tone is unarguable, as has been an increase in access for both journalists and visiting politicians. But even if the trend is positive, the starting point is low, and in terms of concrete actions progress has been slow.

It seems that the Burmese military hopes that Western sanctions will be lifted, suggesting that it hopes to dilute Chinese influence. This provides significant opportunities for the West, and for the US in particular, to effect change. At the same time, the West needs to be careful not to antagonise China, which remains the country with the greatest leverage over Burma. Meanwhile, the military may be attempting to juggle a reduction in its political power with an increase in its economic power.¹

Recent developments throw up difficult decisions for Western countries over how best to entrench and encourage continued reform. If reformers within Burma's military are constrained by hardliners, the West should offer early rewards to encourage continued reform. If, however, the lifting of sanctions is the end-point envisaged by the military, the West must be clear on the conditions that need to be met before policy towards Burma is recalibrated.

Few authoritarian rulers who try to manage a transition towards political liberalization have managed to maintain power throughout. Most lose power along the way either because of a putsch by hardliners or because they cannot hold back the momentum that they have created. Further change in one form or another appears inevitable.

¹ Such an approach would not be new to Burma. A former colonial officer referred disparagingly to the Legislative Council in the 1930s, when the British governor had the veto, saying 'it was safe to let Burmans have the vote so long as Europeans had the money and government had the guns'. John S. Furnivall in S. Devas, *Rebirth of Burma*, (Madras, 1947).

STEPS TO POLITICAL RECONCILIATION

Over the past year Burma's political landscape has seen a number of developments, culminating most significantly, thus far, in the decision by the National League for Democracy (NLD) to re-register as a political party. One year ago, such change appeared unlikely. The November 2010 general election, which saw the election of Thein Sein as president, was widely described as a sham intended to maintain military hegemony under a nominally civilian guise. The NLD, which had won 392 out of 492 seats in the country's previous election in 1990, chose not to participate on the grounds that the 2008 constitution enshrined, rather than curbed, the military's hold on power.² Amid allegations of widespread electoral malpractice, over 80% of the seats were won by the military-backed Union Solidarity Development Party. Thein Sein, accused of being a puppet of the long-term military ruler Than Shwe, hand-picked most of the candidates for the top jobs, many of whom had a military background, while a quarter of parliament was reserved for still-serving military officers.

A week after the election, the NLD's leader, Aung San Suu Kyi, was released from house arrest. That aside, in the early months of the new parliament, most of the changes involved tone rather than substance. Whereas his predecessor, Than Shwe, frequently evoked the threat of 'anarchy' and disorder, and stressed the need for 'discipline', Thein Sein's inaugural address to parliament spoke about tackling poverty, fighting corruption, ending armed conflicts and political reconciliation. A more conciliatory tone has been in evidence elsewhere. The new parliament's slogan is 'the people's expectation is the parliament's implementation'.3 Rather than fear of disorder, Burma's Minister for Border Affairs, Major-General Thein Htay, stressed the need to provide development for ethnic minorities.

Moves for political reconciliation with the NLD did not begin in earnest until the summer of 2011. In August, Aung San Suu Kyi met Thein Sein and the following month the speaker of parliament and presumed 'hardliner', Khin Aung Myint, said that she was welcome to join the legislature. In November Thein Sein signed into law amendments to the Political Parties Registration Law. Rather than 'protect' the 2008 constitution, parties must now 'respect' it. Prior to the amendments, the law had stated that anyone with a criminal conviction (which included Aung San Suu

² Under Burma's 2008 constitution, the military is guaranteed complete legal autonomy and impunity from prosecution. Furthermore, constitutional amendments require a 75% parliamentary majority, thereby providing the military with a veto. 3 'Paying Lip Service Won't Purchase Reform', *Irrawaddy*, 14 September.

Kyi) was barred from membership of a political party. This clause was removed. These amendments paved the way for the NLD to re-register as a political party, with the likelihood that its candidates will stand in by-elections in December.

Along with moves to reconcile with the NLD, other changes have been under way. One of the foremost demands of the NLD (along with Western countries) has been the release of political prisoners. Estimates of their number range between 600 and more than 2,000. In October more than 6,000 prisoners, including some political prisoners, were released. Thein Sein's political adviser, ex-Colonel Ko Ko Hlaing, told Swedish radio that there were 600 'prisoners of conscience' and said that around half had been released. At the ASEAN Summit in Bali in November 2011, Thein Sein said that there were 'no political prisoners [in Burma]. All prisoners have broken the law.'4 The semi-admission that Burma has political prisoners was seen as a positive step, and there is a widespread expectation that further releases of political prisoners will take place.

Nonetheless, while the trend is positive, the base is low. In 2009, a lawyer representing farmers whose land had been confiscated was imprisoned for four years for forming an illegal organization, namely his legal practice. He was released the following year, though his legal licence was revoked. Among those released in 2011 was Maung Thura, a comedian popularly known as Zarganar. In 2008 he had been sentenced to 59 years in prison for violating the Electronics Act, after criticizing the government's response to Cyclone Nargis. Like many dissidents, Zarganar had been imprisoned and released several times during the past two decades. And while some political prisoners are being released, others are being arrested.⁵ A member of the NLD, Aung Hla Myint, was recently sentenced to 16 months in prison for travelling outside his home town in central Burma, and the government has continued to arrest those suspected of taking part in prodemocracy protests.⁶ Furthermore, the parliament has rejected a proposal to repeal section 5(j) of Burma's Emergency Provisions Act, which is mainly used to imprison pro-democracy activists.⁷

^{4 &#}x27;No political prisoners in country's jails: Myanmar president', *The Times*, 20 November 2011. http://www.timeslive.co.za/world/2011/11/20/no-political-prisoners-in-country-s-jails-myanmar-president.

⁵ Meanwhile, conditions in Burma's prisons remain horrific. According to the UN's special envoy, interrogation techniques include sleep and food deprivation, beatings and 'the burning of bodily parts, including genital organs'. 'The Slow Thaw of Burma's Notorious Military Junta', *Time*, 31 August 2011.

⁶ Ibid; 'Myanmar Opposition Leader Suu Kyi Sees the "Beginning of Change",' Bloomberg, 21 September 2011.

^{7 &#}x27;Paying Lip Service Won't Purchase Reform', *Irrawaddy*, 14 September 2011.

Similar questions emerge regarding the planned creation of a National Human Rights Commission. While the announcement has been widely welcomed, no details of the panel's responsibilities or scope have emerged, and many have doubted whether a group largely comprising retired civil servants would take steps to challenge the government. One of its first actions was to call on Thein Sein to give an amnesty to Burma's remaining political prisoners, although its call also suggested that those prisoners who could not be released for 'reasons of maintaining peace and stability' should be moved to prisons closer to their families.

Another area that has witnessed a degree of liberalization is censorship. The director of the Press Scrutiny and Registration Department (PSRD), Tint Swe, said that censorship was 'not in harmony with democratic practices' and 'should be abolished in the near future'. The government has unblocked a number of news websites, and has said that stories that do not relate to news or politics will be immune from censorship. Newspapers are allowed to publish photographs of and reports about Aung San Suu Kyi.

Websites no longer banned include Reuters, *The Bangkok Post* and Burmese radio services from Voice of America and the British Broadcasting Corporation. The move came soon after the government had made email services such as Gmail, Yahoo and Hotmail accessible. It is worth noting that internet access within Burma is low, at less than 1% of the population. Charges for internet access are high, and Burma maintains a domestic internet system separate from the global internet.

At the same time, internet users who access banned news sites still face lengthy prison sentences, and the Committee to Protect Journalists described the relaxations as meaningless,⁸ arguing that new publications are often forced to publish news written by state officials that presents the government 'in a glowing light'.⁹ Furthermore, while three journalists working for the Democratic Voice of Burma (DVB) were released in the amnesty in October, 14 remain behind bars. Many have been given long sentences for 'no more than doing their jobs'.¹⁰ And despite calling for an end to censorship, the PSRD is continuing to ban some news reports. In November it banned publication of various comments by Aung San Suu

^{8 &#}x27;Burma and Reform: All Talk and no Walk?', *Huffington Post*, 13 September 2011.

^{9 &#}x27;Rights Group Finds Press Freedom in Burma Still Restricted', VOA, 20 September 2011.

^{10 &#}x27;Censorship prevails in "new" Burma, despite reform talk', PBS Mediashift, 13 September 2011.

Kyi, and the previous month it refused to allow the publication of reports about protests by monks and farmers against land confiscations.¹¹

In a similar vein, in August Thein Sein announced that the government would allow exiles to return home and would offer leniency with respect to offences other than murder. The majority of Burmese exiles would appear to have adopted a wait-and-see approach before considering returning, if discussion in internet chatrooms is any guide. Without the release of all political prisoners, take-up on the offer is likely to be low.

Where change would appears to be more concrete is in economic management. Burma's GDP growth has been slow in recent years and millions live in or close to poverty. But high commodity prices have meant that those who control access to resources have done well: Burma's exports rose from just over \$1bn in 1999 to almost \$8bn by 2010. Their Sein has pledged to support local entrepreneurship and to attract foreign investors to special economic zones. Such moves reflect a pre-existing, though sporadically implemented policy of privatizing state-owned firms. (Following widespread nationalization in the 1960s, Burma had introduced a privatization policy in 1995.)

In September 2011 it was reported that nine state-owned factories had recently been transferred to the private sector under a long-term leasing scheme. The enterprises included two soft-drink factories and two garment factories. The scheme is intended to make the businesses more profitable. Yet the progress is not transparent. In 2010 the government granted licences to four new private banks. In each case the banks were subsidiaries of conglomerates connected to the regime, each of which appeared on various lists of sanctions imposed by the EU and United States. 15

The privatization process seems to involve the transfer of assets to the military or those connected to the military. Many of the children of Burma's military elite have done well in recent years. One report suggests that more than 400 state-controlled

^{11 &#}x27;Burma's PSRD Still Alive and Censoring', Irrawaddy, 17 November 2011.

^{12 &#}x27;Burma's President Invites Exile to Return Home', *Irrawaddy*, 17 August 2011.

^{13 &#}x27;Burma Opens for Business', Forbes, 13 September 2011.

^{14 &#}x27;Nine State-owned Factories Privatized in Myanmar', Myanmar Business Network, 18 September 2011.

^{15 &#}x27;Myanmar 2010: Doors Open, Doors Close', *Asian Survey*, vol. 51, no. 1, January/February 2011.

assets, including airports and land, had already been sold off prior to the recent bout of political liberalization. ¹⁶ One critic has argued that:

The wave of privatization that has taken place has been a move to transform public assets into personal property of the military regime and their cronies including the leaders of the Union Solidarity and Development Party which is the biggest party backing the regime. ¹⁷

Despite Burma's natural resources, the government records budget deficits, largely because the wealth is transferred directly to this small elite. The government has reached out to the International Monetary Fund (IMF) for help in improving economic management, in the first instance attempting to reform the country's dual exchange rate. An IMF team visited Burma in October, meeting business leaders. However, without greater economic and social reform, the IMF would be unlikely to offer tangible assistance. Because of the US/EU sanctions, the IMF and other multilateral organizations are prevented from providing financial assistance to Burma, but this could change if the political reform is deemed permanent.

One of the more unlikely changes involves Burma's labour laws. In September, the government passed a law allowing for the establishment of trade unions, which had been banned since 1962. The ministry of labour consulted the International Labour Organization (ILO) on the legislation to ensure that it met international standards. The ILO's liaison officer in Burma, Steve Marshall, called the move a 'momentous policy decision'. Under the bill, the law will permit unions with a minimum of 30 members to be formed and allows strikes, provided a period of notice is given. Once again, time will tell whether or not the move is window-dressing. Many labour activists are currently imprisoned, and in a country where forced labour remains relatively common, the likelihood of building effective trade unions without deeper change seems low.

Another left-field move involved the decision to halt construction of the Myitsone dam, though again the logic behind the decision is open to dispute. The dam was widely opposed for its potential impact on the Irrawaddy river. Environmental groups had argued that it would displace at least 10,000 people and irreversibly damage a key area of bio-diversity. In conciliatory language in a letter to parliament, President Thein Sein said that:

^{16 &#}x27;Burma's Path to Privatization Keeps Armed Forces in Economic Control', VOA,

²⁵ January 2011.

¹⁷ Ibid.

^{18 &#}x27;A change to believe in?', The Economist, 8 October 2011.

Our government, being elected by the people, has to take great consideration of public opinion. Accordingly, we have an obligation to respond to the public concern with seriousness. Therefore, we will suspend the Myitsone project during the term of our government.¹⁹

Clearly, the decision may have been made on the grounds of meeting public opinion. At the same time, the move could be intended to distance Burma from China. Many members of the Burmese leadership are thought to be uneasy about China's increasing control over Burma's economy and Burma's increasing reliance on China. A third reason could be that the move was intended to demonstrate to the West that Burma is changing: for now, at least, the dam has only been suspended rather than cancelled. And there is a more cynical interpretation: since 2006 the government has granted concessions for gold mining and logging in the area that would be affected by the dam as a means of clearing the area (with negative environmental impacts as mercury and cyanide filter into river systems). Five days after the decision to suspend the dam was announced, the Kachin Development Networking Group claimed that some villagers who would have been evicted by the dam were instead being evicted because of a decision to increase gold-mining. Local newspapers have since been banned from discussing the Myitsone dam, and sceptics believe that the dam may reappear on the agenda in a few months or years.

^{19 &#}x27;Burmese President Halts Myitsone Dam Project', *Irrawaddy*, 30 September 2011.

ETHNIC CONFLICTS

Along with political freedom, sanctions are also predicated on the treatment of Burma's ethnic minorities. A number of human rights groups have demanded that Burma's leaders be investigated for war crimes in relation to a number of ethnic conflicts. For instance, Human Rights Watch has published compelling evidence of the use of prisoners in conflict situations. Calls for a war crimes inquiry led the Burmese government to effectively ban the UN Special Rapporteur, Tomás Ojea Quintana, from visiting the country, although in August that ban was lifted.

Quintana appears far from convinced about the depth of change within Burma. While he described the new government as 'nominally civilian' and acknowledged that different actors were 'engaging in the political process', he also noted the exclusion of many actors, including many ethnic minorities. In relation to the ethnic conflicts, he observed:

The ongoing tensions in ethnic border areas and armed conflict with some armed ethnic groups, particularly in Kachin, Shan and Kayin States, continue to engender serious human rights violations, including attacks against civilian populations, extrajudicial killings, sexual violence, arbitrary arrest and detention, internal displacement, land confiscations, the recruitment of child soldiers and forced labour and portering.²¹

Numerous reports have emerged of abuses of civilians in various conflicts. Troops in the northeastern Shan state are reported to have ransacked villages and assaulted their inhabitants following clashes with the Shan State Army (SSA). Similar abuses have been reported among other minorities, including the Kachin, Karen and Rohingya.

Despite ongoing reports of atrocities, in the run-up to US Secretary of State Hillary Clinton's December visit to Burma, the Burmese government announced that it had held talks with five ethnic groups, and proposed a ceasefire, as well as arranging for further talks. The government is also believed to have offered a number of incentives to ethnic groups to encourage dialogue. This follows the decision by parliament to form a 'Peace Committee' to mediate in the various conflicts, although it is unclear when the committee will be formed, or its composition or mandate.

^{20 &#}x27;Dead Men Walking: Convict Porters on the Front Lines in Eastern Burma', Human Rights Watch, July 2011.

^{21 &#}x27;Report of the Special Rapporteur on the Situation of Human Rights in Myanmar', UN, September 2011.

The motivation behind the government's interaction with the armed ethnic groups is hard to fathom. While it has continued to make peace overtures to the Karen National Union, Democratic Karen Buddhist Army and Shan State Army South, and has signed ceasefire agreements with the United Wa State Army and the National Democratic Alliance Army, the army has launched operations against the Kachin Independence Army (KIA) and has resumed an operation against the Shan State Army North.

Its actions can be interpreted in a number of different ways. The military made a series of hastily arranged ceasefire deals in the early 1990s, when the NLD was clearly the dominant popular force. In some respects it is now doing the reverse, courting the NLD when its relationship with the ethnic groups is coming under strain. Moves to engage with Aung San Suu Kyi began at a time when the military must have been aware that it planned to revive the conflict with the KIA. Alternatively, it could be that the government's recent rhetoric regarding reconciliation with the ethnic groups is correct, but it wanted to begin the reconciliation from a stronger military position. Other explanation mooted are that Thein Sein has been unable to rein in the military or that he 'is playing the good cop, while the military is taking the role of a bad cop, while hood-winking all the stakeholders'.²²

^{22 &#}x27;Suu Kyi's dilemma and Naypyidaw's confrontation-reconciliation approach on ethnic resistance groups', *Shan Herald*, 5 November 2011.

INTERNATIONAL REACTION

The international reaction to developments in Burma has been mixed. The United States has increased interaction with Burmese officials over the past year, but has adopted a wait-and-see approach in relation to any tangible policy shift. Given the sustained imposition of sanctions, the US has a number of carrots to dangle towards Burma to encourage continued reform. The US Special Representative to Burma, Derek Mitchell, summed up this pragmatic approach, commenting:

I think everybody who follows this country knows that there have been stops and starts, that expectations have been dashed, that things only go so far, and then they stop or they reverse themselves. And I really urged the leadership to prove the sceptics wrong.²³

The US Senate has voted to extend sanctions on Burma for another year; one senator noted that the new regime appeared little different from its predecessor, and that 'the only legitimately good news was Suu Kyi's release'. A meeting in September between US officials and Burma's foreign minister was interpreted as a thaw and this has continued with the visit of the US Secretary of State, Hillary Clinton, at the end of November. Nonetheless, the US has stressed that it has not changed its basic approach, which is 'still a dual track approach with sanctions but also with principled engagement'. ²⁵

The EU appears more divided in its stance. A number of member states, including Sweden, the Netherlands, the Czech Republic and the United Kingdom, have considered Burma to be a test of the seriousness of the EU's human rights agenda. Other members, notably Germany, Italy, Spain and Austria, have pushed for dialogue and some form of engagement. The EU's principled stance has not extended to backing the establishment of a UN Commission of Inquiry into war crimes and crimes against humanity²⁶ or to the referral of Burma to the International Court of Justice for its use of forced labour, and in April it relaxed financial and travel restrictions on some members of the government.²⁷

The EU/US sanctions regime was clearly undermined by the continued economic engagement of a number of Asian countries, and the 'constructive engagement' of

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^{23 &#}x27;Are rulers of Burma serious about change?', The Nation, 21 September 2011.

^{24 &#}x27;US Remains Tough on Burma Sanctions', Irrawaddy, 5 October 2011.

^{25 &#}x27;Burma's leaders are showing signs of change, but there is a long way to go', *The Guardian*, 30 September 2011.

²⁶ Although the United Kingdom and 15 other countries have supported the call. 27 'When a hero's image signals a new Burmese dawn', *Financial Times*, 5 October 2011.

the Association of South East Asian Nations (ASEAN). Economic relations between China and Burma are booming; according to China its investments in Burma stood at \$12.3bn in 2010. In the same year, trade increased by 50% to stand at \$4.4bn. While China sees Burma as a source of raw materials and a sizable neighbouring market, with more than 50m potential consumers, it is equally, if not more, concerned about stability, being particularly fearful of influxes of refugees.

ASEAN faces a somewhat different challenge. On the one hand its members clearly wish to normalize relations with a fellow member. However, there is awareness of the disdain with which the EU and the United States have viewed the military regime, and that ASEAN's engagement with both the EU and the United States has suffered over the issue of Burma. If Burma were to 'normalize', this would enhance ASEAN's ability to engage more deeply with the West. Consequently, and unsurprisingly, ASEAN has been among the first to argue that the election and the subsequent release of Aung San Suu Kyi demonstrate that Burma is making progress, and that sanctions should be lifted.²⁸

^{28 &#}x27;Burma's Path to Privatization Keeps Armed Forces in Economic Control', VOA, 25 January 2011.

POLICY DILEMMAS

Having imposed sanctions for two decades in the hope of improving human rights in Burma, recent developments throw up a host of difficult decisions for Western countries over how best to entrench and encourage reforms and assist in ensuring that the process is not halted or rolled back. Problematically, there is uncertainty over what has triggered the reform process, as well as a host of competing and mutually exclusive explanations of how international engagement has helped encourage reform. Some voices from India and ASEAN have suggested that the reforms have demonstrated the success of 'constructive engagement'; the United States has maintained sanctions but also enhanced its dialogue with the military; and the EU has slightly modified its sanctions regime. It seems clear that not all of these divergent strategies can have led the military to decide to embark on reform.

The most optimistic interpretation of events is that Burma's military contains both hardliners and reformers. The 2010 election empowered the latter, and they are now pushing through genuine reforms. Their Sein stated in parliament that development is Burma's priority, requiring some degree of political stability and preventing more expeditious reform. In this case, those questioning the pace of change should recognize the limits within which the government operates, and the need to assuage hardliners who remain powerful. Nonetheless, reformers are hopeful that in time they will be able to work with Aung San Suu Kyi and the NLD. If such an interpretation is true, this would imply for the West the need to offer early concessions to the reformers to demonstrate to hardliners that reform will be beneficial. The obvious incentives would be the gradual lifting of sanctions, or an increase in development assistance.

However, an alternative theory could posit that the removal of sanctions and the acceptance of Burma as a 'normal' state is the end-point of itself. In recent years there have been indications that Burma has sought to break away from growing Chinese hegemony by gaining increased investment from other Asian countries. However, this has not reduced the reliance on China, and thus perhaps Burma's rulers have seen the need for Western investment, necessitating the lifting of US and EU sanctions. At the same time, certain forthcoming events could normalize Burma's status: the country will host the South East Asian Games in 2013 and chair ASEAN in 2014.²⁹ The military may consider that the latter, in particular, could mark

²⁹ Prior to the decision to allow Burma to chair ASEAN, Indonesia's foreign minister, Marty Natalegawa, said that the opinion of Aung San Suu Kyi would be taken into account. See 'Are rulers of Burma serious about change?', *The Nation*, 21 September 2011.

Burma's acceptance into the international community. If this is the case, one could expect incremental change up to the point at which sanctions are lifted, with a high likelihood that reform would then stall.

This explanation for reform would require the opposite policy response: ensuring that the sanctions regime remains in place until genuine and tangible reforms are enacted. The United States has been clearest in laying down the conditions that Burma needs to meet: the release of political prisoners, credible elections and peace with ethnic minorities. The first is foreseeable. How elections can be judged credible will need to be defined. And while there have been somewhat optimistic statements in recent weeks regarding ethnic minorities, a sustainable peace will require rethinking the relationship between the state and its periphery.

Alternatively, or in addition, Burma's rulers may be acting out of fear. The West's willingness to, in effect, conduct regime change in Libya and the ease with which some dictators have been ousted through popular non-violent revolutions in other countries in the Middle East may have led Burma's rulers to liberalize political space in Burma for fear that they too might meet the same fate. But while this may be the case, there is little evidence that the reforms are being imposed from a position of weakness.

A cross-cutting and more problematic explanation, at least in terms of a Western response, would be that the military has decided to focus on self-enrichment and to entrench its power in a more acceptable format. Other groups will be allowed some political power, but the scope will be limited and the military will maintain a veto, while it increases its economic domination of Burma. Moves to expedite the Russian-style 'privatization' process suggest that this could be the case. While the 'Burmese way to capitalism' may have enriched more of the military than its prior 'Burmese way to socialism', few of the benefits have been seen by the public at large. Responding to such moves would present difficulties. The need for a checklist of political reforms would remain imperative. But so too, perhaps, would be the need to focus on economic advice, not least in relation to tax collection, ³¹ rather than assistance.

Regardless of motivation, one other factor affects the dynamics of reform, namely that it is not easy to manage political liberalization. If the end-point was a credible

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^{30 &#}x27;Change the Burmese public can't believe in', Maung Zarni, *Irrawaddy*, 21 October 2011.

³¹ According to the Heritage Foundation, Burma's tax to GDP ratio is below 5%, one of the lowest in the world.

election (which would involve those elected having the power to enforce change), then the military would almost certainly lose both its political and its economic power. And there is a long list of authoritarian leaders who have attempted to reform but ended up losing power, either because of a putsch by hardliners, or because they could not hold back the momentum that they created. The next test for Thein Sein will take place when by-elections are held, perhaps as early as December. If the elections are rigged, Western encouragement for reform will swiftly turn to hostility. If they are not rigged and military-backed candidates perform poorly, how will he react?

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