

**The London School of Economics and Political  
Science**

*Making EU Foreign Policy towards a 'Pariah' State:*

*Consensus on Sanctions in EU Foreign Policy  
towards Myanmar*

Arthur Minsat

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## **Abstract**

This thesis seeks to explain why the European Union ratcheted up restrictive measures on Myanmar from 1991 until 2010, despite divergent interests of EU member states and the apparent inability of sanctions to quickly achieve the primary objectives of EU policy. This empirical puzzle applies the ‘sanctions paradox’ to the issue of joint action in the EU. It also connects the assessment of policy effectiveness to EU foreign policy-making. The investigation unravels this conundrum through competitive theory testing.

The study discovers that EU foreign policy was essentially decided by the largest member states. Since 1996, the UK has fostered a consensus among EU policy-makers on a principled common policy, which would induce political reform in Myanmar mainly via the implementation of punitive measures. Hence, non-compliance by the target with EU demands offers a credible, but insufficient explanation of why the EU tightened its sanctions regime. US pressure on EU policy was marginal.

The dissertation argues that a ‘normative’ interpretation of liberal intergovernmentalism best solves this puzzle. The EU met domestic pressures for action, although the measures adopted were clearly too inadequate to be effective. Feedback on policy effectiveness did not play a significant role in EU decision-making.

EU policy was driven by a consensus to treat Myanmar as a ‘pariah’ state. Ideological motivations have largely outweighed material interests. Normative arguments were necessary to put proposals on the common agenda; yet, decisions ultimately involved ‘cooperative bargaining’ among the largest states. Consensus building was therefore a dynamic process. The policy entrepreneur defined its interests domestically; member states with lower preference intensity generally refrained from opposing its leadership.

This thesis thus contributes to the liberal intergovernmental scholarship by proposing a more comprehensive explanation for the drivers and constraints that influence the making of European sanctions.

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## List of Acronyms

3DF	Three Diseases Fund
AA	Auswärtiges Amt
ABC	Atomic, Bacteriological, and Chemical
ABSDF	All Burma Students' Democratic Front
ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ASEM	Asia-Europe Meeting
ASSK	Aung San Suu Kyi
BC UK	Burma Campaign UK
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe
BMZ	Bundesministerium für Zusammenarbeit (Federal Ministry for Economic Cooperation and Development, Germany)
BSPP	Burmese Socialist Programme Party
CDU	Christlich Demokratische Union (Germany)
CEO	Chief Executive Officer
COFACE	Compagnie Française d'Assurance pour le Commerce Extérieur
COREPER	Committee of Permanent Representatives
CRDB	Committee for the Restoration of Democracy in Burma
CSR	Corporate and Social Responsibilities
DAB	Democratic Alliance of Burma
DCI	Development Cooperation Instrument
DFID	UK Department for International Development
DPNS	Democratic Party for a New Society (Myanmar)
DPRK	Democratic People's Republic of Korea
DS	Democrazia Sinistra (Italy)
DTI	Department of Trade and Industry (UK)
DVB	Democratic Voice of Burma
EBA	Everything But Arms
EBO	Euro Burma Office
ECGD	Export Credit Guarantees Department
ECHO	European Commission Humanitarian Office (i.e. the Commission's Directorate General for humanitarian aid)
EFP	European foreign policy
ETUC	European Trade Union Confederation
EEAS	European External Action Service
EEPA	Europe External Policy Advisor
EESC	European Economic and Social Committee
EIAS	European Institute for Asian Studies
ENC	Ethnic Nationalities Council
EU	European Union
FAC	Foreign Affairs Council
FCO	UK Foreign and Commonwealth Office
FDI	Foreign Direct Investment

FDP	Freie Demokratische Partei (Germany)
FLEGT	Forestry Law Enforcement, Governance and Trade
FPA	Foreign Policy Analysis
FRG	Federal Republic of Germany
FTUB	Federation of the Trade Unions of Burma
GAERC	General Affairs and External Relations Council
GDP (PPP)	Gross Domestic Product based on purchasing-power-parity
GDR	German Democratic Republic
GFATM	Global Fund for Aids, Tuberculosis and Malaria
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Society for International Cooperation)
GmbH	Gesellschaft mit begrenzter Haftung (Germany)
GNA	ECHO's Global Needs Assessment
GNI	Gross National Income
GONGOs	Government-organised Non-Governmental Organisations
GSP	Generalised System of Preferences
GTZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Society for International Cooperation)
HRVP	High Representative for EU Foreign and Security Policy and Vice President of the Commission
ICG	International Crisis Group
ICFTU	International Confederation of Free Trade Unions
ICRC	International Committee of the Red Cross
IDO's	International Development Organisations
IFIs	International Financial Institutions
ILO	International Labour Organisation
IMF	International Monetary Fund
IQR	Interquartile range
IR	International Relations
JCC	Joint Cooperation Committee
KNU	Karen National Union
KPF	Karen Peace Front
LCD	Lowest Common Denominator
LDC	Least Developed Country
LI	Liberal Intergovernmentalism
LIFT	Livelihoods and Food Security Trust Fund (EU)
MDG	Millennium Development Goals
MIC	Monitoring Information Centre (EU)
MFA	Multi-Fibre Agreement
MFN	Most Favoured Nation
MOGE	Myanmar Oil and Gas Enterprise
MoU	Memorandum of Understanding
MSF	Médecins Sans Frontières
NC	National Convention
NCGUB	National Coalition of the Union of Burma
NCUB	National Council of the Union of Burma



NGO	Non-Governmental Organisation
NLD	National League for Democracy (Myanmar)
NUP	National Unity Party (Myanmar)
ODA	Official Development Assistance
OPIC	Overseas Private Investment Corporation (USA)
PM	Prime Minister
PRC	People's Republic of China
PS	Parti Socialiste (France)
QMV	Qualified Majority Vote
RtoP	Responsibility to Protect
SLORC	State Law and Order Reconciliation Council (Myanmar)
SPD	Social-Democratic Party (Germany)
SPDC	State Peace and Development Council (Myanmar)
TBBC	Thai-Burma Border Consortium
TEU	Treaty on European Union
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Commission on Trade and Development
UNDP	United Nations Development Programme
UNECOSOC	Economic and Social Council of the United Nations
UNODC	United Nations Office on Drugs and Crime
UNSG	United Nations Secretary General
US	United States of America
USDA	Union State and Development Association (Myanmar)
USDP	Union Solidarity and Development Party (Myanmar)
UWSA	United Wa State Army (Myanmar)
WB	World Bank
WDI	World Development Indicators
WTTC	World Travel and Tourism Council

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## ***Part I/ Introduction***

## Chapter I

### Introduction:

#### The Paradox of EU Sanctions on Myanmar

Since 1991, the European Union (EU) has sought to compel Myanmar to work together with the democratic opposition led by the Nobel Peace Prize winner Aung San Suu Kyi. European policy-makers were thus tempted to claim victory, when, on 1 April 2012, Aung San Suu Kyi and 42 other fellow representatives of her party, the National League for Democracy (NLD), were elected as members of parliament in a landslide victory and what appeared to be a free by-election. As a favourable response to this landmark, on 23 April 2012, the EU suspended all sanctions except its arms embargo. This paradigmatic change of EU policy seemed to be justified by the achievement of the main objectives it had consistently promoted in Myanmar: the release of prisoners of opinion, in particular of Aung San Suu Kyi; the holding of free and fair elections; and national reconciliation between the government, the political opposition embodied by the NLD, and insurgent ethnic minorities. Domestic reforms, accompanied with Myanmar's re-integration into the international community, would herald a new era in Myanmar's history, as well as in EU-Myanmar relations. Democracy, human rights, and economic prosperity would finally flourish in this least developed country where the EU has contributed to the transformation of one of the world's most autocratic and repressive regimes into a vibrant democracy.

The 'success story' of EU foreign policy towards Myanmar, however, has been more contestable than European politicians would conveniently pretend. In fact, democratic reforms remained limited when the EU suspended its sanctions regime in April 2012. The NLD held only 8.4 percent of the seats in the *Pyithu Hluttaw* (the Lower House), and 1.8 percent of the seats in the *Amyotha Hluttaw* (the Upper House). The houses of parliament were still dominated by the military establishment and the NLD had not participated in the 2010 general elections. As

a parliamentary minority, the NLD could hardly act on its own as an agent of change. These limitations were borne out when, a few days after the NLD's victory in the by-elections, Aung San Suu Kyi announced she would not join the Parliament's opening ceremony. Elected NLD representatives initially refused to take the oath to safeguard the constitution, as they disagreed with constitutional provisions enshrining the military establishment, notably a proviso of 25 percent of seats automatically reserved for Defence Services personnel.<sup>1</sup> Moreover, the government nominated in April 2011 was composed of former members of the establishment who had taken off their military uniforms. Democratic reforms were also limited because hundreds of prisoners of opinion allegedly remained in prison.

The EU had been notoriously unable to influence Myanmar's military junta during some twenty years of ostracism. Since EU policy needed more than two decades to yield tangible effects, it could hardly be described as an unmitigated success. Furthermore, while sanctions may have (whether by luck or design) promoted the reforms decided by the new government ruling since April 2011, it is only under the conditions and at the pace set by Myanmar, not by the EU, and in a top down orchestrated process. Most reforms implemented by the nominally civilian government had been planned ahead by the old military command preparing its safe retirement.<sup>2</sup> It is paradoxical that the EU welcomed democratic reforms that have served to consolidate and legitimise the military establishment thriving under the State Peace and Development Council (SPDC), the military Council ruling Myanmar until 30 March 2011. To avoid a partial analysis of ongoing events, this thesis only investigates EU foreign policy-making towards military-ruled Myanmar.

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Through 2011, the EU has shown a great deal of consistency in its policy towards Myanmar since it first imposed formal sanctions in 1991. It consistently

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<sup>1</sup> Constitution of the Republic of the Union of Myanmar 2008, sections 109 (b) and 141 (b).

<sup>2</sup> Interview 27.

scaled up punitive measures owing to the military regime's persistently poor treatment of human rights. During twenty years, restrictions were suspended only in exceptional cases, such as waiving the visa ban when targeted Myanmar officials participated in international summits in EU territory. EU member states seemed to unanimously agree on the use of sanctions as an instrument of democracy promotion.

While human rights activists may applaud the EU for its commitment to a punitive policy towards Myanmar's military government, this consistency is puzzling for students of EU foreign policy-making. The expectation that sanctions on the military government would be more effective if more stringent is indeed striking, for Myanmar used to offset Western restrictions by tapping economic relations with neighbouring and other influential states that could provide political protection (e.g. ASEAN member states, China, India, or Russia).<sup>3</sup> Authoritative independent analysts had therefore questioned the ability of restrictive measures to coerce the SPDC to implement the reforms called upon by Western governments.<sup>4</sup> Since their imposition, numerous foreign governments, some Myanmar opposition parties, public intellectuals, and activists called for the repeal of sanctions.<sup>5</sup> The EU, however, consistently reinforced penalties to punish human rights violations, although such measures seemed unable to bear fruit for more than two decades – at least as long as the SPDC retained its firm grip on power.

Despite its ethical merits, the sanctions policy was highly controversial. Scaling up sanctions that carried little likelihood of success was denounced as a doomed policy.<sup>6</sup> The EU escalated negative measures, while the SPDC

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<sup>3</sup> Egreteau and Jagan 2009.

<sup>4</sup> Stiglitz, 6 March 2012; Thant Myint-U 2011; Pederson 2008; Kyaw Yin Hlaing 2004; R. Taylor 2004; Steinberg, 1 April 2003; Steinberg 2001a.

<sup>5</sup> Stiglitz, 6 March 2012; Abour, March 2012; ASEAN Foreign Ministers' Retreat, 16-17 January 2011; International Crisis Group (ICG), March 2011; Chin Progressive Party, 21 January 2011; Shan Nationalities Democracy Party, 15 January 2011; Aung Naing Oo 2011; Tonkin, 25 September 2011; Thant Myint-U 2010; ICG, April 2004.

<sup>6</sup> Tonkin, 29 November 2007.



continued to blatantly ignore its demands. The achievement of the policy's primary objectives seemed ever more remote with Myanmar's increased isolation from the West. This dogged approach is all the more intriguing if one considers that secondary effects of sanctions may be counterproductive. Over twenty years of ostracism arguably strengthened the junta's stranglehold on power.<sup>7</sup> Sanctions have also deprived ordinary citizens of livelihoods, thus hindering the growth of a middle class, which is generally considered an indispensable driver of democratisation by transition theorists.<sup>8</sup>

The conundrum of EU foreign policy towards Myanmar relates to a much-debated puzzle in Foreign Policy Analysis, which Daniel Drezner coined the 'sanctions paradox'. This paradox asks the question why policy-makers tend to impose restrictions even in cases where scholars predict their ineffectiveness as tools of foreign policy.<sup>9</sup> This puzzle is applicable to the case of Myanmar, where renowned country experts have predicted that Western sanctions were unlikely to bear fruit.

The sanctions paradox is all the more intriguing when applied to EU foreign policy. The main thread that pervades the literature on EU policy-making is the question of joint action by national member states.<sup>10</sup> This question is tantalising in the case of a long and controversial sanctions regime like the one imposed on Myanmar's SPDC. It seems difficult to understand why *all* EU member states persisted in a policy of ostracism despite their potentially divergent national interests.

Some senior European officials criticised EU sanctions policy on Myanmar, claiming it had failed on all fronts.<sup>11</sup> Twenty years of ostracism did not alter the SPDC's behaviour as hoped by the EU, making the human rights situation even

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<sup>7</sup> Pedersen 2008; Zarni and Oo 2004.

<sup>8</sup> Saw Myat 2008: 49ff. and 150; Stefan and Linz 1996; Huntington 1993.

<sup>9</sup> Drezner 1999: 5.

<sup>10</sup> Hoffmann 1966; Ginsberg 1989; K. Smith 1996; Moravcsik 1998; Meunier 2000: 103-135.

<sup>11</sup> Interview 7; Hauswedell 2008; Hauswedell 2006: *Keynote Speech*.

worse, while EU member states were progressively losing market shares and political contacts in a country located in a geostrategic region between rising powers China and India. Besides, the EU effectively scaled up restrictions only after Myanmar had already joined ASEAN in 1997, when its membership of the regional organisation made European penalties less likely to bear fruit.

Military-ruled Myanmar is an exceptional case among all EU sanctions regimes. In most other instances of sanctions, EU foreign policy was less consistent and the EU decided to soften its policy at some point. Hence, the EU quickly revised its initial measures on China, which have been limited to an arms embargo since 1990.<sup>12</sup> The EU scaled down diplomatic restrictions on Belarus on several occasions in 1999, 2008 and 2009 until it ratcheted them up again owing to Minsk's adamant lack of compliance with EU demands.<sup>13</sup> In the case of Zimbabwe, the suspension of development aid under the Cotonou agreement did not hinder the EU from continuing to deliver relatively important amounts of humanitarian aid even after this ban was imposed.<sup>14</sup> No statutory EU restrictions on trade have been enforced. The EU allowed Robert Mugabe to take part in the EU-Africa summit held in Lisbon on 8-9 December 2007.<sup>15</sup> Hence, despite the obvious moral high ground of a punitive policy towards Myanmar, one may retrospectively ask: why did the EU scale up sanctions on military-ruled Myanmar?

The remainder of this introductory chapter is divided into four parts. The first section presents the research agenda. The second section defines key terms and concepts encountered throughout the thesis. The third section examines its main contributions. The final section outlines the structure of this dissertation.

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<sup>12</sup> Council of the EU: *Declaration of 27 June 1989*.

<sup>13</sup> Council of the EU: *Decision 99/156/CFSP of 22 February 1999*; *ibid.*: *Conclusions on Belarus of 13 October 2008*; *ibid.*: *Decision 2009/969/CFSP of 15 December 2009*; Stewart 2004: 34.

<sup>14</sup> Council of the EU: *Common Position 2002/145/CFSP of 18 February 2002*; *ibid.*: *Council Common Position 2004/161/CFSP of 19 February 2004*; European Commission, March 2011: *Atlas*.

<sup>15</sup> *Economist*, 6 December 2007.

## 1. Scope of the Research

This study covers EU foreign policy from the *coup* staged by the State Law and Reconciliation Council (SLORC) on 18 September 1988 until the dissolution of the military council SPDC on 30 March 2011. During this period, the EU progressively adopted sanctions. Members of the European Community applied non-statutory restrictions on development aid towards the end of 1988.<sup>16</sup> An arms embargo was officially enforced on 29 July 1991.<sup>17</sup> EU restrictions were regularly ratcheted up and never officially scaled down until the end of this study in April 2011.

This twenty-three years period is characterised by the rule of successive military governments in Myanmar. SLORC seized power in 1988, and organised elections in 1990 but did not honour their results. Twenty years later, its successor SPDC held new elections, as foreseen in the fifth point of Myanmar's seven-step roadmap to 'discipline flourishing democracy'. This election led to the dissolution of the SPDC and the swearing in of a President on 30 March 2011, who gathered a nominally civilian government in April. The transition from a military dictatorship to authoritarian civilian rule marks the end of an important era in EU-Myanmar relations. This dissertation does not cover the recent post-military period, in order to avoid an incomplete study of an ongoing event.

### 1.1. Research Question

The thesis seeks to answer the overarching research question: why did the EU scale up sanctions on Myanmar between 1991 and 2010, despite the apparent inability of EU sanctions to quickly reach the primary objectives of the policy during that period, and potential disagreements among EU member states on the common policy?

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<sup>16</sup> Frittin and Swanström 2010a: 1; Soe Myint Aung 2003.

<sup>17</sup> Council of the EU: *Declaration of 29 July 1991*.

The lack of effectiveness of sanctions is defined as their inability to attain the primary objectives of the policy during a defined period of time. The typical time span to assess policy effectiveness is the period of a legislature. The effectiveness of restrictive measures can be ascertained by examining their impact on the SPDC's behaviour over a five years period after they have been enforced.

This study investigates the rationale for making EU foreign policy towards Myanmar as sanctions were being decided. Time-bound policy effectiveness is therefore an important part of the research question. It is not directly relevant to this thesis whether EU sanctions have, more than twenty years after their initial imposition, eventually contributed to the reform process engaged in post-military Myanmar.

Scholars have highlighted the fluctuating and vague character of the varied purposes of sanctions.<sup>18</sup> It seems challenging to evaluate the success of sanctions regimes.<sup>19</sup> However, it would seem preposterous to completely disconnect policy instruments from the actual achievement of their primary objectives.<sup>20</sup> The most common yardstick to measure an effective sanctions regime is an 'observable change in behaviour' of the target.<sup>21</sup> Consequently, the SPDC's compliance with EU demands remains the main criterion to assess the effectiveness of EU foreign policy towards that country.

Primary objectives are stated in official documents, such as common positions, statements or press communiqués and interviews of key policy-makers representing the EU or one of its member states (e.g. the EU High Representative, the President of the Council, the President of the European Commission, the head of a member state or a foreign minister). As a rule of

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<sup>18</sup> Cohen and Harris 1975: 5-20; Hufbauer *et al.* 1985/1990: 31; Jørgensen 1998; K. Elliott 1998; Mack and Khan 2000: 279-292; Baldwin 1999/2000; Economides and Wilson 2001: 143-153; Portela 2010: 13-4.

<sup>19</sup> Baldwin 1999/2000.

<sup>20</sup> Pape 1997: 98.

<sup>21</sup> Jonge Oudraat 2001: 235; Portela 2010: 13.

thumb, the assessments of historians and officials involved in policy-making are used as a supplementary indicator to clarify the formulation of policy objectives.<sup>22</sup>

Drawing on Margaret Doxey, this thesis defines sanctions as: statutory or non-statutory penalties threatened or imposed by the EU and its member states, as a consequence of the target's failure to observe standards or obligations viewed by the EU as internationally valid.<sup>23</sup> Sanctions are used as a synonym for: penalties; restrictions; punitive, restrictive, negative, or coercive measures. Notwithstanding, the EU avoids the politically sensitive term 'sanctions'. It privileges the expression 'restrictive measures' (*mesures restrictives*) in its legal acts.<sup>24</sup> The Council of the EU underlined that it adopts restrictive measures in order to achieve external objectives, namely 'to bring about a change in policy or activity by the target country, part of country, government, entities, or individual.'<sup>25</sup>

The terms extend, scale up, ratchet up, escalate, increase, and strengthen sanctions are used here in a generic fashion. The EU could scale up negative measures by *intensifying* them within one specific policy area (for example, including more members of a targeted regime on an EU visa ban or asset freeze list), as well as by *extending* restrictions to new policy areas. Penalties may target different sectors, such as the military (e.g. defence cooperation); the political (e.g. diplomacy); the economic (e.g. trade and investment); the societal or socio-cultural (e.g. assistance in the fields of education and health); or the environmental sector (e.g. assistance in the field of environmental protection).<sup>26</sup>

Spillover into new policy areas implies that sanctions may exert lasting constraints on the strategy towards the target. Opting for restrictive measures may narrow down the gamut of instruments on offer. Other components of the foreign policy armoury, such as incentives in the form of aid or diplomatic

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<sup>22</sup> Hufbauer *et al.* 1985/1990: 2.

<sup>23</sup> Doxey 1996: 9.

<sup>24</sup> Portela 2010: 21.

<sup>25</sup> Council of the EU, 3 December 2003: *Guidelines*: 5.

<sup>26</sup> This classification is adapted from Buzan and Little's definition of various fields of social sciences (Buzan and Little 2000: 73ff).

recognition, may be definitely jettisoned from the political agenda. Cooperation with a state stigmatised by economic and diplomatic sanctions – a ‘pariah’ state – may be considered anathema. Making foreign policy towards a target of sanctions is a challenge because other policy instruments that were once available may become irretrievably lost.

## 1.2. Policy Evaluation and Policy Change

Scaling up sanctions begs the theoretical question of policy change and continuity: why is a policy not changed despite its apparent lack of effectiveness? Not revising an unavailing policy contradicts Hugh Heclo’s model of policy-making as a learning process. Heclo contended that policy-makers attempt to streamline policy impact in a given set of constraints.<sup>27</sup>

### 1.2.1. Evaluation of Policy Impact

In his *Framework for Political Analysis*, David Easton originally designed a theory of ‘feedback loops’. Policy outputs go out of the political system into the external environment, metamorphosing into new policy inputs.<sup>28</sup> The historical institutional literature presented feedback as an important driver of policy change.<sup>29</sup> Kjell Goldmann developed the related concept of ‘negative feedback’. He identified ‘negative feedback’ and ‘adaptation’ as sources of policy change. Negative feedback may generate policy learning; it changes the perceptions of policy-makers over time and thus motivates foreign policy changes: ‘A typical case [of negative feedback] would be the abandonment of a conciliatory policy because the response had been nonconciliatory.’<sup>30</sup>

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<sup>27</sup> Heclo 1974: 305-306; see also: Hall 1993: 275-281; Pacheco Pardo 2009.

<sup>28</sup> Easton 1965: 112.

<sup>29</sup> Pierson 1993: 596ff.

<sup>30</sup> Goldmann 1988: 6.

Roy Ginsberg thus classified the impact of EU foreign policy into four different levels: nil, marginal, considerable, and significant.<sup>31</sup> He depicted policy feedback as the backbone that strengthens European foreign policy (EFP):

[external feedback is] the critical link between targets and new sources of EFP action. Without internal and external feedback, which generates new (and possibly improved) sources of EFP inputs, the EFP decision-making system would not be sustained. [...] If the EU ignores feedback, it risks damaging or destroying over time the EFP decision-making system.<sup>32</sup>

John Kingdon identified three channels of feedback: 'systematic monitoring', 'complaints and casework', and 'bureaucratic experience'.<sup>33</sup> Evaluations may take place via formal (e.g. policy proposals, audits of programmes) or informal channels (e.g. academic reports, conferences). The evaluation of a foreign policy usually follows its implementation.<sup>34</sup> In the EU, policy feedback may originate from multifarious sources: it can be produced by member states; the European Commission and its delegations; the Council Secretariat; the European Parliament; and representatives of civil society (including lobbyists).

### 1.2.2. The Question of Policy Change

The continuation of an apparently ineffective policy could invalidate the claim that policy feedbacks influence policy-making. Maintaining a sanctions policy despite its apparent inability to quickly reach its objectives could be interpreted as an *absence of policy change*, whereas revoking restrictions or giving

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<sup>31</sup> Ginsberg 2001: 53, table 3.2.

<sup>32</sup> Ginsberg 2001: 277. David A. Welch (2005: 46) formulated a similar hypothesis that policy failure tends to trigger policy change. His study concluded that this hypothesis is disconfirmed in one case, undecidable in one case, and confirmed in six other case studies (*ibid.*: 217-223).

<sup>33</sup> Kingdon 2003: 102. It is noteworthy that in his theories of 'primeval soup', Kingdon (2003) attributed only a minor role to policy evaluations. Jeremy Richardson (2006: 6) did not include policy feedback when differentiating the main stages of the EU policy-making process: 'agenda-setting, policy formulation, policy decision, and policy implementation'. Such perspectives are opposed to Goldmann's generic theory of negative feedback, which Ginsberg (2001) applied to EU policy-making. Political science textbooks usually present feedback as constitutive of policy-making (Patzelt 2007).

<sup>34</sup> S.M. Smith 1987: 190-191.

incentives could be decrypted as *policy change*. Against this backdrop, Charles Hermann's definition of four different dimensions of foreign policy change enables us to conceptualise how the EU could change (or not change) its foreign policy towards Myanmar:<sup>35</sup>

- (1) 'Adjustment change' represents minor changes taking place in the level of effort put into a policy in order to enhance it;
- (2) 'Programme change' implies a change in means and methods while the basic goals remain unaltered;
- (3) 'Problem/goal change' refers to a change in goals and objectives. According to Peter Hall, the third level mirrors a radical shift of policy paradigm, which entails:  

[...] simultaneous changes in all three components of policy: the instruments settings, the instruments themselves, and the hierarchy of goals behind the policy.<sup>36</sup>
- (4) 'International orientation change' indicates a fundamental change in a state's entire orientation towards world affairs.<sup>37</sup>

Furthermore, Hermann distinguishes between four sources of foreign policy change: leaders, bureaucratic advocacy, domestic restructuring and external shocks.<sup>38</sup>

An often-neglected dimension of foreign policy change is the absence of change. Inaction could be related to three different factors, namely to the fact that the EU decides not to act, that it is unable to act, or that certain policy options are

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<sup>35</sup> C. Hermann 1990: 5-6.

<sup>36</sup> Hall 1993: 279. In a fashion similar to Hermann, Hall (1993: 280) identified three levels of policy change: a change in the policy setting, in the techniques, and in the paradigm. In contrast, Federica Bicchì (2007: 3-4) did not include the notion of foreign policy objectives in her theory of paradigmatic EU foreign policy change. According to her, paradigmatic policy changes require the concurrence of three different factors: the opening of a policy window (or 'windows of opportunity'); the presence of a policy entrepreneur who will act on these opportunities; an interaction among member states and European institutions.

<sup>37</sup> For a detailed discussion of foreign policy restructuring, see: Volgy and Schwarz 1994: 25; Holsti 1982: 2; Srivardhana 2003: 8; Holsti 1982: 2; Srivardhana 2003: 8-9; Rosati *et al.* 1994: 267; Oldfield 1998: 5.

<sup>38</sup> C. Hermann 1990.



excluded from the policy agenda.<sup>39</sup> According to Joseph Frankel, two types of situations may be distinguished in which decisions to do nothing are taken deliberately:

In the one, the issue is considered of too little importance to warrant action, or the cost anticipated is too high in relation to the need felt. [...] In the other, the issue is important but incapable of a satisfactory solution [...].<sup>40</sup>

Some scholars went further and characterised the lack of change to an ineffective policy as ‘policy paralysis’,<sup>41</sup> or as a ‘path dependent policy’.<sup>42</sup> Chapter II will define these two concepts in the context of theories of EU policy-making.

### 1.3. Variables

Three dependent variables thus define this research on the making of EU sanctions policy: the decisions to implement instruments that *increase* the isolation of a targeted state on the one hand; the decision to implement instruments that *decrease* the isolation of a targeted state on the other hand; and finally, the decision to *maintain* the measures in place without altering them. These three dependent variables shall be examined whenever relevant throughout the case study, although the research question explicitly focuses on scaling up sanctions. Indeed, the factors that lead the EU to impose tougher penalties may ultimately differ from the reasons that lead the EU to scale down, or simply maintain restrictions.

Four main independent variables could account for a change in EU foreign policy towards Myanmar: 1) the behaviour of the state targeted by EU sanctions (i.e. compliance or no compliance with EU demands); 2) United States influence

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<sup>39</sup> Hill 2003: 107; see also: Schattschneider 1975: 69. The analysis of policy inaction can be traced back to the works of Peter Bachrach and Morton Baratz (1970), as well as Matthew A. Crenson (1971), which have been later applied to International Relations.

<sup>40</sup> J. Frankel 1963: 197.

<sup>41</sup> Zielonka 1998; Bernanke 2000.

<sup>42</sup> Paul 2001: 15-40.

on EU foreign policy decisions; 3) the interests of domestic constituencies within EU member states; and 4) policy-makers' search for a consensus when making EU foreign policy. Chapter Two develops four competing hypotheses, which are based on these independent variables.

## **1.4. Methodological Strategies**

### **1.4.1. Case Study Selection**

This thesis seeks to untangle an empirical puzzle. It therefore deals with a single case study. Yet, single case studies have been criticised for not being generalizable.<sup>43</sup> Why conduct a single, rather than a comparative case study?

A single case study enables us to ascertain which theory best explains an outlying phenomenon.<sup>44</sup> It can thus fulfil a 'theory-testing role'<sup>45</sup> by generating and testing new hypotheses.<sup>46</sup> Moreover, a single case can better throw light on non-events, thanks to process tracing.<sup>47</sup> Non-events are expected events that do not occur. It seems necessary to pay attention to non-events in order to understand why the EU may react to specific issues and not to others – i.e. why the EU reinforces sanctions in certain circumstances and not in others.<sup>48</sup>

In a nutshell, there are three relevant justifications for selecting EU foreign policy towards Myanmar rather than another case study: it features a deviant case, it is recognised in the literature as an important case in the panoply of EU sanctions regimes, and it represents an extended sanctions episode.

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<sup>43</sup> Collier 1993: 105-119.

<sup>44</sup> Alison 1971; Maoz 2004: 172.

<sup>45</sup> Ruffa 2011: 563.

<sup>46</sup> Maoz 2004: 7; Odell 2001: 171-2.

<sup>47</sup> J. Levy 2002: 145; Maoz 2002: 163.

<sup>48</sup> Hill 2003: 107-8.

Outlying cases have ‘outcomes not predicted or explained adequately by existing theories.’<sup>49</sup> They focus on ‘empirical anomalies in established theoretical generalisations in order to explain them and refine existing [theories]’.<sup>50</sup> EU foreign policy towards Myanmar features an ideal case study to test the validity of approaches that perceive EU member states as actors driven by self-interest. Given the scope and duration of EU sanctions on Myanmar, explanations relying on economic utility or competition for power seem most likely to be refuted. Rationalist theories seem unable to explain why *all* EU member states would share the same goal to restrict bilateral relations with a third state during twenty-three years, thus squandering the benefits of economic and other interactions with the target and, potentially, its allies. It is also a paradox that EU member states continued to unanimously reinforce sanctions although they seemed unable to quickly alter the SPDC’s behaviour.

On the other hand, theories that emphasise the role of norms and ideas in EU foreign policy do not explain why Myanmar was treated differently from comparable human rights offenders (e.g. Sudan; or North Korea, with whom the EU engaged diplomatically between 2001 and 2004). Human rights violations occur in numerous other countries, but the EU does not always impose the same intensity of sanctions. Finally, Myanmar also corresponds to the statistical definition of an outlier since the duration of sanctions on Myanmar falls more than 1.5 interquartile range (IQR) above the upper quartile.<sup>51</sup> This dissertation thus explores the specificity of the Myanmar case in much greater depth.

Another motivation to select this case study resides in its high relevance in EU sanctions regimes. It appears favourable to select one of the longest sanctions episodes. Myanmar is among the states that have been effectively censured for

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<sup>49</sup> George and Bennett 2005: 215.

<sup>50</sup> J. Levy 2002: 137. See also: Odell 2001: 166.

<sup>51</sup> See: Annexes 2 and 3, which present the total and average durations of all EU sanctions regimes. For a statistical definition of outliers, see: Agresti and Finlay 2000: 54.

the longest period of time, from 1988 until 2012 (twenty-three years altogether).<sup>52</sup> Annex 3 shows that, between 1956 and 2011, EU sanctions were adopted for 8.5 years on average and autonomous EU restrictions for 6.4 years on average. The duration of the EU's sanctions regime on Myanmar exceeds these averages by far. Focusing the analysis on a short period of time may impact on research outcomes. For instance, Clara Portela characterised EU sanctions policy on Belarus as a 'partial success' in 2009.<sup>53</sup> This assessment could be questioned with the hindsight of the flawed 2010 elections, which led to a resumption of EU sanctions on Minsk.<sup>54</sup> Therefore, the historical suspension of most EU sanctions on Myanmar in 2012 also makes our choice pertinent.

Additionally, Myanmar was one of the most intensively sanctioned states. The EU imposed the following statutory measures: the suspension of development aid and corresponding trade benefits, diplomatic sanctions (e.g. withdrawal of embassy personnel, visa ban, and moratorium on high-level visits), an arms embargo, the freezing of assets, a ban on loans to state-owned companies and a trade and investment ban in targeted sectors.<sup>55</sup> The EU also wielded a wide array of non-statutory measures, such as the discouragement of trade, investment, or tourism, the deferment of a cooperation agreement since 1988, boycotts of multilateral meetings where Myanmar was a party, and a veto on International Financial Institutions (IFIs)'s cooperation with Myanmar. In spite of this large range of penalties, these measures have not tangibly achieved their objectives within a timeframe of five years after their imposition. There is a widespread assessment among scholars that EU sanctions on Myanmar featured an 'ideal type of CFSP sanctions failure',<sup>56</sup> a case of 'perfect failure',<sup>57</sup> or 'a long line of failures'.<sup>58</sup>

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<sup>52</sup> Eriksson 2005: 199; Hill and K. Smith 2000: 437-440; Kreutz 2005; Hristov 2009; Portela 2010: 56ff. and 62.

<sup>53</sup> Portela 2010: 48.

<sup>54</sup> Council of the EU: *Decision 2010/639/CFSP of 25 October 2010*; *ibid.*: *Decision 2011/69/CFSP of 31 January 2011*.

<sup>55</sup> Portela 2010: 56.

<sup>56</sup> *Ibid.*: 30.

The method used throughout this detailed case study is based on hypothesis testing. Karl Popper developed the concept of *falsification* to assess the explanatory power of a given theory, illustrated by his seminal ‘black swan’ example.<sup>59</sup> While it may be impossible to prove that an hypothesis is correct, it is sufficient to demonstrate its falsehood in specific cases – in other words, to falsify it. If an hypothesis is shown to be false, then the theory from which it is developed could be seriously undermined.<sup>60</sup> An hypothesis shall be considered *indeterminate* if it can be neither falsified nor validated.

#### 1.4.2. Sources

The research is based on primary sources, which are EU official records. These documents are supported by secondary sources, such as reports, articles, books, PhD and master theses, and interviews. These sources are presented in the bibliography, which differentiates between official documents and speeches, books, articles and websites, interviews, and email exchanges.

Interviewees were selected among diplomats from European institutions, EU member states, states external to the EU (including Myanmar and its economic partners), representatives of European and Myanma political parties, non-governmental and international organisations, the think tank and academic community, and retired officials. Interviews were conducted in Brussels, Berlin, London, Paris, Yangon, and Bangkok between 2004 and 2011. Most interviews were carried out during field research and on the condition of anonymity. Nevertheless, the identity of interviewees is revealed in the bibliography for the sole purpose of the oral examination.<sup>61</sup>

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<sup>57</sup> *Ibid.*: 15.

<sup>58</sup> Frittin and Swanström 2010a: 1.

<sup>59</sup> Popper 1959.

<sup>60</sup> Collier 1993.

<sup>61</sup> Gubrium and Holstein 2002.

In order to buttress the information gathered from first and secondary sources, some 60 interviews were conducted with individuals involved with EU foreign policy-making towards Myanmar and other pariah states. 47 interviews are quoted throughout the thesis and referenced in the bibliography. Interviews were pursued as qualitative and semi-structured open discussions. To ensure neutrality of the data gathered during interview research, the privileged, the activists and the bureaucrats influencing EU foreign policy from both within and outside the institutional framework of EU decision-making were equally pursued. Due to unequal access to information and the varying willingness of interviewees to disclose confidential information, strategic information holders were interviewed more intensively. Any analysis of elites also depends on broader interpretations of hegemony and society, and on an understanding of the intersection of respective environments. Discourse analysis has thus been used to decrypt interviews and official declarations.

## **2. Defining EU Foreign Policy and Sanctions**

Before going more in-depth into the research, it is necessary to explain important terms used throughout the study. The following section presents key terms and abbreviations used in this thesis. It then defines EU foreign policy, as well as the concepts of sanctions and pariah states.

### **2.1. Explanation of Terms, Usages, and Abbreviations**

The current official name 'Myanmar' in the English language is used for 'Burma' throughout this thesis. The adjectival 'Myanma' is a direct transliteration from the Myanma language. It has been used officially since Myanmar enacted the Adaptation of Expression Law in 1989. 'Myanma' was the official name of the country in the Burmese language versions of the Constitutions of 1947, 1974, and 2008. The same transliteration is used for other geographic locations, such

as the former capital Yangon instead of Rangoon. 'Burma' is used to refer to the country before 1988.

When the period from 1988 until the time of writing is covered, the acronym SPDC (designating the State Peace and Development Council, which is Myanmar's military government) is used as a short-hand to SLORC/SPDC. The SLORC refers to the State Law and Order Restoration Council that was changed into the SPDC on 15 November 1997. The thesis does not use the Myanmar adjectives U (for Mr.) and Daw (for Ms.), usually employed with Myanmar names (e.g. Daw Aung San Suu Kyi).<sup>62</sup> The acronym ASSK is used for Aung San Suu Kyi.

EU foreign policy designates the policy carried out from the creation of the EU in 1993 onwards. The period prior to the entry into force of the Maastricht Treaty refers to the European Communities (EC). The acronym 'EU' is used as a short-hand for EC/EU when both periods before and after Maastricht are covered. With the entry into force of the Lisbon Treaty on 1 December 2009, the European External Action Service (EEAS) has replaced the rotating Presidency in the EU Council working groups.

## **2.2. EU Foreign Policy**

Foreign policy implies the existence of an actor (usually a state) defined by its geographical borders (a territory) who implements a policy in an external environment (outside its borders). In doing so, this actor interacts with others who equally strive to promote their own interests and values in the external environment. The essential goal of foreign policy is to influence the behaviour of other actors, most particularly states. Foreign policy is generally an attribute of a state but may also be characteristic of other entities acting at the international level.

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<sup>62</sup> Steinberg 2001a.

Although the EU is not a state *stricto sensu*, it can be conceived as comparable to a state. At least since the entry into force of the Maastricht Treaty in 1993, it is commonly agreed that the EU possesses the qualities of separateness and distinctiveness that define actors in international relations.<sup>63</sup> First of all, the EU is distinct from its member states. It has identifiable institutions - most prominently: the Council of the EU, which takes decisions on matters of common foreign policy; and the European Commission, which conducted external relations under the mandate of the Treaties, until it was superseded by the EEAS following the reforms enforced by the Lisbon Treaty in 2009.

Furthermore, the EU can be distinguished from the environment it evolves in. It is represented on the international stage by both the Council of the EU and the European Commission. Finally, the EU has proven its ability to exert leverage on the behaviour of other actors, most conspicuously on neighbouring countries via its enlargement policy.<sup>64</sup> Taking stock of this debate, Hazel Smith defines EU foreign policy as 'the capacity to make and implement policies abroad which promote the domestic values, interests and policies of the actor in question'.<sup>65</sup> Hence, while sanctions aim at altering the targeted state's behaviour, they simultaneously promote the domestic interests of the sender.

By EU foreign policy, this thesis refers to the foreign policy decided by the Council of the EU and implemented by the European Commission and the member states. The national foreign policies of the diverse member states will be treated insofar as it influences the common foreign policy as a whole. EU foreign policy differs from the wider concept of 'European foreign policy', which encapsulates 'Community foreign policy', 'Union foreign policy' and 'National (member state) foreign policy'.<sup>66</sup> The semantic distinction between European and

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<sup>63</sup> The concept of international actorness has been initially developed by Gunnar Sjöstedt (1977: 13). He showed that the unit under discussion must have two distinct particularities, namely 'a minimum degree of separateness' and be 'discernable from the external environment'.

<sup>64</sup> Sedelmeier 2003; K. Smith 1995; 1999.

<sup>65</sup> H. Smith 2002: 7.

<sup>66</sup> Bonvicini 1998: 74; White 2001: 24 and 165.



EU foreign policy also reflects an ontological debate on the 'nature of the beast'.<sup>67</sup> This dissertation therefore picks out the term EU foreign policy in order to embed the study in an intergovernmental school of thought.

### 2.3. Sanctions

Sanctions need to be accurately defined because they have become deeply embedded in International Relations. The term carries various – and at times contradictory – meanings. It has been used with so much terminological imprecision that mainstream scholar David Baldwin even suggested to avoid using the expression altogether.<sup>68</sup> Similarly, no authoritative legal source contains a universally accepted definition.<sup>69</sup> The ensuing paragraphs distil how this thesis distinguishes sanctions from related concepts.

Sanctions are broadly defined as 'value-depriving' actions by a nation or a group of nations (the sender) against a target (the receiver). Senders and targets are usually states but could also consist of non-state actors.<sup>70</sup> To draw a first distinction, Baldwin differentiated sanctions in Foreign Policy Analysis (FPA) from a 'narrowly legalistic' definition, which refers to 'the use of economic measures to enforce international law'.<sup>71</sup> Multilateral sanctions are not only used to enforce international law, but also attempt to impose the values of a specific group of countries<sup>72</sup> such as EU member states.<sup>73</sup>

Second, sanctions are often used to describe restrictions on economic relations with a targeted state.<sup>74</sup> Nevertheless, the concept may encapsulate

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<sup>67</sup> White 2001.

<sup>68</sup> B. Taylor 2009: 11.

<sup>69</sup> United Nations Security Council, 17 April 2000: *Remarks*; Portela 2010: 21.

<sup>70</sup> Wallensteen 1968: 248-9; Coker 1986: Chapter III.

<sup>71</sup> Baldwin 1985: 36. For a legal definition, see: Combacau 1974: 313.

<sup>72</sup> Baldwin 1985: 35-36; Doxey 1996: 7-8.

<sup>73</sup> Vries and Hazelzet 2005: 98; Eriksson 2005: 109.

<sup>74</sup> Hufbauer *et al* 1985/1990.

penalties in more diverse policy areas. In her seminal work *International Sanctions in Contemporary Perspective*, Doxey's definition of sanctions overhauls their popular meaning as an element of 'Economic Statecraft'.<sup>75</sup> She delineates a wide range of negative measures: diplomatic bans and political opprobrium; restrictions on communications and cultural exchanges; as well as a broad range of restrictive economic measures of financial, commercial, and technical nature.<sup>76</sup> In this thesis, the term sanction is used to denote specific restrictive measures, as well as a sanctions regime. The combination of restrictions on a target is usually defined as 'sanctions regime'. Embargoes (or bans on exports) are distinguished from boycotts (or bans on imports).<sup>77</sup>

Third, sanctions do not imply the use of force to change the target's behaviour.<sup>78</sup> They contrast with 'coercive diplomacy', which consists in an attempt to change the target's behaviour through 'either the threat to use force or the actual use of limited force'.<sup>79</sup> Coercive diplomacy represents a higher level of intensity in the escalation of policy instruments towards a specific target.<sup>80</sup>

Fourth, the adoption of sanctions is opposed to the use of incentives. Incentives are positive measures that contradict the coercive spirit of sanctions.<sup>81</sup> They entice the target to do something it may not do without the prospect of reward. By contrast, sanctions are intrinsically negative: they punish the target for its reprehensible behaviour.

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<sup>75</sup> Baldwin 1985.

<sup>76</sup> Doxey 1996: 11 and 14; Hufbauer *et al.* 1985/1990: 11; Davis and Engerman 2003: 187.

<sup>77</sup> K.Smith 2003a: 60.

<sup>78</sup> Doxey (1996: 11) pinpointed that although in conventional parlance, sanctions mean nonviolent measures, 'military sanctions' can be recommended by the Security Council under Chapter VII of the UN Charter. 'If Security Council is not forthcoming, Art. 51 of the Charter permits members to use force in individual or collective self-defence and governments typically justify military action either in those terms or as humanitarian intervention.' This thesis nonetheless considers that military action is a foreign policy instrument that differs from sanctions.

<sup>79</sup> Art and Cronin 2003.

<sup>80</sup> Hill 2003: 129ff. Christopher Hill identified the following foreign policy instruments, which could be ranked along a continuum from 'soft' power to 'hard' power: culture, diplomacy, propaganda, sanctions, subversion, coercive diplomacy, deterrence, blackmail, and physical coercion.

<sup>81</sup> *Ibid.*: 130ff.

Sanctions and incentives, however, can hardly be dissociated from each other. Repealing sanctions is often interpreted as a reward for a commendable behaviour. Conversely, denying incentives may be perceived as a penalty to punish an objectionable policy. Studies dedicated to EU sanctions therefore contain elaborated analyses of EU aid policies.<sup>82</sup> Sanctions and incentives are two complementary and intertwined foreign policy tools.

As a consequence, this thesis shall not only focus on the process of deciding EU sanctions on Myanmar, but also take into account the various instruments decided by the EU. Analysing a foreign policy by focusing only on diplomatic and economic restrictions would deliver an incomplete assessment of the policy-making process. Diverse policy instruments, including incentives, may effectively contribute to achieving a policy's objectives. Gauging the effectiveness of sanctions without taking wider factors into consideration would limit the analysis.<sup>83</sup>

### **2.3.1. Incentives**

Drawing upon the utilisation of incentives and conditionality, some scholars argued that cautious engagement with authoritarian regimes is more likely to bear fruit than a punitive strategy.<sup>84</sup> Engagement may be defined as a mixed strategy of inducements and sanctions, which is encapsulated in the colloquial designation of 'carrots and sticks'.<sup>85</sup> Engagement strategies rely on the extension or provision of incentives to shape the behaviour of the targeted state.<sup>86</sup> Engagement hence represents a strategic change in the instruments implemented towards a pariah state.

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<sup>82</sup> Wilde d'Estmael 1998; Hazelzet 2001.

<sup>83</sup> Baldwin 1999/2000: 80-107.

<sup>84</sup> Coker 1986; Lavin 1996; Dalacoura 2003.

<sup>85</sup> Hazelzet 2001: 20.

<sup>86</sup> Haas and O'Sullivan 2000: 2.

Engagement could take multifarious forms, which are enumerated below in order of magnitude:

- Second-track diplomacy (or Track Two), which is defined as diplomacy by non-state actors that may precede official diplomacy by a state;<sup>87</sup>
- Temporarily removing specific sanctions (e.g. lifting the visa ban on targeted persons);
- Increasing development aid, granting debt relief, or encouraging direct investments by private companies for instance via public insurance schemes or trade delegations;
- Engagement by mid-level diplomats (i.e. below political director level);
- High-level diplomatic engagement (i.e. political director, minister level, and above).<sup>88</sup>

Engagement reaches its climax when it takes place at a high diplomatic level (e.g. official meetings between heads of states or governments). High-level diplomatic engagement should be distinguished from engagement at a lower level, which can take unofficial forms in order to build trust and prepare high-level diplomacy. Such engagement was epitomised by the second-track 'Ping-Pong diplomacy' on 6-17 April 1971, when Beijing invited the American national table tennis team to the People's Republic of China (PRC). This invitation opened a window for engagement that ultimately made possible President Nixon's visit to China in 1972.

Other attempts at engagement, such as temporarily revoking sanctions, or a surge in assistance, are not necessarily accompanied by high-level diplomatic engagement. The latter has been proposed as a potentially more effective form of incentive, because of the generally hierarchical structure of authoritarian target

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<sup>87</sup> Ball *et al.* 2006: 174 – 188; Pasch 2008. Hybrid track-two missions may incorporate representatives of a state below the minister level (e.g. ambassador, political director, or lower level).

<sup>88</sup> The Council of the EU defined high-level visits as political director level and above (Council of the EU, 30 October 1998: *Decision 98/612/CFSP*).

regimes.<sup>89</sup> It is striking that the EU has made little use of incentives when dealing with Myanmar's SPDC.

Baldwin used the term 'positive sanctions' to refer to incentives.<sup>90</sup> Christopher Coker presented 'positive sanctions' as a conceptual underpinning to the strategy of 'constructive engagement' chartered by Nixon's administration towards apartheid South Africa.<sup>91</sup> Hadewych Hazelzet built upon Tanguy de Wilde d'Estmael's early work to define sanctions as 'carrots' and 'sticks':

Sanctions constitute an act by a nation-state or coalition of nation-states, called the sender, to induce political change in another nation-state, called the target, either by disrupting political and/or economic exchange, or by offering incentives or mixed strategies.<sup>92</sup>

The terminology of negative *versus* positive sanctions, however, has not been broadly adopted in the sanctions literature.<sup>93</sup> This thesis uses the more widespread terms of sanctions *versus* incentives. Sanctions refer to the withdrawal of relations and related benefits in the military, economic, diplomatic, and cultural sectors, whereas incentives refer to the award of benefits in the same sectors (at least by establishing relations).

### 2.3.2. Targeted Sanctions

When dealing with Myanmar and other pariah states, the EU generally promotes the application of targeted, or 'smart', sanctions, rather than indiscriminate economic restrictions.<sup>94</sup> As a consequence of the more frequent use of multilateral sanctions in the post-Cold War world order, members of the

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<sup>89</sup> Kramer 2009; Revel 2008.

<sup>90</sup> Baldwin 1985.

<sup>91</sup> Coker 1986: 29.

<sup>92</sup> Hazelzet 2001: 19; Drezner 1999: 2; Wilde d'Estmael 1998.

<sup>93</sup> Hufbauer *et al* 1990: 3, footnote 5.

<sup>94</sup> Council of the EU, 7 June 2004: *Basic Principles*: par. 6.

international community had launched reviews on sanctions to make them more efficient.<sup>95</sup> Targeted sanctions are meant to:

[...] focus their impact on leaders, political elites and segments of society believed responsible for objectionable behaviour, while reducing collateral damage to the general population and third countries.<sup>96</sup>

Targeted restrictions are typically distinguished between *personal measures*, which target specific persons or legal entities (i.e. black-list based sanctions regimes such as an asset freeze or visa ban), and *selective measures*, which impose an embargo on a circumscribed sector (e.g. oil, diamonds, timber, freezing of state assets or flight bans).<sup>97</sup> Proponents of targeted sanctions argue they are more effective than traditional economic sanctions, because they are more specific and inflict less unintended damage with possible humanitarian ramifications.<sup>98</sup> The EU adopted both personal and selective restrictions on Myanmar.

In addition to targeted sanctions, the EU follows an incremental approach. Typically, it initially adopts an arms embargo. This measure is usually accompanied by pressure circumscribed to the diplomatic arena. It is normally at a later stage that the EU would scale up negative measures, and eventually extend them to new policy areas. Hence, a student of EU sanctions policy could distinguish different levels of restrictions on a scale from diplomatic reprobation to all-out economic sanctions. The EU usually starts at the stage where no sanctions are levied before scaling them up to a phase of reprobation - e.g. diplomatic condemnation, suspension of development aid, or severing diplomatic ties. It then imposes *strategic sanctions*, such as an arms or oil embargo, which

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<sup>95</sup> Respectively the 1998 *Interlaken process* on targeted financial sanctions, the 2000 *Berlin-Bonn process* on arms embargoes and travel sanctions, and the 2002 *Stockholm process* on the implementation of targeted UN sanctions. These reviews were a consequence of Boutros Boutros Gali's *Agenda for Peace*. The Secretary General professed cautiousness vis-à-vis the adverse impact of 'blunt' sanctions (UN Secretary General 1995: par. 66-76. See also: UN Secretary General 1992; IASC and UNOCHA 2004; Brzoska 2001).

<sup>96</sup> Hufbauer and Oegg 2000: 3.

<sup>97</sup> Portela 2010: 8; Brzoska 2003: 522.

<sup>98</sup> IASC and UNOCHA 2004.

generally aim at limiting the targeted regime's capacity to carry out military operations. It may additionally wield *personal sanctions* by targeting individual members of the condemned government. At the highest level of intensity, the EU may finally impose *economic sanctions*. EU sanctions on Myanmar encompass all levels of sanctions.

Portela dubbed the EU's *modus vivendi* a 'double-track' approach to sanctions, which is also a general feature of EU policy towards Myanmar.<sup>99</sup> The EU repeatedly points to its readiness to enter into a dialogue with the targeted leadership. In general, the EU tends to enact penalties when attempts at dialogue and engagement with the targeted leadership have not produced the expected results.<sup>100</sup> The EU principally seeks to 'keep the channels for that dialogue [on human rights] open as far as possible'.<sup>101</sup> At least in theory, it attempts to craft measures that target those responsible for human rights violations, but spares the population enduring such abuses.

This distinction between smart and blanket sanctions is sometimes disproven by practice. Even targeted sanctions may yield adverse socio-economic impact on the population at large, as the case of Myanmar will show. Furthermore, the EU has increasingly used blanket economic sanctions since the late 2000s. This latter development was showcased with Côte d'Ivoire from December 2010 until April 2011, a period during which the EU completely suspended trade relations with Laurent Gbagbo's illegitimate government by imposing an embargo on the autonomous ports of Abidjan and San Pedro.<sup>102</sup> This embargo had adverse humanitarian consequences, such as halting the supply of medicines to local hospitals.<sup>103</sup>

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<sup>99</sup> Portela 2010: 31.

<sup>100</sup> Council of the EU: *Resolution of 28 November 1991*; *ibid.*: 3 October 2005: *Annual Report*: 36; Portela 2010: 31.

<sup>101</sup> European Commission: *Communication of 25 March 1991*: 6.

<sup>102</sup> Council of EU: *Regulation No. 25/2011 of 15 January 2011*.

<sup>103</sup> Interview 45.

### 2.3.3. Autonomous EU Sanctions

EU sanctions on Myanmar are independent from the UN. When the EU crafts its own measures in the absence of a UNSC Resolution, they are characterised as 'autonomous'<sup>104</sup> or 'independent'.<sup>105</sup> Contrasting UN with EU sanctions, Karel Kovanda, a political director of the External Relations Directorate of the European Commission, thus outlined the objectives of autonomous EU sanctions:

If necessary, the Council will impose autonomous EU sanctions in support of efforts to fight terrorism and the proliferation of weapons of mass destruction ... and ... to uphold respect for human rights, democracy, the rule of law and good governance.<sup>106</sup>

By all accounts, the EU defined the application of sanctions in pursuit of the CFSP objectives set out in Article 11 of the Treaty on European Union.

The EU wields the majority of its own sanctions regimes towards countries that are not targeted by UN sanctions (43 out of 68 cases, or 63.2 percent according to the statistics exhibited in Annex Four). Furthermore, the EU may adopt additional autonomous penalties in supplement to those set out in UNSC Resolutions (e.g. additional EU sanctions on Iran<sup>107</sup> or North Korea,<sup>108</sup> which encompass sanctions on individuals, national companies, or economic sectors that are not targeted by the original UN legislation).

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<sup>104</sup> Koutrakos 2001.

<sup>105</sup> Wessels 1988.

<sup>106</sup> Council of the European Union, 7 June 2004: *Basic Principles*. See also: House of Lords, 9 May 2007: *Report*, point 9.

<sup>107</sup> UNSC: *Resolution 1737 (2006)*; UNSC: *Resolution 1747 (2007)*; Council of the EU: *Common Position 2007/246/CFSP of 23 April 2007*; *ibid.*: *Regulation No. 423/2007 of 19 April 2007*; UNSC: *Resolution 1803 (2008)*; UNSC: *Resolution 1929 (2010)*; Council of the EU: *Decision 2010/413/CFSP of 26 July 2010*.

<sup>108</sup> UNSC: *Resolution 1718 (2006)*; Council of the EU: *Common Position 2006/795/CFSP of 20 November 2006*; *ibid.*: *Decision 2009/599/CFSP of 4 August 2009*; *ibid.*: *Decision 2010/800/CFSP of 22 December 2010*.



Multilateral sanctions are normally activated by a 'primary sender': a state that initiates the sanctions implemented by the organisation it belongs to.<sup>109</sup> In the case of the EU, such primary sender is often a member state that enjoys a common history with the targeted state, for instance a former colonial power.

#### **2.3.4. Non-statutory Sanctions**

It was mentioned that the EU adopted non-statutory sanctions on Myanmar, such as discouraging European trade, investment, or tourism. Statutory sanctions are formally enshrined in a text of law, which usually defines the target, the scope, and the length of the restriction. Nevertheless, punitive measures could be enforced without being formally enshrined in a text of law compelling EU member states to implement them. Non-statutory or informal EU sanctions are not legally binding; nonetheless, all EU member states may wield them with a tacit agreement. A political consensus among EU member states may bind together their national foreign policies, instead of official EU Law. Therefore, this thesis does not share Doxey's contention that multilateral restrictions are formalised by an official decision.<sup>110</sup>

Non-statutory restrictions may encompass the undeclared freezing of assistance donated to the target country. Hence, annual Official Development Assistance (ODA) per capita for comparatively poor Laos, Cambodia and Myanmar amounted in 2008 to US\$60, \$30, and \$6 respectively.<sup>111</sup> Such non-statutory restrictions can yield more harm on the country than statutory penalties.

In the diplomatic arena, representatives of the EU and its member states may shun contact with certain states. For example, high-level EU officials have long refrained from meeting with Chairman Kim Jong-Il, although the EU did not

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<sup>109</sup> Drezner 2000: 75; Martin 1993: 408; Hufbauer *et al.* 1985/1990.

<sup>110</sup> Doxey 1996: 9.

<sup>111</sup> Petrie 2008: 12. See also: UNDP *Report 2007/8*, Table 18; IRIN 2009; Weiss 2009.

explicitly impose diplomatic restrictions on the DPRK until 2006.<sup>112</sup> Moreover, public statements can isolate a country by damaging its reputation. Tony Blair ostentatiously declared: 'I will never set foot in this country [Myanmar]', setting a principled example for British tourists and companies who would plan to visit or do business with Myanmar.<sup>113</sup>

Non-statutory penalties and incentives also refer to the institutionalised use of positive and negative conditionality in EU external relations. Conditionality saw its expansion with the explicit link between the award of EU assistance and the respect of human rights and democratic standards, following the landmark 1991 Luxembourg Declaration by the European Council:

Positive conditionality is defined as the promise of benefits to a state in exchange for the fulfilment of certain conditions, while negative conditionality involves reducing, suspending or terminating those benefits if the state in question violates the conditions.<sup>114</sup>

Non-statutory sanctions can be identified by delivering proof that a specific penalty towards a third state is enforced by EU states and European institutions, although this restrictive measure is not enshrined in a common position or other legally binding texts of EU law. The use of secondary sources, including interviews, may buttress such claims. Table 1 distinguishes between statutory and non-statutory sanctions.

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<sup>112</sup> Council of the EU: *Common Position 2006/795/CFSP of 20 November 2006*; UNSC: *Resolution 1718 (2006)*.

<sup>113</sup> Interview 6.

<sup>114</sup> Portela 2010: 26; K. Smith 1997.

**Table 1: Statutory and Non-statutory Sanctions Adopted by the EU**

<b>Non-statutory sanctions</b>	<b>Statutory sanctions</b>
<ul style="list-style-type: none"> <li>- Diplomatic reprobation</li> <li>- Shun high-level diplomatic contact</li> <li>- Cancel multilateral meetings</li> <li>- Deferment of signatures needed for the implementation of legal Agreements</li> <li>- Modification of programmes</li> <li>- Postponement of new projects</li> <li>- Suspension of bilateral assistance programmes</li> <li>- Denial of support by International Financial Institutions</li> <li>- Limiting the mandate of international organisations (e.g. UN agencies) operating in the target country</li> <li>- Reduction of cultural, scientific, and technical cooperation</li> <li>- Discouragement of trade, investment and tourism</li> <li>- Political pressures on multinational companies</li> <li>- Banking restrictions not mandated by law</li> </ul>	<ul style="list-style-type: none"> <li>- Visa ban</li> <li>- Closing a Commission's delegation or member states' embassies</li> <li>- Suspension or cancellation of legal Agreements</li> <li>- Cancellation of assistance programmes</li> <li>- Restrictions on trade in cultural goods or activities</li> <li>- Assets freeze</li> <li>- Arms embargo (including enrichment related technologies)</li> <li>- Embargo on planes coming from, going to, or flying over the targeted state</li> <li>- Suspension of GSP or most-favourable-nation treatment</li> <li>- Ban on oil or gas sector (ban on importation, delivery of material geared for refining, transportation, stocking)</li> <li>- Import ban on diamonds (e.g. Kimberley process)</li> <li>- Ban on imports of luxury goods, precious and semi-precious stones, and timber</li> <li>- Ban on investments or on entering financial arrangements with state-owned enterprises</li> </ul>

Source: the author.

### 2.3.5. Objectives of Sanctions

Assessing the effectiveness of EU sanctions poses methodological challenges, because sanctions may entail multi-dimensional objectives. James Barber drew a widely-cited distinction between primary, secondary, and tertiary objectives of sanctions, which refer to three different audiences.<sup>115</sup> Primary

<sup>115</sup> Barber 1979: 370-383; Barber and Spicer 1979: 387; K. Elliott 1996: 52; Lindsay 1986; Economides and Wilson 2001: 145-146.

objectives are concerned with changing the behaviour of the targeted state either at the domestic or international level. Spyros Economides and Peter Wilson pointed out that primary objectives tend to match the ‘formal, public, “official” objectives’.<sup>116</sup>

Secondary objectives relate to the sender. A government may need to convince public opinion that ‘something is being done’. Sanctions may not alter the behaviour of the targeted state effectively. They show the sensitivity of the sender government to the predicament of foreign people, whose rights are encroached upon by a third state. Secondary objectives possess a highly symbolic function.<sup>117</sup>

Tertiary objectives refer to the broader international sphere: they are neither related to the targeted state nor to the initiator. At this third level, sanctions signal to the international community that violations of the international order, or of an international code of conduct, will not be tolerated without tough action being taken against the offending state. Sanctions are ‘conformity-defending instruments’.<sup>118</sup> Such signals may be intended to deter other potentially revisionist states from emulating undesirable acts. Besides, they could be directed at other important powers, in order to garner prestige and influence others ‘in the context of executing and advancing respective grand strategies.’<sup>119</sup>

Doxey hence identified eight goals of sanctions, which are related to these three different audiences for sanctions. Deterrence, compliance, punishment, destabilisation, limitation of conflict are ‘exclusively target-related’ objectives. Solidarity ‘relates to allies and partners’. ‘[S]ymbolism and signalling can be directed at the target, domestic audiences and the world at large’.<sup>120</sup> She concluded:

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<sup>116</sup> Economides and Wilson 2001: 145.

<sup>117</sup> *Ibid.*: 146.

<sup>118</sup> Doxey 1972.

<sup>119</sup> B. Taylor 2009: 10.

<sup>120</sup> Symbolism and targeting are in quotation marks in the original text (Doxey 1996: 55).

[...] the official target is not necessarily the only, or principal receptor: sanctions may serve as signals to the domestic constituencies of sender governments, as well as to third states.<sup>121</sup>

This thesis addresses the challenge of measuring sanctions effectiveness by assessing whether the target complied with the demands expressed when sanctions were imposed. If this primary objective is not achieved, other functions of sanctions can be analysed to explore alternative explanations for the making of EU foreign policy.

### 2.3.6. Pariah States

This thesis embraces a broad definition of sanctions beyond their statutory use in the economic arena. Ostracism implies that the target could be assimilated with a pariah state. A pariah state is a generic synonym for a target of economic and diplomatic sanctions imposed by a group of other states for an extended period of time, five years or more. Myanmar has been characterised as a pariah by several scholars, because of its isolation by the international community to condemn its egregious treatment of human rights.<sup>122</sup>

The EU does not explicitly use the term ‘pariah’ state in its common foreign policy statements. However, it seems legitimate to apply this concept even though the EU does not officially mention it. Not explicitly using this denomination does not imply that the EU does not treat Myanmar as a pariah.

The appellation ‘international pariah’ usually refers to a member of the United Nations with whom the international community restricts relations, due to the adoption of multilateral sanctions on its government by the UNSC.<sup>123</sup> The

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<sup>121</sup> Doxey 1996: 12.

<sup>122</sup> Babson 2001: 83-95; Kinley 2006; Camroux and Egretreau 2010: 277; Alden 2010; Horsey 2011: 3 and 196-199. Myanmar was also characterised as a pariah state by international and Myanmar focused media (BBC News 2010; Aung Zaw, 31 March 2011).

<sup>123</sup> Niblock 2003. Nonetheless, this opprobrium is not universal *per se*. Other important countries may maintain benign relations with a pariah state. Otherwise, a pariah could effectively lose its *de jure* status as a sovereign state and its seat in the UN, as Taiwan experienced to its cost in 1971 (after it was expelled from the United Nations by UN General Assembly *Resolution 2758 of 25*

concept has been used in the FPA literature.<sup>124</sup> When analysing Zimbabwe and Myanmar, which are not targeted by UN sanctions, Chris Alden used the phrase 'Western-designated pariah state'.<sup>125</sup>

This dissertation extends this designation to the context of EU foreign policy. The EU is an international organisation that applies sanctions on other states. Composed of twenty-seven member states and usually followed in its foreign policy by countries aligning themselves with its decisions (e.g. candidate countries to EU membership, members of the European Economic Area), the EU constitutes a cohesive block that has the power to ostracise third-party states. From an EU perspective, pariah states are typically ruled by an authoritarian regime that flouts international norms recognised as valid by the EU, such as human rights and democratic principles.

The designation 'pariah' underlines that the EU severs relations with the target. It does not imply, however, that other states do not infringe human rights. It is commonplace that the EU does not treat all authoritarian regimes and human rights offenders with the same consistency.<sup>126</sup>

Hence, the intensity of sanctions applied on different pariahs is not necessarily commensurate with the magnitude of their violation of international norms. The case of the Republic of the Sudan illustrates a lack of consistency in EU sanctions regimes, because EU sanctions did not proportionately reflect the grave intensity of human rights violations taking place in this country. The EU adopted only an arms embargo,<sup>127</sup> a flight ban, an asset freeze and a visa ban on representatives of the government in Khartoum.<sup>128</sup> By contrast, the European Parliament had decried the situation as 'tantamount to genocide'<sup>129</sup> and the

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*October 1971*). Hence, some states are also ostracised by some groups of states but not by the EU (e.g. Israel by certain Muslim countries in the Middle East and Southeast Asia).

<sup>124</sup> Hill 2003: 184.

<sup>125</sup> Alden 2010.

<sup>126</sup> K. Smith 2001.

<sup>127</sup> Council of the EU: *Common Position 94/165/CFSP of 15 March 1994*.

<sup>128</sup> UNSC: *Resolution 1054 (1996)*, UNSC: *Resolution 1070 (1996)*; Council of the EU: *Common Position 2005/411/CFSP of 30 May 2005*.

International Criminal Court (ICC) indicted President Omar al-Bashir. Such discrepancies evince some inconsistencies in EU foreign policy.

It is obvious that not all targets of EU sanctions are treated as pariah states. European governments placed restrictions on China following the Tian'anmen crackdown (i.e., the suspension of military contracts and arms sales, the downgrading of diplomatic relations by withholding all ministerial-level visits, the freezing of all government-guaranteed loans and visa extensions offered to some 10,000 Chinese students registered in European universities).<sup>130</sup> After the People's Liberation Army (PLA) lifted martial law on 10 January 1990, European restrictions were removed with the exception of the arms embargo.<sup>131</sup> It is evident that, with a total two-way trade amounting €428.465 billion in 2011, a share of 17.3 percent in the EU's total imports and a vivid diplomatic dialogue in bilateral and multilateral settings, China is not treated by the EU as a pariah state but as a major political and economic partner.<sup>132</sup>

To conclude, a pariah state is the target of economic and diplomatic restrictions. The EU starts to treat a third-party state as a pariah when its policies are systematically condemned in EU statements. Consequently, the EU allocates a limited amount of economic or development assistance to this country, and may implement statutory sanctions against it. European heads of states and governments would normally not meet with their counterparts from pariah states, although contacts at a lower diplomatic level may take place. This severing of diplomatic relations spills over into different policy areas (military, political, economic, and cultural), hence impeding most interactions between EU member states and the pariah. This denial of cooperation can be named ostracism, which is a deliberate attempt to isolate a government by denying it the benefits of cooperation. This thesis does not use the notions of rogue state, state of concern, or undemocratic outlaw state, which other studies have more narrowly

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<sup>129</sup> EP: *Resolution of 16 September 2004*.

<sup>130</sup> Council of the EU: *Declaration of 27 June 1989*.

<sup>131</sup> Foot 2008: 313.

<sup>132</sup> Eurostat 2012.

defined.<sup>133</sup> The scholarship sometimes uses the term human rights rogue state as a synonym for pariah state.<sup>134</sup>

### 3. Contributions of the Thesis

#### 3.1. EU Foreign Policy towards Myanmar

In essence, this thesis makes an empirical contribution to the literature on EU foreign policy towards Myanmar. Almost twenty studies and articles have been devoted to this topic.<sup>135</sup> Nevertheless, the dynamics of EU foreign policy-making remain to a large extent unexplored. Country specialists stressed that general knowledge on Myanmar and its relations with the EU is often characterised by one-sided, if not empirically erroneous, statements.<sup>136</sup> Academics and students have at times even ventured into political activism by expressing policy recommendations.<sup>137</sup>

This thesis makes a distinct contribution from the one published in 2009 by Dobromir Hristov, which did not explore the connection between policy effectiveness and EU policy-making. The EU-Myanmar literature has almost exclusively focused on the issue of the lack of effectiveness of EU policy without investigating how policy feedbacks may have influenced EU policy-making.<sup>138</sup>

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<sup>133</sup> Harkavy 1981; Behrendt 1997; Niblock 2001; O'Reily 2007. On undemocratic outlaw states, see: Simpson 2004: 281-282. On rogue states, see: Litwak 2000.

<sup>134</sup> Caprioli and Trumbore 2006: 131.

<sup>135</sup> Portela 2011a; 2010; Frittin and Swanström 2010a; 2010b; Kramer 2009; Hristov 2009; Egreteau 2009; Revel 2008; Khaliq 2008; Andréasson 2008; R. Taylor and Pedersen 2005; K. Smith 2007: 155-171; ICG April 2004; Haacke 2006: Chapter IV; Wallensteen *et al* 2004; Soe Myint Aung 2003; Tamen 2003; Artuso 2001.

<sup>136</sup> Tonkin, 28 November 2011; Tonkin, 22 April 2010; Zöllner 2008.

<sup>137</sup> For policy recommendations, see: Frittin and Swanström 2010b; Hristov 2009; Wallensteen *et al* 2004; R. Taylor and Pedersen 2005; Kramer 2009; ICG October 2008; ICG January 2008; ICG September 2004; ICG December 2006; ICG September 2004; ICG April 2004.

<sup>138</sup> Portela 2011a; Frittin and Swanström 2010a; Portela 2010; Hristov 2009; Egreteau 2009; Kramer 2009; Revel 2008; K. Smith 2007: 155-171; R. Taylor and Pedersen 2005; ICG April 2004; Wallensteen *et al* 2004.



Urfan Khaliq confined his contribution to a legal analysis. Current compendia of studies have neglected the UK's influence on EU foreign policy.<sup>139</sup>

This thesis therefore brings back the focus on the policy-making process in the EU. It provides with a theoretically-informed explanation of why the EU scaled up sanctions on military-ruled Myanmar. It examines strengths and weaknesses of neo-realism, sanctions theories, liberal intergovernmentalism, and social constructivism in this case.

### **3.2. The Making of EU Sanctions**

The Myanmar case study sheds new insights into the making of EU sanctions. Michael E. Smith and Wilde d'Estamel respectively mentioned that the achievement of political objectives via EU sanctions represents a paradox.<sup>140</sup> Targeting political objectives via economic penalties may run counter to the promotion of national commercial interests. Rationalist explanations of EU foreign policy are hence challenged by the imposition of a wide gamut of sanctions over an extended period of time, as in the case of Myanmar. Previous scholarship has not resolved the sanctions paradox in an EU context, or explained why EU member states pursued political objectives by restraining economic relations with a third state, despite potentially divergent national interests between EU member states, and despite the unlikely ability of sanctions to quickly achieve their objectives in a peculiar target like Myanmar.<sup>141</sup>

Carla Portela underscored the dearth of studies on EU sanctions, despite the mushrooming literature on the EU as an international actor.<sup>142</sup> This scarce attention is all the more noteworthy, because the emergence of distinct EU

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<sup>139</sup> Email exchange 1. See also: Hristov 2009; Kramer 2009; Revel 2008; Khaliq 2008; Stewart 2004; Soe Myint Aung 2003; Tamen 2002/2003; Artuso 2001.

<sup>140</sup> M. Smith 2004b: 97; Wilde d'Estmael 1998.

<sup>141</sup> Portela 2007.

<sup>142</sup> Portela 2010: 1.

sanctions regimes has been noticed at least since the late 1980s.<sup>143</sup> (The EU applied its first autonomous penalties on the Soviet Union in 1982).<sup>144</sup>

The foreign policy literature has mainly focused on the US and the UN as instigators of sanctions, but cast aside other actors, such as the EU.<sup>145</sup> The early literature furnished an empirical analysis of sanctions hitherto wielded by the EU without suggesting a broader explanatory framework.<sup>146</sup> Hazelzet compared EU with US sanctions by focusing on the reasons leading to their imposition.<sup>147</sup> Portela assessed the impact of EU sanctions.<sup>148</sup> Jones briefly examined their autonomous imposition through the EU rather than other frameworks.<sup>149</sup> Single case studies essentially focus on sanctions that had been decided before the Lisbon Treaty reforms.<sup>150</sup>

Only Portela examined the sanctions paradox in the context of EU foreign policy.<sup>151</sup> Yet, she concluded that EU sanctions are effective policy instruments generally.<sup>152</sup> Her approach generally casts aside the very conundrum of imposing ostensibly unavailing penalties. It is unknown whether EU policy-makers take

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<sup>143</sup> Holland 1988; Ginsberg 1989; Hill 1996b; Wilde d'Estmael 1998.

<sup>144</sup> Kreutz 2005: 22. The first autonomous European sanctions were mandated against the Soviet Union and Poland in January 1982 to condemn the invasion of Poland and imposition of martial law; and against Argentina in April 1982 during the Falklands/Malvinas war. During the Falklands controversy, the European Community deterred Ireland from defecting from the arms embargo by threatening to eliminate European Community benefits (Jones 2007: 103-4; Kreutz 2005: 22ff.).

<sup>145</sup> B. Taylor 2009: 107-8.

<sup>146</sup> Wilde d'Estmael 1998; Anthony 2002; Eriksson 2005; Kreutz 2005.

<sup>147</sup> Hazelzet 2001.

<sup>148</sup> Portela 2010.

<sup>149</sup> S. Jones 2007: Chapter IV.

<sup>150</sup> See, on the Yugoslav sanctions episode: Wilde d'Estmael 2004; Buchet 2003; De Vries 2002; on the South African sanctions episode: Holland 1988; 1994; 1995a; on the European arms embargo on China: Decerton 2009; Remond 2008; Casarini 2006: 221-231; on the Falklands episode: Hill 1996a; Martin 1992b.

<sup>151</sup> Portela 2007a; 2010.

<sup>152</sup> Portela 2010.

policy feedbacks into account when deciding a foreign policy; and if so, how, and to what extent.<sup>153</sup>

No study has ever related an assessment of sanctions effectiveness to the process of EU policy-making. Students of International Relations do not know whether mainstream theories can explain the making of EU foreign policy towards pariah states. Studies of EU sanctions do not examine how a sanctions regime affects EU policy-making in other policy areas, thus impinging on the entire policy towards the targeted state.

### 3.3. Foreign Policy-Making towards Pariah States

This thesis finally contributes to the literature on extended sanctions regimes, and, more particularly, on foreign policy-making towards pariah states, which are the targets of both economic and diplomatic restrictions over an extended period of time. Whether examining international organisations or sovereign states, the scholarship has paid little attention to the process of deciding sanctions *after* the first restrictions have already been imposed.<sup>154</sup> Analyses of the sanctions paradox tend to focus on explaining how important milestones have been reached in the making of a sanctions policy, like the decision to impose a stringent penalty. Fewer studies cover the entire history of the policy-making process. The scholarship offers few comprehensive explanations for why sanctions are scaled up, maintained, or scaled down. Dorussen and Jongryn, who investigated why American policy-makers do not repeal ineffective penalties, concisely touch upon this conundrum.<sup>155</sup> However, their article mainly examines rent-seeking behaviours of policy-makers, without looking at competing hypothetical explanations of sanctions decision-making.<sup>156</sup>

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<sup>153</sup> Ginsberg 2001: 277. See also: K. Smith 2009: 329-353.

<sup>154</sup> B. Taylor 2009: 109.

<sup>155</sup> Dorussen and Jongryn 2001: 395-426.

<sup>156</sup> *Ibid.*: 395ff.

In conclusion, it can hardly be overemphasised that this thesis does not attempt to contribute to the scholarly debate whether sanctions are an effective instrument of foreign policy.<sup>157</sup> Portela already found that EU sanctions may work – although the debate remains open to new contributions.<sup>158</sup> This thesis explicitly focuses on a case study where EU sanctions demonstrated limited effectiveness in quickly altering the target's behaviour. The methodological choice not to cover EU foreign policy in the post-SPDC era owes to the unavoidable limitations of an analysis of ongoing events. This approach does not attempt, in Pape's words, to 'stack the deck against sanctions'.<sup>159</sup> Nor does this thesis represent a normative attempt to defend or condemn the EU's sanctions policy in general or towards Myanmar more specifically. EU policy-makers have their own grounds for increasing sanctions despite unlikely effectiveness – motivations that this study seeks to elucidate, not to confront.

## 4. Conclusions

### 4.1. Summary

To conclude, this study of EU foreign policy towards military-ruled Myanmar seeks to answer the following questions:

- What was the effectiveness of EU sanctions policy in attaining its primary objectives?
- What were the objectives of EU sanctions (and how did they evolve)?
- Who were the key actors making EU policy?
- To which domestic developments in Myanmar did the EU react, why, and how?
- What was the relevance of feedbacks in the policy-making process?

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<sup>157</sup> Galtung 1967: 409; Wallensteen 1968: 262; Adler-Karlsson 1968: 9; Doxey 1972: 547; Hufbauer *et al.* 1985/1990; Baldwin 1985; Tsebelis 1990; Pape 1997; Weiss *et al.* 1997; Amini 1997; Cortright and Lopez 2000; Askari *et al.* 2003.

<sup>158</sup> Portela 2010.

<sup>159</sup> Pape 1997: 70. See also: Galtung 1967: 378-416.

- How do theories of International Relations elucidate this empirical puzzle?
- What could be learned from this puzzle about EU foreign policy-making in general?

## **4.2. Thesis Outline**

The thesis is divided into three main parts: a theoretical explanation of concepts and theories; an in-depth case study of EU foreign policy towards Myanmar; and a conclusion to the single case study. This opening chapter has presented the research agenda, and defined core concepts germane to the research puzzle.

Chapter Two formulates theoretical answers to the research question. It first examines how the EU decides its common foreign policy, and sanctions in particular. In a second step, key concepts defined in the introductory chapter are connected to mainstream theories of International Relations. The section reviews explanations derived from neo-realism, conceptual approaches to sanctions, liberal intergovernmentalism, and social constructivism. Four competing hypotheses are deduced from these theories, which shall be tested out in the empirical investigation.

The core of the thesis – the case study of EU foreign policy towards Myanmar – is divided into four chapters. Chapter Three delivers a contextual introduction to EU foreign policy towards Myanmar. This contextual analysis answers key background questions that should be clarified before conducting the chronological investigation of EU foreign policy towards Myanmar. The three next chapters carry out a chronological investigation punctuated around ASSK's repeated releases from house arrest and additional arrests in 1995, 2003, and 2010 respectively.

Chapter Four examines the chronological evolution of EU policy towards Myanmar from its Cold War premises until the EU's reaction to ASSK's first release from house arrest in 1995. This chapter first investigates how the end of the Cold War affected the EC's relations with Myanmar. It then analyses the EU's

reaction to the domestic events unfolding in Myanmar in 1988 and 1990 until 1995.

Chapter Five covers the period from the adoption of Common Position 96/635/CFSP in 1996 until ASSK's third arrest in 2003. The Common Position 96/635/CFSP fostered a European consensus that would lay the basis for the making of future EU foreign policy. The chapter subsequently examines how this consensus was later deepened and redefined, leading to further restrictions in specific policy areas. ASSK's renewed release from house arrest in 2002 heralded a historical climax in a policy of relative conciliation by the SPDC with Western demands. This period was steeply brought to a close after ASSK was put under house arrest for the third time, barely a year after her second release.

Chapter Six covers the period from 2004 until 2010. In 2004, Common Position 2004/730/CFSP signalled a landmark revision of EU foreign policy towards Myanmar, which allowed for an increase in assistance. The EU thus chartered a 'double track' approach, since it used incentives as well as tougher restrictions in its interactions with Myanmar. The European consensus was redefined as a result. Nonetheless, limits appeared in specific policy areas closer to the sovereignty of EU member states. The period elapsed with the holding of general elections in October 2010 and ASSK's third release from house arrest in November. The ensuing dissolution of the SPDC on 30 March 2011 marks a new and ongoing era in EU-Myanmar relations, which is not analysed in this dissertation.

Chapter Seven concludes this thesis in four steps. First, it reviews the main arguments put forward in the six preceding chapters. Second, it expounds the core empirical findings of the thesis that more generally contribute to the literature on EU foreign policy-making. The third section draws theoretical conclusions by analysing the four hypotheses tested throughout the empirical study. Finally, the ultimate section assesses how this thesis effectively contributed to the scholarship. It also examines new research potential to stem from this study.

Annex 1 draws a chronology of EU and US foreign policy towards Myanmar from 1988 until 30 March 2011. Annex 2 exhibits a dataset of 68 sanctions regimes adopted by the EU from 1956 until 2010. Annex 3 presents the average duration of EU sanctions regimes. Annex 4 indicates the frequency of autonomous EU sanctions in relation to those imposed in a UN framework. Annex 5 identifies EU sanctions imposed on the same targets as the US. Annex 6 shows the frequency of EU sanctions in the context of each major EU Treaty. Annex 7 outlines sanctions imposed on neighbours of EU countries, former colonies of the largest EU member states, former colonies of the other EU member states, and nonmembership in these three categories.

## **Chapter II**

### **Explaining EU Foreign Policy-making: The Special Case of EU Sanctions Regimes**

After having defined the core concepts used in this thesis, the present chapter shall now explain why the EU would possibly scale up sanctions on a pariah state. This chapter has two objectives. First, it lays out how the EU decides its sanctions policy. Second, it develops a theoretical framework for competitive theory testing.

Theories offer diverging answers to the research question: why did the EU scale up sanctions on military-ruled Myanmar? Four hypotheses are deduced from different schools of thought on the making of EU sanctions policy. These hypotheses shall be empirically tested during the four subsequent chapters devoted to the EU-Myanmar case study. Three mainstream theories of EU foreign policy (i.e., neo-realism, liberal intergovernmentalism, and social constructivism) and a generic approach to sanctions policies are outlined here to explain the making of sanctions by the EU. The sanctions approach produces the compliance hypothesis; neo-realism the bandwagoning hypothesis; liberal intergovernmentalism the large member states hypothesis; and social constructivism the consensus hypothesis. Beside their apparent ability to explain the conundrum of EU foreign policy towards a pariah state like Myanmar, these theoretical approaches have been picked out because of their prevalence in the discipline of International Relations and the field of EU foreign policy in particular. The theoretical framework developed in this chapter could, therefore, be tentatively applied to the making of EU foreign policy towards other pariah states, or states targeted by both economic and diplomatic sanctions.



This chapter is divided into three sections. The first section outlines how EU foreign policy is made in the specific context of sanctions regimes. It defines EU sanctions policy, and examines who are the actors deciding EU sanctions. The ensuing section is dedicated to theories that could explain why the EU would scale up sanctions on pariah states in general, in order to formulate hypotheses that can be tested in the EU-Myanmar case study more specifically. Finally, the conclusion highlights core differences between the competing theoretical explanations that shall be assessed in the empirical part of this thesis.

## **1. Deciding Sanctions in EU Foreign Policy**

### **1.1. EU Sanctions Policy**

EU member states have laid out a legal framework allowing the imposition of sanctions since the 1957 Treaty Establishing the European Economic Community (Treaty of Rome).<sup>1</sup> This basis has been incrementally expanded ever since, following the enhanced institutionalisation of European Political Cooperation (EPC) under the 1987 Single European Act;<sup>2</sup> the creation of a Common Foreign and Security Policy (CFSP) under the 1992 Maastricht Treaty; the 1997 Amsterdam Treaty, which deepened EU foreign policy cooperation; and the 2007 Lisbon Treaty, which abolished the legal separation between Community and CFSP pillars in EU foreign policy.

With the entry into force of the Maastricht Treaty on 1 November 1993, restrictive measures have been usually divided between those falling under the Community and CFSP framework.<sup>3</sup> Portela delineated three modalities to decide restrictive measures from 1993 until the ratification of the Lisbon Treaty in 2009. First, sanctions can be decided and implemented by the Community. They encompass the withdrawal of Generalised Systems of Preference (GSP)

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<sup>1</sup> Rome Treaty, Art. 60 and Art. 301; Anthony 2002.

<sup>2</sup> Single European Act, Art. 30.

<sup>3</sup> Maastricht Treaty, Art. 113, renumbered Art. 133 in Amsterdam Treaty; Maastricht Treaty, Art. 228(a), renumbered 301 in Amsterdam Treaty.

benefits, the interruption of financial and technical assistance, development aid cut-offs, suspension of trade and cooperation agreements under the Art. 300(2) EC, postponements of new projects, deferral of the signature on decisions to implement cooperation, and change of contents or channels of cooperation partners.<sup>4</sup>

Community sanctions are usually decided by qualified majority voting (QMV) by the Council after a proposal by the European Commission.<sup>5</sup> However, the Council acts unanimously when it is deciding whether to suspend trade and cooperation agreements.<sup>6</sup> For measures falling under the Cotonou Convention, it decides by QMV for partial suspensions and by unanimity for full suspension. Some sanctions may be decided by the European Commission (without Council involvement). For instance, a letter from the Commission suspended aid to Equatorial Guinea in 1992 without formal approval by the Council.<sup>7</sup> The European Parliament may delay the ratification of cooperation and other agreements. It blocked a new 5-year aid package to Syria between 1992 and 1993 owing to human rights concerns.<sup>8</sup> Consequently, this first category comprises statutory as well as informal restrictions.

Second, sanctions may be agreed by the CFSP and implemented by the Community. Such measures typically encompass: trade embargoes (e.g. ban on imports of certain products and commodities), financial sanctions, and flight bans. Their imposition follows a two stage procedure. The first phase consists of a CFSP agreement decided in the Council by a unanimity vote, resulting in a legal act (a Common Position or a Joint Action) based on Art. 15 TEU. The second phase ensues when a Community Regulation is adopted to give effect to

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<sup>4</sup> Portela 2010: 27.

<sup>5</sup> *Consolidated Version of the Treaty Establishing the European Community*, 2006 Official Journal C 321 E/37 (hereinafter EC Treaty), Art. 301 and 60 (3); Eriksson 2005: 109.

<sup>6</sup> EC Treaty, Art. 300 (2).

<sup>7</sup> Hazelzet 2001: 71; Portela 2010: 27.

<sup>8</sup> Hazelzet 2001.

the CFSP act. For trade embargoes and financial sanctions, the Council decides the Community Regulation by QMV on the basis of a Commission proposal.<sup>9</sup>

Alternatively, sanctions may be agreed under the CFSP framework and implemented by the member states through national legislation. These cases include arms embargoes, visa bans, diplomatic and cultural sanctions. Their imposition is decided by unanimity vote in the Council.<sup>10</sup> These measures may be formal as well as non-statutory: the EU has imposed an arms embargo on China since 1989 on the simple basis of a Council Declaration.<sup>11</sup> Although a Declaration does not carry the legal weight of a Common Position, it did not hinder the EU from maintaining this embargo for over two decades.

Until the entry into force of the Lisbon Treaty, the unanimity requirement could make the repeal of sanctions as cumbersome as their imposition. Hence, due to the veto of the UK and the Netherlands, the EU flight ban and oil embargo on the Federal Republic of Yugoslavia (FRY) were maintained until February and October 2000 respectively, despite internal pressure to rescind them and although the UN had gradually lifted these restrictions between 1994 and 1996.<sup>12</sup> In the case of the arms embargo on Indonesia, EU sanctions automatically expired on 19 January 2000 despite continuing strife in East Timor. The regulation stipulated that unanimity among EU member states was necessary to extend the measures for another period, and Portugal could not secure unanimity before the Decision's expiry date.<sup>13</sup> This constraining decision-making mechanism underpins the assumption that divergences among member states may hinder possible changes to a multilateral sanctions regime. The Lisbon Treaty, ratified on 1 December 2009, moved the decision of sanctions towards a single-step procedure. The Council acts by a qualified majority on a joint

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<sup>9</sup> EC Treaty, Art. 301 and Art. 60 (3).

<sup>10</sup> Portela 2010: 27-30; S. Jones 2007: 115-6.

<sup>11</sup> European Council: *Declaration of 27 June 1989*.

<sup>12</sup> Hazelzet 2001: 100.

<sup>13</sup> *Ibid.*

proposal from the High Representative and the Commission. It informs the European Parliament thereof.<sup>14</sup>

Its institutional development has therefore enabled the EU to streamline its sanctions policy. Treaties have strengthened the legal basis for the adoption of sanctions. While still occurring, the imposition of non-statutory sanctions has been less frequent since the Maastricht Treaty entered into force, and even less so with the Lisbon Treaty. The latter has simplified decision-making procedures.

## **1.2. Actors Making EU Sanctions Policy**

After having outlined the evolution of EU sanctions policy, the following section identifies the actors who are involved in decision-making. Decisions are taken by the EU member states within the Council. Three other actors can influence their decisions: the European Commission, the European Parliament, and lobby groups.<sup>15</sup>

### **1.2.1. The Council**

The European Council constitutes the political apex of EU foreign policy. It is chaired by the President of the European Council and made up of heads of states and governments of the member states, the President of the European Commission, and the High Representative.<sup>16</sup> It defines the broad directions of EU foreign policy and may take action in cases of significant crises.<sup>17</sup>

Discussions of political technicalities and decisions on individual matters rarely take place therein. They are prepared beforehand at lower hierarchical levels.<sup>18</sup>

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<sup>14</sup> *Consolidated Version of the Treaty on the Functioning of the European Union*, 2010 OJ C 83/144 (hereinafter TFEU), Art. 215. See also: *Consolidated Version of the Treaty on European Union*, 2006 OJ C 321 E/5 (hereinafter TEU), Title V, Chapter 2.

<sup>15</sup> Bicchi 2002: 4.

<sup>16</sup> Keukeleire and MacNaughtan 2008: 68.

<sup>17</sup> TEU, Art. 14; TEU, Art. 13.

<sup>18</sup> Peterson 1995: 69-93.

Nonetheless, preparation by lower administrative bodies does not exclude high-level involvement. Ministers who have a vested interest in repealing or tightening up sanctions towards a third country may convey policy guidelines to their national representatives sitting in the Committee of Permanent Representatives of the EU (COREPER) or other bodies.

To solve disagreements among member states, the Council may seize specific moot points. The regular discussions on the problem of apartheid in South Africa in the mid-eighties and in 1993 epitomise the European Council's role in the development of a common foreign policy towards a pariah state.<sup>19</sup> Council involvement does not necessarily imply that a common policy will ensue, as illustrated by the failure to find a common stance on the South African issue at the June 1986 Hague summit.<sup>20</sup>

Secondly, the Foreign Affairs Council (FAC) is the main decision-making body. It is permanently chaired by the High Representative/Vice President of the Commission (HRVP) and convenes the ministers of the member states responsible for foreign affairs, defence, and development. It is responsible for voting the EU's Decisions under the CFSP. The FAC meets at least once a month, bringing together the ministers of foreign affairs. Before the entry into force of the Lisbon Treaty, it was called the General Affairs and External Relations Council (GAERC). It gathered the relevant ministers, the High Representative, and a member of the European Commission.<sup>21</sup>

EU foreign policy decisions are thoroughly prepared by subsidiary actors: the Committee of Permanent Representatives of the EU (COREPER), the Political Security Committee (PSC), the working groups and the entities of the Council Secretariat. COREPER II is the most senior preparatory body of the Council. It is

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<sup>19</sup> Holland 1992a: 11; 1992b.

<sup>20</sup> Nuttall 1992.

<sup>21</sup> Keukeleire and MacNaughtan 2008: 71; Peterson and Gomez 2001: 53-74.

composed of the member states permanent representatives to the EU at ambassador level and a representative from the Commission.<sup>22</sup>

The Political and Security Committee (PSC) handles the day-to-day running of external relations. With the enforcement of the Lisbon Treaty, it is permanently chaired by the EU External Action Service (EEAS) and composed of national representatives at the ambassador level from the member states missions to the EU, plus a representative of the Commission.<sup>23</sup> The ‘geographical’ and ‘thematic’ working groups, such as the ‘sanctions working group’, are staffed by experts from national capitals and from the permanent missions in Brussels and a Commission representative. Most working groups are chaired by the EEAS.

Before the Lisbon Treaty, the increased workload of national representatives induced an enhanced role for the Council’s ‘common actors’: the Presidency, the High Representative, and the Directorate General E (DG E).<sup>24</sup> The Presidency of the Council represented the EU following a rotation between member states on a six-month basis. EU Troikas gathered a representative of the Commission, the country that held the Presidency, and the next incumbent.<sup>25</sup> The power of the Presidency was nonetheless curbed by the ‘collective resistance’<sup>26</sup> of the other member states: the UK’s reluctance to impose sanctions against South Africa, for example, could not prevent the other twelve members ‘insisting on sanctions being introduced under the auspices of the British presidency’ in September and October 1986.<sup>27</sup>

The Secretary General/High Representative for the CFSP (HR) was created in the Treaty of Amsterdam to assist the Council and enhance the representation of

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<sup>22</sup> Keukeleire and MacNaughtan 2008: 73-76; see also: Nugent 2003: 156 - 158; Cameron 1999: 33-38.

<sup>23</sup> Keukeleire and MacNaughtan 2008: 73-76; see also: Nugent 2003: 157 – 158.

<sup>24</sup> Keukeleire and MacNaughtan 2008: 74.

<sup>25</sup> Amsterdam Treaty, Art. J.8.

<sup>26</sup> Holland 1995a: 9.

<sup>27</sup> *Ibid.* See: Council of the EU: *Decision 86/459/ECSC of 16 September 1986*; *ibid.*: *Decision 86/517/EEC of 27 October 1986*; *ibid.*: *Regulation (EEC) No 3302/86 of 27 October 1986*.

the Union.<sup>28</sup> The Lisbon Treaty modified this setup to enhance the coherence of EU foreign policy. It transformed the HR into the HRVP, the 'EU High Representative for Foreign Affairs and Security Policy and Vice President of the Commission', who exercises the functions that had so far fallen under the remit of the Presidency, the HR and the Commissioner for External Relations. The HRVP is therefore no longer an office responding exclusively to the member states in the Council, as the former pre-Lisbon HR did. It carries two hats, namely the 'Council role' of permanent chair of the Foreign Affairs Council (FAC), and the 'Commission role' as Vice President with a responsibility for budgets and programmes.

The HRVP may appoint EU Special Representatives (EUSR) to represent the EU on the ground in crisis situations and strategic areas.<sup>29</sup> The EU had a Special Envoy to Burma/Myanmar from 2007 until 2011. The EUSRs are at the crossroads between Brussels-based policy-making, national diplomatic initiatives, relations with third states and parties, and coordination with other international organisations.<sup>30</sup> Such Representatives may eventually be phased out with the full functioning of the Lisbon Treaty.

### 1.2.2. The European Commission

Until the Lisbon Treaty, the European Commission had a decision-making remit in the field of external relations, as mandated by the Treaties.<sup>31</sup> Until Lisbon, the Commission carried responsibility for the first pillar of the TEU (notably implementation of economic sanctions and assistance, humanitarian aid, negotiation of trade agreements), represented the EU internationally (together with the Council Presidency and the High Representative), and initiated foreign

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<sup>28</sup> Art 26 TEU.

<sup>29</sup> Amsterdam Treaty, Art. J.8.

<sup>30</sup> Grevi 2007: 10-11.

<sup>31</sup> Pre-Lisbon EU foreign policy was notionally divided into Council-led 'foreign affairs' and Commission-led 'external relations'.

policies by making proposals to the COREPER. The Commission was the only European institution represented globally via its delegations in one hundred and thirty four countries.<sup>32</sup> With the Lisbon Treaty, 'Union delegations' fell under the authority of the HRVP.<sup>33</sup>

The Commission consists of a College of Commissioners, with each of them responsible for one or more Directorates General (DG). Until Lisbon, several DGs had competences in matters of external relations: DG Relex, DG Trade, DG Enlargement, DG Dev, DG Aid-Co, and DG ECHO. For the sake of methodological clarity, it is assumed that the Commission acts as a unitary actor, although this unity is sometimes belied by practice.<sup>34</sup>

Under Lisbon, DG Relex and the departments from the General Secretariat of the Council dealing with foreign policy have been merged into the European External Action Service (EEAS). Its personnel are drawn from these administrations and national diplomatic services of the member states. The EEAS took over the responsibility to prepare policy proposals and implement them, whereas trade and development policy remained under the responsibility of the relevant Commissioners.<sup>35</sup>

Until Lisbon, the Commission had a vested interest in increasing its role in foreign policy issues. A policy of *rapprochement* with a state targeted by sanctions would enhance the role of the European Commission, leaving room for manoeuvre in the implementation of Community instruments. Moreover, the Commission – the 'Guardian of the Treaties' – is mandated to represent the common European interest, thus not responding to national policy objectives of

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<sup>32</sup> European Commission website 2010.

<sup>33</sup> Sola 2009: 1. In practical terms, the former 'delegations of the European Commission' were re-named 'delegations of the European Union'.

<sup>34</sup> Holland 1995a: 83-86.

<sup>35</sup> Council of the EU, November 2009: *Background*.



member states. Some may consider the Commission as a 'policy entrepreneur' that gives impetus for foreign policy change.<sup>36</sup>

### 1.2.3. The European Parliament

The European Parliament (EP) is the only institution that represents the European public. As such, the European Parliament has traditionally defended the cause of democracy, human rights and good governance in the EU's external relations.<sup>37</sup> The European Parliament recognised 'Sanctions as part of an overall human rights strategy', but 'deplore[d] the fact that, to date, no evaluation or impact assessment has been carried out in respect of the EU's sanctions policy'.<sup>38</sup> The European Parliament's principled position often confronts the material interests of the member states, or the Commission's propensity to engage with difficult countries, even under authoritarian regimes.<sup>39</sup> Members of the European Parliament (MEPs) exert pressure on the Council and on the Commission to follow their resolutions. The main actors in the European Parliament are the Committee for Foreign Affairs, and the Subcommittees on Human Rights and on Security and Defence.

Until the entry into force of the Lisbon Treaty, the European Parliament had a limited role in EU foreign policy-making.<sup>40</sup> It mainly voted resolutions to proclaim its views, which the Council did not have to take into account. The Lisbon Treaty gave the European Parliament more substantial powers including decision powers on the entire EU budget; competence to ask the Commission to present legislative proposals to the Council; a formal agreement procedure to international agreements; and improved procedures for European Parliament

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<sup>36</sup> Bicchi 2008; Krause 2002; Caporaso and Keeler 1995; Nuttal 1993. See also: E. Haas 1964; 1968. E. Haas later challenged his own theory of neo-functionalism (E. Haas 1975).

<sup>37</sup> Howitt 2006.

<sup>38</sup> EP: *Resolution of 4 September 2008*, par. 15 and par. 1.

<sup>39</sup> Hristov 2009.

<sup>40</sup> Viola 2000; K. Smith 2004c.

hearings and resolutions, which enhanced the Council's accountability to the European Parliament.

#### 1.2.4. External Groups

External groups are not directly involved in the EU decision-making system. They can be grouped together under the broad category of lobbyists – or activists.<sup>41</sup> The European Parliament is often their first gateway to influencing foreign policy-making.<sup>42</sup> Among the multifarious organisational units involved in EU policy-making, the Council and the Commission are independent from transnational organisations and thus more arduous to lobby effectively.

External groups may encompass: political parties, NGOs (e.g. human rights, pro-democracy, and diaspora associations), think tanks, or private firms. Activists may strive to influence political decisions primarily by gaining access to national policy-makers (national governments and parliaments), and secondly to EU officials who can influence the Council's political agenda and decisions (officials from the EEAS, MEPs, and from the Commission). Hence, EU lobbying could be viewed as a 'transnational collective action'.<sup>43</sup> By contrast, schools of thought emphasising domestic politics within member states consider that influential EU lobbying takes place at the national level, not at the supranational or transnational level.<sup>44</sup>

Lobbyists may endeavour to convince policy-makers by demonstrating the legitimacy of their position for national and European politics.<sup>45</sup> To this end, they may show a petition of citizens to national authorities (e.g. ministry of foreign affairs, prime minister's office, national parliaments), but also to the European

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<sup>41</sup> Kingdon 1993: 115.

<sup>42</sup> Andersen and Eliassen 2001: 45.

<sup>43</sup> *Ibid.*: 44; Greenwood and Aspinwall 1997: 7.

<sup>44</sup> Moravcsik 1993b: 3-32; Moravcsik 1997: 513-553.

<sup>45</sup> Eberlie 1993.

Parliament, the Commission, or the Council secretariat.<sup>46</sup> In the EU, lobbyists usually try to influence a policy proposal before it has passed to the Council.<sup>47</sup> If lobbyists gain direct access to legislation, their influence on policy-making may be important.<sup>48</sup>

Robert Putnam's conception of international trade negotiations as a two-level game taking place at the domestic level with domestic constituencies and at the international level between foreign governments has been widely applied to EU policy-making.<sup>49</sup> David Camroux emphasised that this metaphor could be widened to a three-level game, since policy-makers may negotiate not only with domestic constituencies and other EU members, but also at a third table with transnational institutions (e.g. the European Parliament, the Commission) and transnational organisations (e.g. international NGOs, multinational companies). Moreover, in the case of interregional cooperation, such as the EU-ASEAN process, a fourth level could be added. European representatives also negotiate at a fourth table with their interregional counterparts (in the present case, representatives of ASEAN member states).<sup>50</sup> External groups may thus adopt different strategies to influence EU decisions at each of these four different levels of interaction.

In the context of sanctions, active lobbying may lead to emphasising the achievement of secondary over primary objectives because policy-makers are keen to demonstrate domestic groups that 'something is being done' against tyrannical states. Lobbyists can therefore play the role of impeters of foreign policy change rather than its promoters, due to the difficulty to lobby all actors

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<sup>46</sup> Interview 30. The Lisbon Treaty allows widening such national practices to a transnational European polity. It introduced a 'European citizens' initiative', which would allow European citizens to request the Commission to consider an initiative backed by at least one million citizens from a minimum of one-third of EU countries.

<sup>47</sup> Peterson 1995: 76.

<sup>48</sup> Andersen and Elliasen 1993: 30.

<sup>49</sup> Putnam 1988; Moravcsik 1993b: 3-32; Moravcsik 1997: 513-553.

<sup>50</sup> Camroux 2010: 71-73. See also, on three-level games analyses of EU negotiations: Deutsch 1999; Patterson 1997: 135-165.

involved in EU decision-making. To bring their political cause to the international limelight, diaspora activists can favour a policy of confrontation rather than engagement with their country of exile, like Iran, Libya, Myanmar, South Africa, or Zimbabwe. For instance, the weight of the Cuban exiled community in Floridian elections has contributed to heavily constrain American sanctions policy towards Cuba since 1959.<sup>51</sup>

After having outlined the procedures for deciding sanctions and the main actors making the policy, the following section defines the theoretical framework of analysis that shall be tested in the empirical investigation of this thesis.

## 2. Explaining why the EU Scales up Sanctions

### 2.1. Neo-Realism

The first hypothesis posits that US pressure leads the EU to reinforce sanctions on a state that lacks strategic effectiveness for the EU. This hypothesis is derived from an interpretation of the neo-realist school of thought.

Adapting neo-realism, a state-centric theory, to unveil the drivers of the foreign policy of a non-state actor, may seem an unorthodox endeavour. However, the EU can be analysed as if it was a state, because it is generally recognised as an international actor *sui generis*.<sup>52</sup> Previous studies have adapted classical realism as well as Kenneth Waltz's neo-realism to the EU context, notably in order to analyse European integration,<sup>53</sup> and EU foreign policy.<sup>54</sup> Although the end of the

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<sup>51</sup> Zebich-Knos and Nicol 2005.

<sup>52</sup> Hill and Wallace 1996: 1-15; K. Smith 1996: Chapter II-VII; K. Smith 2003c. The debate on the EU's actorness has mushroomed with the growing juridical personality of the EU, notably against the backdrop of the Treaties of Maastricht (1992), Amsterdam (1997), and Lisbon (2007). See: Peterson 1998; Rosecrance 1998; Bretherton and Vogler 1999; Hazel Smith 2002: 7; K. Smith 2003c; Cornish and Edwards 2005; Giegerich 2006; Meyer 2006; Elgström and M Smith 2006; Toje 2008b; Koehler 2010.

<sup>53</sup> Mearsheimer 1990; Grieco 1995; Loriaux 1999; Rosamond 2000: 131-135; Wivel 2004; Collard-Wexle 2006.

<sup>54</sup> J. Snyder 1990; van Evera 1990/1991; Pijpers 1991: 135-148; Krupnik 1996; Norris 2002; P. Gordon 2003; Jones 2003; Posen 2003; 2004; 2006; Hyde-Price 2006: 217-234; Rynning 2005; Farrel 2005: 263-283; Ruffa 2011.

Cold War raised challenges to its central assumptions, neo-realism has proven an incredibly resilient theory of International Relations.<sup>55</sup> It is particularly useful to make sense of systemic influences on foreign policy in the context of states' struggle for survival.<sup>56</sup>

Neo-realism would expect that the tightening, or relaxing, of sanctions depends on how systemic dynamics affect the EU's security. Neo-realists view international politics as determined by the anarchic structure of the international system, where no authority can dispel the threat of war. In order to ensure their survival, states seek to maximise their security in relation to others.<sup>57</sup>

Structural realists view international politics as determined by the material structure of the international system around competing poles of power. Polarity leads states to adopt one of the main patterns of behaviour towards more powerful states: balance of power, bandwagoning, or buck-passing.<sup>58</sup> Structure, however, constrains but does not determine action.

Security threats posed by a third state could induce the EU to continue isolating a targeted state, in order to contain its revisionist agenda. Realists posit that sanctions are imposed on foes, while incentives are given to allies.<sup>59</sup> Isolation represents a cost effective strategy, although it may not eradicate security threats.<sup>60</sup> Sanctions could thus serve as a deterrence to prevent other states from emulating revisionist policies. Brendan Taylor argued that EU

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<sup>55</sup> Peterson 2006: 26-27.

<sup>56</sup> In contrast, classical realism and neo-classic realism tend to take systemic *and* domestic inputs into account (Wohlforth 2008: 34ff.). The main advantage of using neo-realism is its exclusive emphasis on international constraints on state behaviour, in addition to developing a theory of power. Various studies have shown that neo-realism can be adapted to a FPA framework (Wolfe 1986; Feigenblatt 2009). Rittberger (2001: Chapter III and Chapter X) labelled it 'modified neo-realism'. Waltz (1979) had originally distinguished neo-realism from other ramifications of the realist school of thought by pinpointing that neo-realism is a theory of IR, and not a middle-range theory of FPA.

<sup>57</sup> Waltz 2001: 202.

<sup>58</sup> Ruffa 2011: 568; Hyde-Price 2006: 224; Waltz 1979: 128.

<sup>59</sup> Drezner 1999: 3 and 33-4; Hazelzet 2001: 40-1.

<sup>60</sup> Coker 1986: 43.

sanctions are part of a grant strategy to 'increase Europe's global power and autonomy' in a post-Cold War world order.<sup>61</sup>

Bandwagoning with the hegemon could also justify why the EU continues a policy unlikely to bear fruit. Enjoying lucrative relations with a human rights offender could spoil the alliance with a hegemon promoting human rights. Confronted with a unipolar world order, Waltz reformulated his original affirmation that balance of power against the hegemon was the most likely outcome induced by polarity.<sup>62</sup> He recognised that bandwagoning 'may sometimes seem a less demanding and more rewarding strategy than balancing'.<sup>63</sup> Maintaining the Transatlantic Alliance seems the least costly choice for European states, in order to further benefit from American protection in the post-Cold War order.<sup>64</sup> Realist Stephen Walt showed that in addition to perception of relative aggregate power, perception of threat can explain why a state bandwagons with a more powerful (but relatively benign) ally.<sup>65</sup> Quoting Hans Morgenthau, Walt also suggested that 'ideological solidarity' could entice bandwagoning behaviour when it does not go against power politics.<sup>66</sup>

According to Catherine Gegout, Washington yields a *de facto* veto power on EU policy initiatives that do not suit American interests.<sup>67</sup> The US exerts its veto power by pressuring its closest allies in the EU. The US has the power to unite as well as divide EU member states.<sup>68</sup> US pressure may lead the EU to invoke sanctions, for instance in order to temper America's intentions to unleash war on a third state.<sup>69</sup> This hypothesis of EU foreign policy gravitating around US

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<sup>61</sup> B. Taylor 2009: 98.

<sup>62</sup> Waltz 1979: 126.

<sup>63</sup> Waltz 2000: 38.

<sup>64</sup> Wivel 2005: 301; Kagan 2003.

<sup>65</sup> Walt 1987: viii.

<sup>66</sup> Walt 1985: 18ff.; Morgenthau 2006.

<sup>67</sup> Gegout 2005b.

<sup>68</sup> Pardalis 1987: 271–294; Peterson 1996; M. Smith 2004b: 98.

<sup>69</sup> Pardalis 1987: 284.

interests could be correlated to the empirical finding outlined in Annex 5, that 83.6 percent of EU sanctions were also targeted by the USA (51 out of 61 cases).

US influence could be conveyed via two different channels:

- The US would exert direct pressure on the EU and/or individual member states to scale up sanctions;
- Within the Council, a close European ally of the US would promote a position that aligns EU policy with US interests. This European ally may defend such position in the name of European interests and without overt pressure from Washington. Among all EU member states, the UK has usually spurred the EU to follow the lead taken by the US. The UK does so in order to achieve influence on key US policies in return for its support.<sup>70</sup> However, the decision-making process within the EU may be paralysed, if EU member states do not agree to follow the UK's leadership and thus bandwagon with the US.<sup>71</sup> Policy paralysis during the Iraq war illustrated the possible consequences of US influences on the EU's policy towards a pariah state.<sup>72</sup>

While recognising that systemic pressures constitute one of the main constraints on state behaviour, neo-realists argue that the balance of power serves the purpose of preserving the autonomy of 'independent states that wish to remain independent'.<sup>73</sup> It is thus likely that international pressures determine EU foreign policy towards a targeted state, but not the entire policy and in all policy sectors. The EU is likely to prove more assertive in 'harder' issues related to economy and security. Power is fungible, so that economic and security

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<sup>70</sup> Posen 2006: 167. This argument could also be supported by theories of bandwagoning (Walt 1987).

<sup>71</sup> Ruffa 2011: 568.

<sup>72</sup> Crowe 2003a: 533-546; 2003b; K. Smith 2004a; Youngs 2004b; Ham 2004; Gordon and Shapiro 2005; Stahl 2005; Honig 2005; Kasmeri 2007; Lewis 2011.

<sup>73</sup> Waltz 2001: 209.

interests are complementary.<sup>74</sup> 'States use economic means for military and political ends; and military and political means for the achievement of economic interests'.<sup>75</sup> Conversely, the EU would be prone to follow suit with its allies in 'softer' domains of communication, culture, and diplomatic relations.

Since the quest for autonomy can threaten security alliances, in which cases is the EU more likely to bandwagon with the US? This question can be best answered by including considerations of statesmen's perceptions of power into our interpretation of neo-realism.<sup>76</sup> Bandwagoning behaviour is more likely to occur when EU policy-makers perceive the targeted state as lacking in strategic weight. Relative lack of strategic interests minimises the potential costs of bandwagoning.

Multiple elements could explain why certain states are perceived as not strategically important: they typically do not pose a direct threat to EU security; they are not allies of EU member states; they generate a relatively low Gross National Product (GNP):<sup>77</sup> they maintain, from an EU perspective, fairly marginal trade relations with the EU; they are (usually) geographically remote from the EU;<sup>78</sup> and, accessorially, they do not have strong cultural and historical links with EU member states. The EU has less incentives to achieve its primary policy objectives towards states that are perceived as carrying relatively little strategic weight, making balancing with the hegemon all the more attractive.

The neo-realist definition of power enables us to assess whether a target of sanctions is perceived as an actor that is strategically relevant for the EU:

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<sup>74</sup> Peterson 2006: 26.

<sup>75</sup> Waltz 1979: 94.

<sup>76</sup> See: Walt 1987.

<sup>77</sup> The realist literature usually uses GNP, rather than GDP, as a measure of national wealth – and power (Mearsheimer 2001: 67; B. Schmidt 2005: 542, footnote 68). GNP allocates production based on ownership, whereas GDP defines production by geographical location.

<sup>78</sup> Walt 1987: 23-24.



Their [states'] rank depends on how they score on *all* of the following items: size of population and territory, resource endowment, economic capability, military strength, political stability and competence.<sup>79</sup>

The pariah's strategic relevance can be assessed by analysing:

- Whether it poses a direct threat to EU security. A threat can be defined by the amount of military expenditure and the number of armed forces, in combination with a revisionist – or bellicose – posture towards the EU and its allies,<sup>80</sup>
- Its economic relations (e.g. trade and investment) with the EU as a whole, and with specific member states, in particular big member states like the UK, France, and Germany;<sup>81</sup>
- The size of its GNP, territory and population in relation to the EU's security;
- The legacies of a close relationship with one of the EU member states;
- Geographic proximity to the EU.

The bandwagoning hypothesis thus predicts that the EU will align its foreign policy with the US, if the target of sanctions bears little strategic weight for the EU. The bandwagoning hypothesis posits that US policy could lead the EU to adopt three different policies towards a pariah state, hence reflecting the three dependent variables identified in the introductory chapter: scaling up restrictions; scaling them down; or continuing the same policy.

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<sup>79</sup> Waltz 1979: 131; B. Schmidt 2005; for a classical realist definition of power see: Morgenthau 2006: Chapters 8-10.

<sup>80</sup> B. Schmidt 2008: 159-162.

<sup>81</sup> Borrowing from dependency theories (Wallerstein 2004), the EU tends to treat as pariah states those human rights offenders that are situated at the periphery of the world economy. Karen E. Smith (2001: 193) also noted that 'poor, marginal states (often in Africa) of little importance to the EU or one of its member states tend to be subjected to negative conditionality; these are the cases where it is also easiest to show that you are doing something about human rights.'

Bandwagoning hypothesis:

- 1) *The EU is likely to increase sanctions if the US scales up sanctions on a targeted state that bears little strategic weight for the EU.*
- 2) *The EU is likely to decrease sanctions if the US scales down sanctions on a targeted state, ceteris paribus.<sup>82</sup>*
- 3) *The EU is likely to be paralysed if some EU member states choose not to align with US policy.*

In the empirical investigation of this thesis, the bandwagoning hypothesis will be confirmed if evidence is found that US pressure led the EU to increase the isolation of Myanmar, regardless of the effectiveness of such policy for objectives achievement. Pressures could be traced back to official statements by US and European officials, notably the US President, the secretary of state, a European head of state, government or minister.<sup>83</sup>

Congress or parliamentary resolutions within an EU member state could also establish evidence of nominal pressures that the EU should emulate US policy. However, parliamentary motions provide flimsier evidence because they do not constitute a proper foreign policy action that emanates from a sovereign state. They belong to the realm of domestic politics. Secondary sources (such as comments from interviews or press articles) could also indicate whether pressures stemmed from Washington.

To demonstrate that an alignment with the US was not merely coincidental, empirical evidence should be given that EU policy-makers deliberately decided policies emulating the US. In the absence of empirical evidence of US pressure, the bandwagoning hypothesis could also be confirmed if the EU repeatedly adopted the same policy as the US towards the state targeted by sanctions. In

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<sup>82</sup> To avoid tedium, the 'other things being equal' proviso is not repeated in each of the propositions that follow (Putnam 1988: 437, footnote 32).

<sup>83</sup> Pacheco-Pardo 2010: 62.

such cases, an EU member state that is a close ally of the US would promote a policy aligning the EU with the US. This faithful American ally would defend the position serving both US and its national interests in the Council of the EU.

Conversely, the bandwagoning hypothesis will be disconfirmed if:

- The EU successfully resisted US pressure;
- The EU's policy contradicted US strategy (e.g. the EU scales down sanctions whereas the US scales them up, or *vice-versa*);
- The EU did not follow suit to US foreign policy even in sectors deemed nonstrategic for EU security (e.g. the EU could conduct its humanitarian aid policy totally independently from the US);
- The EU does not change its policy despite an upheaval in the international world order (such as the end of the Cold War).

Simultaneity of action (or non-action) between the EU and US does not, on its own, constitute an empirical proof that US pressure led the EU to change its sanctions policy. This hypothesis would remain unverified if no empirical evidence can be found of US pressure or a deliberate bandwagoning policy by an EU member state.

## 2.2. Sanctions Approaches

The second hypothesis concentrates on the direct interactions between the EU and Myanmar at the unit level of analysis. It suggests that the EU scales up sanctions because the target does not comply with its demands. This hypothesis springs from the straightforward argument that sanctions aim at achieving their primary objectives. It is not based on an explicit theory of International Relations, but relates to goal-orientated approaches to foreign policy-making<sup>84</sup> and sanctions in particular.<sup>85</sup> Explanations of sanctions as correlated to the

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<sup>84</sup> J. Frankel 1970: 24-48.

<sup>85</sup> Wallensteen 1968: 251; Leyton-Brown 1987: 308ff; Tsebelis 1990: 3-4; Pape 1997: 94-5; Schwebach and Morgan 1997: 45-46.

achievement of primary objectives do not offer a formal system of logical rules that could be applied to different empirical scenarios – beyond cases of sanctions policies.

Despite this lack of firm theoretical grounding, it is generally expected that the economic disruption caused by sanctions would translate into political pressure on the targeted government to mend its ways. Economic disintegration would either compel the beleaguered leadership to heed the sender's demands, or lead to its overthrow.<sup>86</sup> This explanation posits that penalties are likely to be scaled down if the receiver complies with the sender's demands; *per contra*, coercive measures would be toughened if the target fails to comply. Sanctions are the product of issue-linkages.<sup>87</sup> Compliance is traded off against withdrawal of punishment.

This equation of sanctions objectives with the receiver's compliance is fairly unambiguous, since official policy objectives are usually not changed frequently.<sup>88</sup> When assessing the effectiveness of sanctions, scholars usually identify the demands of the sender on the target – the primary objectives of the policy – so that they can gauge whether these goals have been attained.<sup>89</sup> Hence, both the US and EU repealed sanctions on Libya in 2004, after Tripoli had agreed to dismantle its Weapons of Mass Destruction (WMD) programme, renounce the use of terrorism, and paid indemnities to families of victims of the Lockerbie attack.

If the overarching goal of EU foreign policy is to attain its primary objectives, then a change of common foreign policy could not be justified without compliance by the pariah state with EU demands. Only compliance by the pariah could elicit a change of foreign policy. If, on the contrary, the target persists in not heeding the sender's demands, then tightening sanctions may help make the overall

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<sup>86</sup> Galtung 1967: 380ff.; K. Elliott 1996: 52; Portela 2010: 3; Mack and Khan 2000: 279-292.

<sup>87</sup> Lacy and Niou 2004: 25-42.

<sup>88</sup> J. Frankel 1963: 23.

<sup>89</sup> Wallensteen 1968: 251-2; Hufbauer *et al.* 1985/1990; Pape 1997: 97; Dashti-Gibson *et al.* 1997: 608-618; K. Elliott and Hufbauer 1999: 403 and 408; Portela 2010.

policy more effective. A sanctions policy follows a mechanistic cause-and-effect relationship between the target and sender's behaviours. It follows that sanctions may be continued even if they have been previously ineffective.

The compliance hypothesis understands foreign policy goals as one-dimensional: the isolation policy only aims at changing the pariah state's behaviour. It does not focus on the achievement of secondary and tertiary objectives by the EU. It aims at testing whether EU sanctions on Myanmar solely depended on the military regime's behaviour.

The compliance hypothesis disregards other goals of sanctions, which may co-exist with the policy's primary objective of compliance by the targeted state.<sup>90</sup> It does not take into account the multiple functions of sanctions, or their costs and stakes for both the sender and the target, which could influence how a sanctions policy is decided.<sup>91</sup> It is assumed sufficient to assess the connection between sanctions and the target's behaviour. The compliance hypothesis suggests that the behaviour of the pariah state could induce the EU to behave in three different ways, hence reflecting the three dependent variables outlined in the introductory chapter: scaling up sanctions; scaling them down; or continuing the same policy.

#### Compliance hypothesis:

- 1) *The EU is likely to increase sanctions towards a pariah state if this state does not comply with EU demands.*
- 2) *The EU is likely to decrease sanctions if a pariah state complies with EU demands.*
- 3) *The EU is likely to continue its sanctions policy if the status quo is maintained within the targeted state.*

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<sup>90</sup> Barber 1979: 380.

<sup>91</sup> Economides and Wilson 2001: 154-156; Baldwin 1999/2000: 80-107; Baldwin and Pape 1998: 189-198; Jørgensen 1998; Doxey 1996.

The compliance hypothesis will be confirmed if the EU changes its policy because the pariah state has met its demands. Evidence should be provided that the EU revised its policy as a result of compliance by the pariah state, and not owing to other policy inputs. Primary and secondary sources, as well as interviews, provide the data where such evidence could be found.

Regime change would be a case of full compliance, as sanctions would be lifted because of the undemocratic government's downfall. Full compliance by the pariah would trigger a paradigmatic foreign policy change, whereby the EU changes both its policy objectives and instruments.<sup>92</sup> Partial compliance may be sufficient to engender partial (or temporary) policy change.

The compliance hypothesis will be falsified if:

- The EU does not change its policy despite compliance by the pariah state;
- The EU changes its policy although the pariah state has not complied with EU demands. (Such policy change would be caused by factors that are not related to the pariah state's behaviour, but reflected by other hypotheses);
- Sanctions do not hit their target. If a penalty explicitly targets an entity that is not responsible for the behaviour it condemns, then it could be concluded that the policy was not primarily designed to change the targeted government's behaviour. Achieving other objectives, such as symbolic recognition of a given issue in the targeted country, could explain why sanctions are set off the target. (Unintended and secondary effects of sanctions, such as unemployment induced by trade boycotts, are not the topic of the present discussion. They differ from off-target sanctions, whose primary effects are intended).

The following section now turns to profit calculation by large member states as a competing explanation for why the EU scales up sanctions.

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<sup>92</sup> C. Hermann 1990: 5-6.

### 2.3. Liberal Intergovernmentalism

According to the third hypothesis, the big EU member states calculate that scaling up EU sanctions best serves their domestic interests compared to other policy options. This hypothesis is underpinned by liberal intergovernmentalism. Championed by Andrew Moravcsik, liberal intergovernmentalism derives from classic intergovernmentalism. It was originally developed as a theory of European integration.<sup>93</sup> Wolfgang Wagner later set out a framework to apply this theory to EU foreign policy.<sup>94</sup> Derived from a Benthamite tradition of utilitarianism, liberal intergovernmentalism asserts that a material calculus of costs and benefits guides the decisions taken by utility-maximising member states within the Council.<sup>95</sup>

The interests of EU member states are given. They are constituted at the domestic level after consultation with domestic constituencies.<sup>96</sup> National interests of EU member states are not subject to change as an outcome of the interaction with other actors at the EU level.<sup>97</sup>

Sharing this approach focused on domestic politics, Barber contended that the secondary objectives of sanctions can consist in deflecting domestic criticism.<sup>98</sup> Rent-seeking 'enables governments to obtain political gain from the opportunities for side-payments provided by sanctions.'<sup>99</sup> Maintaining sanctions can reflect policy-makers' attempt to minimise political costs and seek reward from domestic constituencies.<sup>100</sup> By contrast, repealing sanctions may translate into 'audience

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<sup>93</sup> Moravcsik 1998; Hoffmann 1966; 1995; Milward 1992; Rosamond 2000: 75-81 and 135-141.

<sup>94</sup> W. Wagner 2003: 576-595.

<sup>95</sup> Bicchi 2007: 10-11. Most of the literature eludes the question whether member states are utility maximisers or risk minimisers. In practice, a benefit maximising behaviour may differ from a cost minimising attitude.

<sup>96</sup> Katzenstein 1985.

<sup>97</sup> K. Smith 1999: 167ff.

<sup>98</sup> Barber 1979: 380.

<sup>99</sup> Dorussen and Mo 2001: 395.

<sup>100</sup> *Ibid.*: 397.

costs'<sup>101</sup> so that domestic constituencies with radical preferences could put a veto on such policy change, even if discussed at the EU level.<sup>102</sup> Policy-makers defend globalised norms for the purpose of domestic consumption. This leverage takes effect 'primarily through citizens punishing or rewarding politicians via elections'.<sup>103</sup>

Drawing upon liberal theories, Moravcsik depicts EU foreign policy as a 'two-level game'.<sup>104</sup> National preferences take roots in the functional demands of groups at the domestic level, mainly economic groups.<sup>105</sup>

National preferences reflect the objectives of those domestic groups which influence the state apparatus.<sup>106</sup>

While at the EU level, national representatives aim at approximating their preferred outcome as closely as possible. Possible side-payments and compromises could be struck on issues where member states do not share the same preference intensity.<sup>107</sup> They are asymmetrically interdependent.<sup>108</sup> Issue linkages occur:

[...] when governments have varying preference intensities across different issues, with marginal gains in some issue-areas more important to some than to others.<sup>109</sup>

Liberal intergovernmentalism perceives EU decision-making as a bargaining process over policy alternatives among individual member states.<sup>110</sup> Bargains usually take the form of issue linkages and side-payments.<sup>111</sup> Member states

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<sup>101</sup> Fearon 1994 and 1997.

<sup>102</sup> Mo 1995: 914.

<sup>103</sup> Robinson 2008: 140; Robinson 2002.

<sup>104</sup> Moravcsik 1998; Putnam 1988.

<sup>105</sup> Moravcsik 1995: 157-8.

<sup>106</sup> Moravcsik 1998: 24.

<sup>107</sup> Moravcsik 1998; Thomson and Hosli 2006: 7; Bicchi 2007: 12.

<sup>108</sup> Moravcsik 2005: 12; Bicchi 2007: 62.

<sup>109</sup> Bicchi 2007: 65.

<sup>110</sup> Scharpf 1988; Schneider and Cederman 1994; Bicchi 2007: 11; Thomas 2011: 21.

<sup>111</sup> Thomas 2011 60-67; M. Smith 2004b: 102.



have a tendency to build coalition alternatives, in order not to be excluded from policy-making.<sup>112</sup> They agree to ratify Treaties in order to lock in the advantages they have secured.<sup>113</sup> ‘Competitive bargaining’ (or ‘hard bargaining’) means that any member state may threaten to yield its veto if a proposal is further from the *status quo* than its own policy.<sup>114</sup>

‘Cooperative bargaining’ (also known as ‘integrative bargaining’ or ‘problem-solving’) is characterised by an intensive search for solutions that are acceptable for the greatest number of member states. Issue linkages may be either explicit or implicit.<sup>115</sup> Such bargaining may generate ‘log-rolling’ whereby two politicians agree to support each other’s projects.<sup>116</sup> Consultation reflexes and consensus norms are therefore an integrative part of the negotiation process.<sup>117</sup> While the member states do not alter their national interest, they emphasise common ties, so that they tend to forget identities generating cleavages and conflicts.<sup>118</sup> Moravcsik conceded that negotiations between EU member states tend to approximate ‘positive sum games’, rather than a sheer ‘zero-sum game’.<sup>119</sup>

EU policy-making is driven by the material interests of the three largest EU member states (i.e. Germany, France, and UK) because they yield the most power in the Council.<sup>120</sup> Supranational institutions (e.g. the European Commission, the European Parliament) have ‘limited or no role to play’ in this sphere.<sup>121</sup> Big member states tend to act as ‘policy entrepreneurs’.<sup>122</sup> As a

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<sup>112</sup> Smith 2004b: 64.

<sup>113</sup> Moravcsik 1998: 23-26.

<sup>114</sup> Thomas 2011: 21; Jupille 1999.

<sup>115</sup> Moravcsik 1994: 9.

<sup>116</sup> Atkinson 2004: 14.

<sup>117</sup> Thomas 2011: 18ff. Daniel C. Thomas developed the concept of ‘cooperative bargaining’ in the framework of normative institutionalism theory. The concept is not alien to liberal intergovernmentalism, since Moravcsik conceives European integration as a ‘positive sum game’.

<sup>118</sup> Olsen and March 1998: 61.

<sup>119</sup> Moravcsik 2001: 238.

<sup>120</sup> M. Smith 2004a: 20; M. Smith 2004b: 99.

<sup>121</sup> Rosamond 2000: 148; Hoffmann 1966; Moravcsik 1993a; 1993b.

consequence, policy feedback by supranational institutions is not a determining factor of European cooperation.<sup>123</sup>

The twenty-seven member states wield a veto power in the CFSP area, so that each of them can potentially block attempts at changing a common foreign policy. Zielonka defined this sort of policy gridlocks, peculiar to the EU, as ‘Euro-paralysis’.<sup>124</sup> Zielonka, as well as Christopher Hill, has applied Stanley Hoffmann’s ‘logic of integration’ and ‘logic of diversity’, to EU foreign policy-making.<sup>125</sup> Hill clarified that EU policy-making is not only determined by a necessary ‘logic of convergence’ among member states who wish to act together, but by a ‘logic of divergence’ that triggers the very phenomenon of policy gridlock.<sup>126</sup>

When the logic of diversity prevails, common decisions are the product of the lowest common denominator among the member states.<sup>127</sup> Lowest common denominator policies correspond to the preferences of the ‘least willing member state(s)’.<sup>128</sup> Such state(s) favour either the *status quo* (an agreement not to change an existing policy), the lowest degree of policy change, or a new policy that reflects the preferences of the veto player.<sup>129</sup>

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<sup>122</sup> Bicchi 2002: 4.

<sup>123</sup> Moravcsik 1998: 54.

<sup>124</sup> Zielonka 1998. See also: Hix 2008; Héritier 1999. Zielonka (1998: Chapter 1) gave five explanations for the general state of Euro-paralysis: a) power politics among major European states, b) a strategic confusion that blocked otherwise successful efforts towards a CFSP, c) the inability of EU states to cope with a new set of internal and external challenges, d) the misguided pattern of European integration, e) and the weakness of European institutions (see also: Whitman 1999: 425-426).

<sup>125</sup> The concept ‘logic of diversity’ in the EU derives from Hoffmann’s work on European integration (Hoffmann 1966). It has been brought back into focus by Zielonka (1998; Hill 1998a: 35).

<sup>126</sup> Hill 1993; 1997.

<sup>127</sup> Moravcsik 1998: 482. Schoutete (1987: 62-67) forged the original expression of common policy reflecting the lowest common denominator among member states (See also: Zielonka 1998; Meunier 2000: 103-135; Gordon 2003; Allen 1998; Asle 2004).

<sup>128</sup> Popescu 2011: 7.

<sup>129</sup> M. Smith 2004b: 97 and 99; Thomas 2011: 21; Meunier 2000: 109.

National preferences can only be changed by shifting domestic pressures (such as an institutional crisis, the election of a new government in an EU member state, or an exogenous shock).<sup>130</sup> Moravcsik advanced:

[...] the foreign policy goals of national governments vary in response to shifting pressure from domestic social groups, whose preferences are aggregated through political institutions.<sup>131</sup>

According to classic intergovernmentalism, policy changes tend to occur when new elites arrive in power.<sup>132</sup> New national governments tend to promote the interests of different domestic constituencies, including at the EU level. Therefore, EU policy change would presuppose the election of a new government within at least one of the three big member states. Moreover, the other big member states would ascertain that the benefits of policy change outweigh the costs.

Liberal intergovernmentalism concurs with David Welch's theory of foreign policy change. Welch contends that states are inclined to change a foreign policy course only when the costs of pursuing it are higher than the costs of change.<sup>133</sup> Conversely, it could be deduced that EU foreign policy is not changed until the costs of changing this policy are lower than the costs of pursuing it. Cost and benefit calculations are measurable because it is assumed that decision-makers have consistent and invariant preferences:

[...] Decision-makers can rank preferences within a particular frame of gains and losses. In other words, if someone prefers A to B, and B to C, then she is irrational unless she also prefers A to C.<sup>134</sup>

Moravcsik delineated five distinct dimensions of national preference formation:

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<sup>130</sup> M. Smith 2004b: 103.

<sup>131</sup> Moravcsik 1993a: 481.

<sup>132</sup> Hoffmann 1966: 905.

<sup>133</sup> Welch 2005: 47ff.

<sup>134</sup> *Ibid.*: 48. Changes in frame can induce preference reversals: 'For some choices between A and B, presenting them in the language of *gains likely to be realised*, and a second time in the language of losses *likely to be avoided*, will elicit a change in preference between the two, even though the actual probabilities and payoffs remain unchanged' (*ibid.*).

variation in preferences across nations and issues, the timing of preference changes, consistency with broader foreign policy, salient domestic actors and cleavages, and major considerations mentioned in domestic deliberations.<sup>135</sup>

The large member states hypothesis is deduced from liberal intergovernmentalism. It posits that interest calculation by the three largest EU member states will lead the EU to behave in three different ways, hence reflecting the three dependent variables: ratcheting up sanctions, scaling them down, or continuing the same policy.

Large member states hypothesis:

- 1) *The EU is likely to scale up sanctions towards a targeted state if the three largest EU member states calculate that strengthening sanctions would entail more domestic benefits than continuing the same policy.*
- 2) *The EU is likely to scale down sanctions towards a targeted state if the three largest EU member states calculate that loosening sanctions would entail more domestic benefits than continuing the same policy.*
- 3) *The EU is likely not to change its policy if the three largest member states do not agree on the foreign policy to adopt.*

The large member states hypothesis will be confirmed if it is found that:

- Intergovernmental divergences between big member states paralyse EU foreign policy, or if the policy reflected little more than the *status quo*. The common foreign policy would hence be the product of lowest common denominator preferences among the member states.
- A big member state bargains with recalcitrant member states in order to enable the EU to scale up sanctions. This large EU state would have a vested interest in isolating a pariah. In exchange for side-payments, other

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<sup>135</sup> Moravcsik 1998: 49-50.

member states would agree to implement a common foreign policy in-line with the interests of the primary sender of sanctions. Since material gains of big member states prevail over ideational benefits, possible rewards for EU member states would entail:

- Preserving or promoting national economic interests, such as business operations of private or public-owned companies that benefit from certain connections with a large EU member state;
  - Gaining popularity among domestic constituencies, in particular within national parliaments, by deciding a policy that is popular at home. In that case, EU foreign policy would be in-line with recommendations expressed by the national parliament of at least one big EU member state. It could follow the desires of influential domestic pressure groups, particularly in times of national elections.
- Finally, the common foreign policy is chiefly decided by the three largest member states, and in accordance with their material interests. Other EU member states and European institutions would exert little influence on final policy decisions.

*Per contra*, the hypothesis will be falsified if:

- EU member states compromised with each other on their material benefits in order to attain the primary objectives of the policy, without making side-payments or using issue linkages between one another;
  - National preferences were altered as a consequence of the interaction with other member states, which would reflect an 'upgraded' national interest.<sup>136</sup>
- In that case, a foreign policy decision would be the result of a commonality of purpose(s), instead of bargains between the three largest member states;

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<sup>136</sup> K. Smith 1999: 167ff.

- The Council decided a policy that contradicts the main pleas of domestic pressure groups in big EU member states, notably core recommendations proclaimed by the national parliaments of large EU member states;
- Other actors than the three largest member states determined EU foreign policy initiatives. The ensuing hypothesis will now appraise this possibility.

#### 2.4. Social Constructivism

The fourth hypothesis proposes that scaling up sanctions on a pariah state strengthens a consensus among EU policy-makers on the identity of the EU as a liberal actor in its international relations. This hypothesis applies the social constructivist school of thought to the making of EU sanctions policy.<sup>137</sup>

Social constructivism is generally recognised as a distinct school of thought in International Relations, although authoritative scholars do not consider it a theory *per se*.<sup>138</sup> Ruggie, as well as Price and Reus-Smit, showed that hypotheses could be derived from it, a view that informs this thesis.<sup>139</sup> Constructivism has been used to theorise EU foreign policy,<sup>140</sup> foreign policy,<sup>141</sup> and International Relations more broadly.<sup>142</sup>

Social constructivism perceives EU policy-making as a process of social interaction among policy-makers.<sup>143</sup> This interaction progressively defines their interests, identity, and policy decisions.<sup>144</sup> Rationality is social, rather than

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<sup>137</sup> There is little place here to delve into the many ramifications of constructivism. In addition to social constructivism, specific strands used in this section include: neo-functionalism (P. Haas 1964; 1968; 1975; 2001), socio-historical institutionalism (M. Smith 2004b; Nuttall 1992), and ideational intergovernmentalism (Bicchi 2002; 2007).

<sup>138</sup> Wendt 1994: 385; Ruggie 1998: 856; Jørgensen 2001.

<sup>139</sup> Ruggie 1998; Price and Reus-Smit 1998: 259-294.

<sup>140</sup> K. Smith 1995; Tonra and Christiansen 2004: 1-10; Jørgensen 2004: 10-26; Sedelmeier 2003; 2004; Bicchi 2002; 2007.

<sup>141</sup> Checkel 2008: 71-82.

<sup>142</sup> Checkel 1998b; Jackson 2010.

<sup>143</sup> Jackson 2010: 96; Wendt 1987: 335-370.

<sup>144</sup> Wendt 1992: 394; Risse 2000.

utilitarian.<sup>145</sup> Foreign policy-making is understood as a social and learning process.<sup>146</sup>

Where social rationality plays a role, 'power' is defined in terms of arguments, language and ideas oriented around collective values. Arguing<sup>147</sup> and persuasion<sup>148</sup> are therefore important in EU decision-making. Arguing implies that a consensus is built between 'persuaders' and 'persuadees'.<sup>149</sup> Persuasion implies 'eliciting a favourable response without explicitly holding out the possibility of punishment'.<sup>150</sup> Norm entrepreneurs are persuaders, defined as 'agents having strong notions about appropriate or desirable behaviour'.<sup>151</sup> Their aim is to convince other actors to embrace new norms.<sup>152</sup> They may drive policy change. 'Normative suasion', or social influence, implies that arguing for norms rather than bargaining over interests resolves divergent preferences among EU policy-makers.<sup>153</sup>

Leadership may stem from any legitimate actor in the EU (whether smaller or larger member state(s), or European institutions).<sup>154</sup> Even transnational actors (e.g. lobbyists) may contribute to decisions taken by the Council. Yet, some constructivists underscore that member states do not wield an equal degree of influence in the Council due to different sizes and statuses.<sup>155</sup>

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<sup>145</sup> Checkel 2008: 76.

<sup>146</sup> Hecló 1974: 305-306; Sacks 1980; Hall 1993: 275-281.

<sup>147</sup> Risse 2000.

<sup>148</sup> Checkel 2003.

<sup>149</sup> Jørgensen 2005: 12. Checkel 1997 and 2001; Bicchi 2007: 18.

<sup>150</sup> K. Holsti 1964: 179-194, quoted by: K. Smith 2005: 4.

<sup>151</sup> Finnemore and Sikkink 1998: 896.

<sup>152</sup> Bicchi 2007: 17.

<sup>153</sup> Schimmelfering 2004: 832f.

<sup>154</sup> M. Smith 2004b: 102-3.

<sup>155</sup> Jørgensen 1998: 91; Bicchi 2007.

Some social constructivists emphasise the role of epistemic communities in policy-making.<sup>156</sup> They are thus defined:

[...] a network of professionals with recognised expertise and competence in a particular domain and an authoritative claim to policy relevant knowledge within that domain or issue-area.<sup>157</sup>

The influence of epistemic communities can be related to the role of transnational elites.<sup>158</sup> Epistemic communities<sup>159</sup> and advocacy coalitions<sup>160</sup> tend to argue at the EU level, thus constructing their ideas in the process. The 'global governance' literature draws attention to the role of policy advocates.<sup>161</sup>

The national interest of each individual member state is shaped by the interaction with other states, European institutions, and their societal and international environments.<sup>162</sup> Alexander Wendt noted that interests are not given, but 'constructed by social structures'.<sup>163</sup> Hill thus argued that EU membership has forced member states 'to reformulate their national interests in the sphere of foreign policy'.<sup>164</sup> The formation of member states' preferences is 'endogenous to the process of identity and social role formation' in the EU.<sup>165</sup> Recurrent social interaction between policy-makers produces an 'upgraded

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<sup>156</sup> Ruggie 1972; P. Haas 1992; Radaelli 1999. The concept of social communities has also been used by the institutionalist literature, which sits closer to the rationalist school of thought than constructivism (Peterson 2006: 29).

<sup>157</sup> P. Haas 1992: 3. On epistemic communities and theories of consociationalism, see: Lijphart 1977; P. Taylor 1990; 1996; Koslowski 2005: 47ff.

<sup>158</sup> Ginsberg 1989: 15-6; Putnam 1977: 385; Putnam 1976: 384.

<sup>159</sup> Haas 1992: 2.

<sup>160</sup> Sabatier and Jenkins-Smith 1993: 5.

<sup>161</sup> Bicchi 2007: 11 and 30; Rosamond 2005: 463-478; Knodt 2004; Lavenex 2004.

<sup>162</sup> Checkel 2008: 72; 77-8.

<sup>163</sup> Wendt 1994: 385.

<sup>164</sup> Hill 1983: 200. See also: Checkel 1998a; Wendt 1999; Rosamond 1999; Christiansen *et al.* 2001; Schimmelfennig 2003: 284-285.

<sup>165</sup> Sedelmeier 2004: 125.



interest' that reflects a commonality of purpose(s).<sup>166</sup> 'States define their interests in a different way as members of the EC [EU] than they would without it.'<sup>167</sup>

Once an agreement has been reached on a foreign policy issue, policy-makers strive to maintain this consensus – and eventually to strengthen it. Consensus is characterised as a group decision-making process that seeks not only the general agreement of most participants, but also the mitigation of objections thanks to solidarity of belief or sentiment. During the early working of the EPC, Simon Nuttall had already witnessed the unwillingness of national diplomats to be seen as holding back the collective action of the whole, so that national positions were altered in order to facilitate a median viewpoint acceptable to all.<sup>168</sup> EU foreign policy cannot be reduced to a mere product of lowest common denominator preferences among member states.<sup>169</sup>

This effort to maintain a consensus between policy-makers gives rise to 'logics of appropriateness' (i.e., adopting a behaviour by internalising it), which supersedes 'logics of consequences' (i.e., adopting a behaviour without internalising it).<sup>170</sup> The interaction process changes decision-makers' perception of a given problem.<sup>171</sup> Hence, the absence of policy change in an ineffective foreign policy could be explained by the intention to maintain a consensus based on shared values. Even an ineffective policy is preferable to no common policy at all.

Maintaining a consensus to preserve a European identity could be considered a path dependent policy, which builds upon the *acquis politique*.<sup>172</sup> A path

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<sup>166</sup> K. Smith 1999: 167ff.

<sup>167</sup> Standholtz 1993: 3.

<sup>168</sup> Nuttall 1992; Kissack 2008: 9.

<sup>169</sup> Bicchi 2007: 5; Tonra 2001; Nuttall 1992; Schoutheete 1987.

<sup>170</sup> Thomas 2011: 23-24.

<sup>171</sup> Checkel 2005: 813ff.

<sup>172</sup> M. Smith 2004b: 99.

dependent policy is a 'self-reinforcing', 'non-reversible' and dynamic process, which lengthens in time.<sup>173</sup>

Once actors have ventured far down a particular path, they are likely to find it very difficult to reverse course...The "path not taken" or the political alternatives that were once quite plausible may become irretrievably lost.<sup>174</sup>

A path dependent policy starts from a 'point of departure', upon which the policy will expand.<sup>175</sup>

Consensus-building is based on a shared European identity. Wendt defined identities as 'inherently relational' and 'relatively stable, role-specific understanding and expectations about self'.<sup>176</sup> They are shaped by social interactions and substantiated by ideas.<sup>177</sup> 'Ideas are mental constructs held by individuals, sets of distinctive beliefs, principles and attitudes that provide broad orientations for behaviour and policy.'<sup>178</sup> Ideas could be distinguished between normative (or principled) beliefs about right and wrong, policy prescriptions, and ideologies.<sup>179</sup> Nina Tannenwald defines policy prescriptions as:

[...] programmatic ideas that facilitate policymaking by specifying how to solve particular policy problems. They are at the center of policy debates and are associated with specific strategies and policy programs.<sup>180</sup>

Walter Carlsnaes defined ideologies as motivated by collective interest. Ideologies share:

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<sup>173</sup> David 2001: 15; Margolitz and Liebowitz 1995: 205-226.

<sup>174</sup> Skocpol and Pierson 2002: 7. Social constructivism understands path dependence as the product of social and ideational, rather than material, interactions (V. Schmidt 2006: 25). The original concept was embedded in liberal institutionalism, which envisioned path dependency as a product of material dynamics. This understanding is embodied by the seminal example of the QWERTY keyboard as a path dependent technological development (David 1985; Margolitz and Liebowitz 1995: 205-226).

<sup>175</sup> Svetlozar 2003: 10-11.

<sup>176</sup> Wendt 1992: 397.

<sup>177</sup> Wendt 1992: 394ff.

<sup>178</sup> Tannenwald 2005: 15.

<sup>179</sup> *Ibid.*: 15-16.

<sup>180</sup> *Ibid.*: 15.

[...] *cognitive, affective* and *action-oriented* characteristics [...]. [An ideology] is a political doctrine which purports to motivate an actor P to do y (or not to do z) for the sake of the collective interest of Q.<sup>181</sup>

Scaling up sanctions could thus represent a policy prescription that bolsters the EU's identity.

The ideology embodied in EU foreign policy has been related to liberal cosmopolitanism (or cosmopolitan liberalism).<sup>182</sup> Paul Taylor characterised proactive cosmopolitanism as 'a deliberate attempt to create a consensus about values and behaviour – a cosmopolitan community – among diverse communities'.<sup>183</sup> Cosmopolitanism 'refers to the consciousness of being a citizen of the world, whatever other affiliations we may have'.<sup>184</sup> As a consequence of intergovernmental and/or inter-institutional dynamics, the defence of human rights and democracy represents an effective way to build a consensus on EU foreign policy.<sup>185</sup> Critical theorist Makau Mutua argued that the promotion of human rights constructs the identity of the promoter to its very advantage, by drawing a convenient distinction between 'savages, victims, and saviors'.<sup>186</sup>

Policy prescriptions that emanate from a liberal ideology are thus enshrined in EU Law. The fifth objective of the CFSP is 'to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms'.<sup>187</sup> The Council proclaimed representative democracy a fundamental principle of 'European identity'.<sup>188</sup> Art 21 Lisbon Treaty states explicitly:

The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to

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<sup>181</sup> Carlsnaes 1986: 149-150.

<sup>182</sup> K. Smith 2007: 155-171. On the liberal ideology in EU foreign policy, see also: Youngs 2010; McCormick 2006; Telò 2007; Manners 2008: 46-60; Aggestam 2008: 46-60.

<sup>183</sup> P. Taylor 1999: 540; quoted by: K. Smith 2007: 159.

<sup>184</sup> Fine 2005: 243; Archibugi and Held 1995.

<sup>185</sup> Balfour 2008: 240.

<sup>186</sup> Mutua 2001.

<sup>187</sup> TEU, Art. J.1.

<sup>188</sup> Council of the EU: *Declaration of 14 December 1973*: par. 1.

advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The enhanced institutionalisation of EU foreign policy through successive Treaty-reforms leads to increased interaction among policy-makers. Over time, this institutionalisation seems to have an impact on the frequency of sanctions adopted by the EU. Annex 6 relates the frequency of EU sanctions regimes to the number of years when different Treaties guided EU foreign policy. It reveals that, on a yearly average, 37 percent of EU sanctions regimes were decided during the period when the Maastricht Treaty was enforced, 27 percent during the Lisbon Treaty period, 24 percent during the Amsterdam Treaty period, and only 12 percent during or before the EPC period. This more frequent adoption of sanctions after the Maastricht Treaty and beyond supports the social constructivist hypothesis, that increased interaction among policy-makers facilitates the making of a common sanctions policy.

A consensus hypothesis can be deduced from social constructivist approaches to EU foreign policy. Presidency Declarations on behalf of the EU, Common Positions, or Common Actions embody a consensus among member states. The consensus hypothesis posits that the search for a consensual policy reflecting the liberal identity of the EU would lead the EU to behave in three different ways: tightening restrictions; easing them; or continuing the same policy.

### Consensus Hypothesis

- 1) *The EU is likely to scale up sanctions on a targeted state if such decision would maintain or strengthen a consensus between EU policy-makers on the identity of the EU as a liberal actor in its international relations;*
- 2) *The EU is likely to scale down sanctions on a targeted state if such decision would maintain or strengthen a consensus between EU policy-makers on the identity of the EU as a liberal actor in its international relations;*
- 3) *The EU is likely to maintain sanctions on a targeted state as long as such policy would maintain a consensus between EU policy-makers on the identity of the EU as a liberal actor in its international relations.*

This hypothesis will be confirmed if evidence is found that the intention to maintain a consensus among EU member states was a key motivation to scale up sanctions. Moreover, the interaction between EU member states could lead some EU member states to change their national foreign policy. By dint of social interaction, they would adopt a policy that substantially differs from the early years of EU foreign policy-making.

By contrast, this hypothesis will be falsified if:

- Only big member states promote and defend EU foreign policy towards Myanmar;
- Material interests of member states prevail over ideational interests;
- The common foreign policy is the product of the lowest common denominator. In that case, the foreign policy tends to be paralysed by an EU member state that would constantly block policy initiatives undermining its national interests, notably economic interests to do business with the pariah state;
- Preference formation takes place solely at the domestic level and is not changed after interaction with other member states at the EU level.

### 3. Conclusions

The empirical puzzle tackled in this thesis – why the EU scaled up sanctions on the SPDC – draws upon a broad theoretical debate in the field of EU foreign policy-making. Why do EU member states agree to act jointly, in the specific case of sanctions regimes?

Four competing hypotheses stem from different theoretical assumptions. Each hypothesis is geared to capture core independent variables emphasised by different theories: US pressure on the EU, compliance by the target with EU demands, the utilitarian calculus of the three largest EU member states who aim to maximise domestic preferences, and EU policy-makers building a consensus on the liberal identity of the EU as an actor in its international relations. Testing these competing hypotheses will enable us to determine which theory best explains why the EU scaled up sanctions. These hypotheses are built on the three independent variables identified in the preceding chapter: ratcheting up sanctions; scaling down sanctions; maintaining the same policy without changing it. Each hypothesis sketches a different explanation for why the EU scaled up sanctions on the SPDC:

- 1) It could first be advanced that the EU scaled up sanctions because of US pressure on a state perceived as not strategically relevant for the EU;
- 2) The second hypothesis posits that the EU scaled up sanctions when the target did not comply with EU demands;
- 3) The third hypothesis interprets the decisions to scale up EU sanctions as the result of an on-going bargaining process between the three largest EU member states (i.e. Germany, France, UK), who aimed at satisfying their main domestic preferences by making, if necessary, side-payments to the other big member states;
- 4) Finally, it could be imagined that a principled foreign policy strengthened a consensus among EU policy-makers on the identity of the EU as an international actor defending liberal values.

Explanations based on the above-mentioned theories could be polarised along different continua: the dichotomy between ideationalist and rationalist schools of thought, the different levels of analysis that competing theories may focus upon, and the key actors making EU foreign policy. First, theoretical explanations could be crossed along the ideational/material continuum. Neo-realism and liberal intergovernmentalism offer explanations that are based on the material continuum (e.g. pressures to align with US power in cases that are not strategically relevant to EU member states; influence of domestic constituencies, especially economic interest groups, within large member states). By contrast, social constructivist explanations typically stress ideational inputs into policy-making (e.g. EU policy-makers' quest for a common identity).<sup>189</sup>

Second, hypothetical explanations lay emphasis on different levels of analysis (i.e. systemic, unit, sub-unit, and domestic levels of analysis).<sup>190</sup> US influences on EU foreign policy refer to the *systemic level of analysis*, since the structure of the international system is polarised around US power. The Council, as the EU's decision-making body, embodies a *unit* of the international system. Myanmar represents another unit. Its (non-)compliance with EU demands directly impacts on its interactions with the EU at the *unit level of analysis*.

Social constructivist explanations of EU policy-making tend to accentuate the *sub-unit level of analysis*. It entails dynamics between EU member states, supranational institutions, and transnational actors interacting at the level below the Council (but above the domestic level of analysis). Consensuses are typically shaped during the interactive preparation of policy initiatives by EU policy-makers, maybe even before a proposal is formally examined within the Council.

By contrast, liberal intergovernmentalism draws attention to the *domestic level of analysis* due its interpretation of negotiations within international regimes as

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<sup>189</sup> Bicchi 2002: 6-7; 2007: 14.

<sup>190</sup> On the definition of different levels of analysis in International Relations, see: Hudson 2007: Chapter II; Buzan and Little 2000: 69; Hazel Smith 1995: Introduction; J. David Singer 1961; Putnam 1988; Peterson 1995: 71- 74; 85.

'two-level games'.<sup>191</sup> Liberal intergovernmentalism perceives the national interest of EU member states as formed domestically by national lobby groups before interaction at the EU level. By all accounts, this conceptual distinction between different levels of analysis does not necessarily exclude some kind of interplay between various layers of policy inputs.

Each hypothetical explanation ultimately identifies different actors as the key stakeholder in EU policy-making. For neo-realists, US hegemonic power constrains EU foreign policy. For sanctions approaches, it is the target's behaviour that determines whether sanctions will be scaled up or down. For social constructivist approaches, the interactions between supranational institutions, EU member states, and transnational non-state actors tend to shape the policy. Liberal intergovernmentalists perceive the three largest EU member states as the key actors in EU policy-making.

In summary, the ensuing empirical investigation shall wrestle with the following theoretical issues to elucidate EU foreign policy-making towards Myanmar:<sup>192</sup>

- 1) *Who makes foreign policy decisions in the EU:* the three big EU member states, all member states, supranational institutions, or actors external to the EU machinery?<sup>193</sup>
- 2) *How do the member states decide EU foreign policy?*
  - Are the interests of EU member states given (that is, pre-formed at the domestic level), or susceptible to change during interaction at the EU level?<sup>194</sup>
  - Is EU foreign policy driven by ideas or material interests?<sup>195</sup>

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<sup>191</sup> Putnam 1988; Moravcsik 1998.

<sup>192</sup> K. Smith 1996: 81; Bicchi 2007.

<sup>193</sup> Bicchi 2007: 14.

<sup>194</sup> K. Smith 1999: 167ff.

<sup>195</sup> Finnemore and Sikkink 1998; Wendt 1999; Balfour 2008.



- Do negotiations between member states follow a process of bargaining, or arguing?<sup>196</sup>
- Is EU foreign policy the outcome of an 'upgraded interest' or of the lowest common denominator among EU member states?<sup>197</sup>

3) *Are the dynamics determining EU foreign policy endogenous or exogenous to the EU?*<sup>198</sup>

The theoretical framework and hypotheses developed here could, in principle, be applied to make sense of various cases where the EU decided to scale up sanctions. As background information, Annexes 2, 3, 4, 5, 6 and 7 thus showcase some 68 cases of EU sanctions from 1956 until the end of 2010. The subsequent chapters shall now test which of these four hypotheses best explains EU foreign policy-making towards Myanmar from its inception until the dissolution of the military government in 2011.

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<sup>196</sup> Bicchi 2007: 14. See also: Risse 2000; Schimmelfenning 2001: 47-80; Erikson and Fossum 2000; Payne 2001; Kratochwill 1989.

<sup>197</sup> K. Smith 1999: 167ff.; Schoutete 1987: 62-67; Moravcsik 1998: 482.

<sup>198</sup> K. Smith 1996 and 1999.

## **Part II/ Case Study**

## Chapter III

### The Context of EU Foreign Policy towards Myanmar

This chapter introduces the case study of EU foreign policy towards Myanmar. It delivers a contextual analysis of the main issues at stake in this empirical investigation. Historical and contemporary data is presented here to provide the reader with relevant background information. Hence, this chapter does not offer a detailed chronological overview of EU foreign policy, as this shall be undertaken in the three ensuing chapters.

This chapter is guided by a Foreign Policy Analysis framework, which seeks to identify *who* are the principal foreign policy-makers, *what* their interests are, and *which* structural factors determine the policy.<sup>1</sup> Agents are 'entities capable of decisions and actions in a given context'.<sup>2</sup> Structures encompass 'the sets of factors which make up the multiple environments in which agents operate [...]'.<sup>3</sup> Structure, therefore, does not merely refer to the external environment; it also includes the political, bureaucratic, and social structures, which all condition foreign policy-making.<sup>4</sup> In the present case, important structural factors include: Myanmar's strategic relevance for the EU; the significance of Myanmar's domestic opposition; the different international approaches towards Myanmar; and the objectives of EU policy. Agents making the policy are: EU member states, supranational institutions, and non-state actors.

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<sup>1</sup> Bryan White showed that FPA can be used in an EU context, although the EU is not a state *stricto sensu* (White 2005: 23-29; and 2003; Bicchi 2007: 12). On agents and structures in FPA, see also: Snyder *et al.* 1954: 53; Frankel 1963; Rosenau 1966: 99; Jones 1970; Beasley *et al.* 2002: 2-3; Hudson 2007: 12-15; Hill and Brighi 2008: 117-135; Carlsnaes 2008: 94-95; J. Carlsnaes 1992; 2008: 85-100.

<sup>2</sup> Hill 2003: 26.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*; J. Frankel 1970.

This chapter is divided in five sections. Drawing upon the bandwagoning hypothesis, the first section analyses whether the EU perceives Myanmar as bearing strategic weight. The second section outlines the sanctions debate against the backdrop of Myanmar's domestic politics and international approaches to the issue of human rights in Myanmar. The next section examines the primary objectives the EU aims to achieve in Myanmar. It also considers how these goals may have evolved over time from 1990 until 2010. The fourth section lays out the interests of the main stakeholders in EU foreign policy. These agents could be broadly classified into two competing camps. One caucus upholds a principled policy, whereas the other defends a flexible approach to the Myanmar issue. The final section summarises this overall analysis and outlines how the next chapters of the case study are structured.

## **1. Myanmar as a State Lacking Strategic Weight for the EU**

The bandwagoning hypothesis formulated in Chapter Two advanced that EU policy is contingent upon EU decision-makers' perception of the targeted state: the EU is likely to scale up sanctions if it is pressured by the US to tighten restrictions on a pariah state that bears little strategic weight for the EU. The ensuing title explains why the EU views Myanmar as lacking strategic value.

At first glance, Myanmar could appear strategically relevant due to its geopolitical situation. It lies at the crossroads between Southeast and South Asia, possesses direct access to the Andaman sea, and shares borders with the two rising great powers in Asia: China and India. During the imperial period, the British considered the territory (then known as Burma) as a geostrategic platform to protect the Raj from intruders coming from East Asia (e.g. French colons). The country was thus annexed to the Raj as a consequence of the three Anglo-Burmese Wars successively won by the British in 1824-1826, 1852-1853, and 1885-1886. During the Second World War, Burma was coveted by both the Japanese and the Allies as a strategic junction between China, India, Southeast Asia, the Andaman Sea, and owing to its proximity to the Strait of Malacca, which

is one of the world's main shipping lanes. Today, Myanmar possesses Southeast Asia's largest territory (676,578 km<sup>2</sup>), and a relatively large population (49.19 million in 2008).<sup>5</sup> It is well endowed with natural resources (e.g. gas, timber, precious and semi-precious stones, partly untapped fisheries). It has the largest number of troops among the ten ASEAN countries: 406,000 members of the armed forces as well as 107,250 paramilitary forces.<sup>6</sup>

Despite these geopolitical assets, Myanmar's relative exclusion from the globalising world economy has influenced the perception of EU policy-makers. Since 1987, it is classified as a least developed country by the UN Economic and Social Council (ECOSOC). Its GDP based on purchasing power parity (PPP) reached only \$76.839 billion in 2010, in stark contrast with its immediate neighbours: Thailand (\$589.005 billion), India (\$4.058 trillion), and China (\$10.120 trillion).<sup>7</sup>

Compared to other countries, Myanmar is a marginal economic partner for the EU. Imports from Myanmar into the EU 27 economic zone amounted to €156,838,787 between January and December 2009. Exports reached €90,882,158 during the same period.<sup>8</sup> The 0.0 percent share of total EU trade bespeaks that such low figures are statistically insignificant from a European perspective. Myanmar ranked as the EU's 139<sup>th</sup> trade partner in 2006.<sup>9</sup> The main economic interface between Myanmar and the EU is the investment by the French oil firm Total SA in the Yadana gas field.<sup>10</sup>

The perception of Myanmar as carrying little strategic weight for EU interests is also cultural. Myanmar's self-isolation under the Cold War has meant that cultural and social links with Europeans have been tenuous since General Ne Win seized power in 1962. Myanmar maintained few contacts with Westerners. It

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<sup>5</sup> World Bank website 2011: *Indicators*.

<sup>6</sup> International Institute for Strategic Studies 2009.

<sup>7</sup> International Monetary Fund 2011: *World Economic Outlook*.

<sup>8</sup> Eurostat 2010 : *EU Trade*.

<sup>9</sup> Eurostat 2006: *EU Trade*: 5.

<sup>10</sup> Egreteau 2009: 10. (SA stands for *Société Anonyme*, or public limited company (Plc).

is only after the tragic events of 1988 and 1990 that Myanmar was unwillingly thrust into the international limelight.<sup>11</sup> This lack of awareness concerning Myanmar certainly contributed to the country's lack of relevance for Europeans' geopolitical and economic strategies in South and Southeast Asia. To add to this perception, the EU was slow to realise the growing importance of Southeast Asia in global terms. This relevance was recognised only with the development of a New Asia Strategy (NAS), promoted by German foreign minister Klaus Kinkel during the Essen European Council of 1994. It preceded the creation of the Asia Europe Meetings (ASEM) in 1996.<sup>12</sup>

Myanmar does not seem to pose a direct security threat to the EU. There are allegations that Myanmar attempts to acquire Weapons of Mass Destruction.<sup>13</sup> Myanmar has indeed upgraded its defence cooperation with both North Korea and Russia, notably in regards to civil nuclear technology. While various hypotheses should not be excluded, such claims are difficult to validate.<sup>14</sup> Suspicions have been only partly substantiated by impartial bodies.<sup>15</sup> Senior US officials have said that their concerns relate to missile, not nuclear technology.<sup>16</sup> Campaign groups have attempted to instrumentalise such claims without sufficient proof, thus partly eroding their credibility. There are also allegations that the Myanmar army used chemical weapons against ethnic minorities.<sup>17</sup> Furthermore, the United Nations Office on Drugs and Crime (UNODC) ranks Myanmar as the second global producer of opiates after Afghanistan. However, narco-trafficking has hardly ever been raised as a source of European concern in the EU's declarations on Myanmar.

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<sup>11</sup> International Institute for Democracy and Electoral Assistance (IDEA) 2001: 133, footnote 192.

<sup>12</sup> Khaliq 2008: 194.

<sup>13</sup> Democratic Voice of Burma 2007; Jefferey 2005.

<sup>14</sup> Selth 2010a; 2010b; 2009a; 2009b; 2009c; 2007a; 2007b.

<sup>15</sup> UN Security Council, 5 November 2010: *Report*.

<sup>16</sup> *New York Times*, 12 June 2011.

<sup>17</sup> Christian Solidarity Worldwide 2005: 2; Simon, April 2005.

Europeans have seriously raised the issue of Myanmar as a security threat only once. On 15 September 2006, the USA succeeded in putting the issue of Myanmar on the UNSC's formal agenda. In January 2007, the UK and the USA initiated a draft for a non-punitive UNSC Resolution on Myanmar, which was supported by European countries (including France). The argument was that the situation in Myanmar, 'including the detention of over 1,100 political prisoners, as well as the outflow from Burma of refugees, drugs, HIV/AIDS; and other diseases [...]' have serious trans-national effects that are 'likely to endanger the maintenance of international peace and security.'<sup>18</sup> Some European MPs and NGOs campaigned for the UNSC to impose multilateral sanctions in the form of an arms embargo.<sup>19</sup>

Although EU countries supported the draft resolution, they considered Myanmar as a threat to *regional* peace and security – and therefore not a direct threat to Europe. The 2007 text received 9 votes in favour (including five EU member states), but was vetoed by China and Russia (the first double veto since 1989), and voted against by South Africa. Indonesia, the Republic of the Congo and Qatar abstained from voting.<sup>20</sup> Wang Guangya, the representative of neighbouring China, had qualified as 'preposterous' the view that Myanmar constituted a threat to regional peace and security.<sup>21</sup>

Consequently, European policy-makers tend to perceive Myanmar as a country carrying little relevance for their security and economic interests. Following the realist emphasis on strategic interests, it seems likely that the perception of Myanmar as a negligible country for European security and its economic interests would give the EU little reason to reconsider its punitive strategy. The lack of strategic interest could explain why the EU scaled up sanctions on Myanmar, especially if compared to states with a similarly bleak

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<sup>18</sup> Bolton: *Annex to the letter of 15 September 2006*.

<sup>19</sup> Bercow (MP), November 2006: *Address*; John Bercow's webpage 2010; Burma Campaign UK, 4 May 2010.

<sup>20</sup> UN News Centre, 12 January 2007.

<sup>21</sup> UNSC, 15 September 2006: *Remark: 2*.

human rights record but bearing more strategic weight for the EU. Nevertheless, this perception of Myanmar as unstrategic could evolve over time owing to its privileged geopolitical location and its gradual integration into the global economy since the early nineties.

## 2. The Foreign Policy Debate

### 2.1. Origins of the Debate

Another important condition is the existence of a vigorous political opposition in Myanmar. Opposition parties enjoined the international community to impose sanctions on the military government. Ethnic groups, and opposition parties including the NLD, most notably its secretary general Aung San Suu Kyi, have advocated sanctions.<sup>22</sup> Western leaders recognised this plea by authoritative opposition leaders as a justification for their imposition, and later for not repealing them.<sup>23</sup>

NLD welcomed sanctions as a signal of support by Western governments, and of disapproval of the SPDC regime. Their primary objective was to push the SPDC to include the NLD into the national reconciliation process. The EU initially exhorted the SPDC to 'respect the results of the 1990 elections'.<sup>24</sup> It aired concerns over the 'maintenance of military rule'.<sup>25</sup> Since Myanmar refused to honour these results, the EU later urged

[...] the military authorities to enter into substantive discussions with the democratic movement concerning a process leading to national reconciliation, respect for human rights and democracy.<sup>26</sup>

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<sup>22</sup> Tonkin 2008a: 3.

<sup>23</sup> House of Lords, 9 May 2007: *Report*.

<sup>24</sup> Council of the EU: *Common Position 96/635/CFSP of 28 October 1996*: Art. 2.

<sup>25</sup> *Ibid.*

<sup>26</sup> Council of the EU: *Common Position 2004/423/CFSP of 26 April 2004*.



Sanctions have subsequently been renewed owing to: '[...] the lack of improvement in human rights situation and the absence of substantive progress towards an inclusive democratisation process [...]'.<sup>27</sup>

NLD activists deemed such symbolic recognition a crucial element of their political aspirations. Despite twenty years in which restrictive measures were unsuccessful in bringing down the regime, the NLD hailed their imposition by Western powers as one of their political victories. For the NLD, supporting sanctions was a tool to demonstrate the extent to which they commanded the Western political agenda vis-à-vis the military government.

A few examples illustrate the considerable importance given to legitimacy by the opposition – sometimes at the cost of pragmatism. In June 1996, MPs founded the government in exile, called the National Coalition of the Union of Burma (NCGUB), with ASSK's cousin Dr. Sein Win as its Prime Minister. NCGUB claims to be Myanmar's legitimate government, not the SPDC. Nevertheless, its influence in Myanmar has been extremely limited.<sup>28</sup> On 16 September 1998, NLD MPs created a Committee Representing the People's Parliament (CRPP) in Yangon, which repealed all decrees passed by the SPDC since the 1990 elections. This symbolic decision led to the arrest of over a thousand NLD members (including sixty NLD MPs); the government ordered the CRPP's dissolution in July 1999.<sup>29</sup> Finally, the importance of symbolic recognition is also mirrored in the debate over which name (Myanmar or Burma) is suitable to designate the country.<sup>30</sup>

The NLD's position has not always been clear on the question of whether it called for sanctions. The party remained periodically silent as to what policy

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<sup>27</sup> Council of the EU: *Decision 2010/232/CFSP of 26 April 2010*.

<sup>28</sup> Saw Myat 2008: 79; Interview 23.

<sup>29</sup> Soe Myint Aung 2003: 79.

<sup>30</sup> Dittmer 2008.

response it expected from the international community pertaining to specific domestic events that unfolded in Myanmar.<sup>31</sup>

Sanctions were chiefly called for by ASSK during interviews and press conferences.<sup>32</sup> Already in June 1989, she had publicly requested a trade and investment boycott, which she reiterated in 1995 and in August and October 1996.<sup>33</sup> In 1996, ASSK explicitly warned foreign tourists against coming to Myanmar during the 'Visit Myanmar Year' promotional period. She beseeched tourists to boycott Myanmar.<sup>34</sup> Another explicit plea asked for a ban on foreign assistance for the government. In a *Prospect* magazine article of July 2001, NGOs were asked to withdraw.<sup>35</sup> As a direct response to ASSK's requests, the European Parliament pressured the Council to ratchet up sanctions 'by ending all links between the European Union and Burma based on trade, tourism and investment'.<sup>36</sup> Western policy and the NLD's stance met fierce opposition by the SPDC, which polarised the political struggle further.

In an apparent about-turn, ASSK denied in 2002 having called upon foreign governments to impose sanctions on her country:

We are of the opinion that sanctions are an action taken by a democratic country to promote democracy in another country. Nevertheless, we have not asked any country to impose sanctions. The countries concerned took actions according to their own reasons and their own decisions.<sup>37</sup>

High-profile exile and EU lobbyist Harn Yangwhe also stated that the NLD did not directly solicit sanctions.<sup>38</sup> However, it seems that ASSK maintained her support

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<sup>31</sup> IDEA 2001: 168; Tonkin 2008c.

<sup>32</sup> Tonkin 2008a: 3.

<sup>33</sup> *Ibid.*; IDEA 2001: 168; *Nation*, 14 August 1996.

<sup>34</sup> Tonkin 2008a.

<sup>35</sup> Tonkin 2008a: 4; Aung San Suu Kyi 2002.

<sup>36</sup> EP, 30 June 1997: *Resolution*.

<sup>37</sup> ASSK's press conference on 6 May 2002, quoted in Network Myanmar's website 2010.

<sup>38</sup> Europe External Policy Advisor 2007. Harn Yawngwhe (1948-), son of Prince Shwe Thaikhe of Yawngwhe and first President of the Union of Burma, worked for Dr. Sein Win's NCGUB and the exile radio station Democratic Voice of Burma (DVB); today he directs the Euro-Burma Office in Brussels.

for sanctions privately, for instance to Nobel Peace Prize laureate Jody Williams, whom she met three months before her third confinement in May 2003.<sup>39</sup>

The question of sanctions is controversial within Myanmar's political opposition, however. Certain political activists independent from the NLD denounced sanctions for their counter-productive effects, and called for an EU policy change.<sup>40</sup> Some criticised Western governments for listening to the NLD's leaders too exclusively.<sup>41</sup> In 2010, the four opposition parties that were elected in Myanmar's parliament, namely the Shan Nationalities Democratic Party, Rakhine Nationalities Development Party, All Mon Regions Democracy Party and National Democratic Force, appealed for sanctions to be lifted.<sup>42</sup> Speaking on his own behalf, the NLD's Central Executive Committee member Win Tin criticised international sanctions for being ineffective.<sup>43</sup>

An independent organisation conducted a confidential and relatively reliable opinion poll on Western sanctions. Carried out from 4 to 10 March 2010 among Yangon's urban population, responses to the different questions varied between 1,089 and 1,514 responses. The confidence level in the answers varied between 95 and 99 percent with a marginal error oscillating between 3 and 4 percent.<sup>44</sup> Only 14.1 percent of the surveyed population was found to have a thorough knowledge of sanctions combining political, economic, and social perspectives.

- 44.3 percent of the surveyed population wanted sanctions to be repealed, while 14.5 percent wanted sanctions maintained. The remaining 41.2 percent delivered a more nuanced answer, wishing economic restrictions and the general isolation of the country to be brought to an end, while they

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<sup>39</sup> Tonkin 2008a: 2.

<sup>40</sup> Aung Naing Oo 2011; Khin Zaw Win 2009 and 2007.

<sup>41</sup> Interviews 27 and 23.

<sup>42</sup> Chin Progressive Party, 21 January 2011; Shan Nationalities Democracy Party, 15 January 2011; Ko Ko Gyi, 10-16 January 2011; Morsbach 2011.

<sup>43</sup> Kuijper 2010: 3.

<sup>44</sup> Nay Win Maung 2011: 1-2.

favoured the maintenance of personal penalties on government officials and business partners, such as the visa ban and asset freeze.

- 44.7 percent of the surveyed population found that sanctions affected their daily life; 18.2 percent of the population thought sanctions were effective in achieving their objectives; 15.9 percent thought sanctions were good for the country; the remaining sample delivered other answers.
- 24.16 percent of the surveyed population considered that the first victims of sanctions were Myanmar people; 23.28 percent the government; 19.34 percent government crony businesses. The remaining 33.22 percent interviewees mentioned other entities.
- 71.0 percent of the surveyed persons wished that domestic political forces would work together in order to lift Western sanctions; 10.7 percent did not desire such political movement; and 18.3 percent did not comment.<sup>45</sup>

This opinion poll reveals significant differences of opinion among the Myanmar urban population. Nevertheless, it is obvious that only a minority of interviewees were openly supportive of sanctions.

The EU has never conducted an independent analysis of the effectiveness of the sanctions approach, at least not one made public. Some voices within the EU argued that sanctions should be repealed, notably owing to their lack of efficacy and the sometimes counterproductive effects they have had.<sup>46</sup> The promotion of political change via sanctions has been criticised for ignoring broader humanitarian, economic, and geostrategic issues at stake in Myanmar.<sup>47</sup> EU policy-makers have on occasion recognised the ineffectiveness of the sanctions policy.<sup>48</sup>

In the absence of political change in Myanmar, the EU progressively adapted its policy formulation. It expanded its wording of support, from NLD to the

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<sup>45</sup> *Ibid.*: 1-8.

<sup>46</sup> Hauswedell 2005: *Keynote Speech*; Tonkin 2006a; Frittin and Swanström 2010a.

<sup>47</sup> Petrie 2008: 21; Tonkin, October 2009b; Hauswedell 2008; R. Taylor and Pedersen 2005.

<sup>48</sup> Assemblée Nationale, 25 April 2000: *Answer*; House of Lords: *Debate of 12 October 2007*; EP: *Resolution of 19 June 2008*; Democratic Voice of Burma, 8 October 2009.

'national reconciliation process' and to 'tripartite talks'. The latter were geared to bring together the central government, the pro-democracy movement and ethnic minorities (including those insurgencies that maintained their armed struggle) in all-inclusive negotiations.<sup>49</sup> However, the SPDC has never recognised the so-called 'tripartite talks' called upon by the international community and ASSK. It has successfully led a 'divide and rule' policy by negotiating cease-fires with each ethnic group separately, from 1989 until the time of writing.<sup>50</sup> In this process, the SPDC systematically sidelined the democratic opposition represented by the NLD and affiliated parties. By the same token, the EU tended to complement its support of ASSK and the NLD with expressions of support for the 'people of Burma/Myanmar'.<sup>51</sup> The issue of ASSK and the NLD's exclusion from the political process came back to the fore when ASSK was re-arrested in 2000 and 2003, her house arrest sentence was extended in 2009, and when the NLD decided to boycott the 2010 general election.

## **2.2. ASEAN versus Western Approaches to Myanmar**

Calls by the political opposition to impose sanctions on Myanmar's military government divided the international community. The countries that decided to restrict their relations with Yangon included: the United States, Canada, Australia, New Zealand, the EU and its members, Turkey, Croatia, the Former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina, Montenegro, Iceland, Liechtenstein, Norway, as well as Ukraine and the Republic of Moldova. Japan tended to cautiously revise its development and diplomatic cooperation, although it did not adopt statutory restrictions.

Myanmar's neighbours refused to emulate Western policy. The lack of effectiveness of Western sanctions on the military government can be at least

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<sup>49</sup> Council of the EU, 30 May 2006: *Declaration*; EP: *Resolution of 11 April 2002*: point 1.2.6.

<sup>50</sup> See: Annex 1.

<sup>51</sup> European Commission 2000: *Bull.* 4: 1.6.61; Council of the EU: *Declaration of 25 September 2007*; European Commission 2008: *Bull.* 5: 1.35.36.

partially attributed to the fact that Asian countries did not restrict their relations with their neighbour. Most sanctions scholars subscribe to the generic claim that sanctions are unlikely to bear fruit if they are not applied by neighbouring states.<sup>52</sup>

In-line with its 1989 open-door economic policy, the military government attempted to integrate into the buoyant regional economy. Myanmar expressed its wish to join ASEAN in 1992. In 1994, Myanmar was allowed to join an ASEAN meeting in Bangkok. It applied for full membership in the regional group in August 1996, which it joined on 23 June 1997.

ASEAN resisted pressures by the EU and the US to reject Myanmar's entry owing to its poor human rights record.<sup>53</sup> In contrast with the EU, ASEAN tolerates differing values among its member states.<sup>54</sup> ASEAN does not set specific prerequisites with regards to respect of human rights by its members, nor does it foist benchmarks for democratic behaviour.<sup>55</sup> The ASEAN community articulated a common approach of enhanced political, diplomatic and economic relations with Myanmar, which external analysts have retrospectively dubbed 'constructive engagement'.<sup>56</sup>

ASEAN alluded to constructive engagement when the Union of Myanmar became a member in 1997. Citing examples of recent liberalisation processes in Indonesia, the Philippines, Thailand, South Korea or even the People's Republic of China, Asian countries defended the position that trade and dialogue would bring about positive change in Myanmar, rather than sanctions. 'Soft authoritarianism' was recognised in Asia as key to economic and societal development.<sup>57</sup> Malaysia's Prime Minister, Mahathir Mohamad, launched a

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<sup>52</sup> Pape 1997: 106ff.

<sup>53</sup> Council of the EU, 2 June 1997: *Declaration*.

<sup>54</sup> ASEAN Secretariat: *Declaration of 8 August 1967*; *ibid. Declaration of 27 November 1971*; *ibid. Declaration of 24 February 1976*; see also: Haacke 2003; Leifert 1996; Huntington 1996: 128.

<sup>55</sup> Emerson 2009: 3ff. and 135ff.

<sup>56</sup> E.g. Kanbawza 1995; Bray 1995.

<sup>57</sup> Fukuyama 1995.

polemic on Western values that placed the individual above the community, which he contrasted with 'Asian Values'. (Myanmar used similar cultural arguments to justify the use of forced labour by the security forces as community work and as a practice derived from *Theravada Buddhism*).<sup>58</sup>

ASEAN tended to confront Western approaches to Myanmar as a block, although some member states also criticised Myanmar for its domestic behaviour. During the ASEAN Bali Declaration of January 2011, the ASEAN Chair, Indonesian foreign minister Natalegawa, was quoted as welcoming Myanmar's 'conducive and transparent' elections in November 2010. ASEAN foreign ministers drew the conclusion that the West should therefore repeal sanctions.<sup>59</sup> The ASEAN's constructive engagement strategy has been denounced by Western countries (e.g. US, UK) as a smokescreen for the pursuit of material interests.<sup>60</sup>

When looking closer at the notion of 'constructive engagement', one hardly finds proof of genuine engagement (with a primary political objective) by ASEAN partners. To some analysts, it seems fair to describe the attitude of ASEAN – and others in the region – as a 'business as usual' approach. As long as the regional picture remains stable, reaping economic advantages is the prime objective. The achievement of political progress would be welcome as a side effect of economic engagement.<sup>61</sup> According to this interpretation, an ASEAN statement perceived as critical vis-à-vis Myanmar would be released to please a Western audience: ASEAN would speak collectively in critical terms, while ASEAN members would pursue their daily business with Myanmar.<sup>62</sup>

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<sup>58</sup> Horsey 2011.

<sup>59</sup> ASEAN Foreign Ministers' Retreat, 16-17 January 2011; Asia Pacific News, 16 January 2011.

<sup>60</sup> Chatterjee 2007.

<sup>61</sup> Interview 6.

<sup>62</sup> *Ibid.* Timo Kivimäcki (2008) advanced that, as regional organisations, the EU and ASEAN have mutually influenced each other's positions on Myanmar. The EU has grudgingly accepted Myanmar into multilateral fora, while ASEAN has at times expressed criticism of Myanmar's human rights records. However, there is little evidence that national ASEAN states have altered their bilateral relations with Myanmar as a result of EU pressure within EU-ASEAN processes (Interview 6).

### 3. Objectives of EU Foreign Policy

Policy-making is also constrained by the objectives set by the EU. The broad, declared objective of EU foreign policy towards Myanmar is to promote human rights, democracy, as well as national reconciliation.<sup>63</sup> These primary objectives have been articulated in European declarations as well as in the common positions towards Myanmar, first decided in 1996, and then renewed on a twelve-month basis. The EU has constantly re-iterated its support to the ‘people of Burma/Myanmar’.<sup>64</sup> However, the EU hardly ever alluded to economic and social prosperity as policy goal. The FCO states that the purpose of sanctions is:

To put pressure on the regime to work towards democratic change and respect for human rights, through measures which are designed to target those obstructing reform and progress, but ensuring that the ordinary people of Burma suffer as little as possible.<sup>65</sup>

#### 3.1. Focus on Aung San Suu Kyi

In practice, democracy promotion has meant that the primary objective of EU foreign policy is securing ASSK’s definitive release from house arrest, as well as her and the NLD’s participation in politics.<sup>66</sup> ASSK’s name is mentioned systematically in almost all EU declarations, except when major events occurred in the country without her involvement, as during the 2007 uprising, and in the aftermath of the 2008 Cyclone Nargis natural disaster. The EU has never ceased to reiterate that a *sine qua non* to repeal sanctions was ASSK’s release from house arrest, and the junta entering into a ‘meaningful dialogue’ with the political opposition and its leader.<sup>67</sup> The direct link between sanctions and ASSK’s detainment was demonstrated on multiple occasions, for instance on 16 June

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<sup>63</sup> Council of the EU, 24 March 1997: *Press Release*.

<sup>64</sup> Council of the EU, 14 April 2003: *Conclusions*.

<sup>65</sup> FCO website 2009, quoted in: House of Lords 24 April 2007: *Report*, par. 53.

<sup>66</sup> Council of the EU, 16 June 2003: *Conclusions*; Council of the EU, 30 May 2006: *Declaration*.

<sup>67</sup> *Ibid.*: *Common Position 96/635/CFSP of 28 October 1996*, Art. 2.



2003 when the EU strengthened penalties to denounce her third incarceration.<sup>68</sup> On 13 August 2009, the EU widened its visa ban and asset freeze to those responsible for the verdict extending her stay in house arrest for another eighteen months.<sup>69</sup> This direct cause and effect relation between penalties and the handling of ASSK underpins the compliance hypothesis, which shall be tested in the subsequent chapters.

This unflinching European support owes to ASSK's extraordinary attributes as a person. She is the recipient of an unrivalled number of prestigious awards (eighty-two international prizes by 2007), including the European Parliament's Sakharov Prize for Freedom of Thought (conferred in 1990 as one of her very first prizes ever) and the Nobel Peace Prize (bestowed upon her in 1991).<sup>70</sup> Together with the 2010 recipient Liu Xiaobo, she was (until June 2012) the only laureate who could not collect her prize in person because of her detainment.

ASSK acted as a catalyst and a symbol of Myanmar's struggle for democracy. The daughter of Myanmar's architect of independence General Aung San, ASSK was seen by her numerous followers as continuing her father's unachieved state-building legacy.<sup>71</sup> She was widely represented as Myanmar's political alternative after her party won the 1990 elections (although the government did not allow her to take part therein). Since then, she has remained the leader of the political opposition. ASSK was intermittently confined to house arrest by the government, and released three times (arrested on 20 July 1989 and released on 10 July 1995; re-arrested on 23 September 2000 and released on 6 May 2002; third arrest on 30 May 2003 and released on 13 November 2010). Thus, the slogan 'Free Burma' espoused by democracy activists (notably by the web-based network Free Burma Coalition (FBC) tended to become a substitute for 'Free

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<sup>68</sup> *Ibid.*: *Conclusions of 16 June 2003*.

<sup>69</sup> *Ibid.*: *Press Release of 13 August 2009*; BBC News, August 2009.

<sup>70</sup> NCGUB website 2007: *Daw Aung San Suu Kyi's International Awards, Honors & Appointments*.

<sup>71</sup> Lintner 1990: 109; Saw Myat 2008: 92.

Aung San Suu Kyi'.<sup>72</sup> She is often portrayed as the martyr of an abject military dictatorship and praised for her abnegation, notably for being separated from her two sons and from her dying husband, Michael Aris, who lived in England until his demise in 1999.

ASSK remains a democracy icon in the West. Her political message of non-violence, which she expressed to the international media directly in English in books<sup>73</sup> and interviews,<sup>74</sup> swiftly gained popularity in European countries. With a political message of non-violent confrontation, inspired by Gandhi and buttressed by Myanmar's ancestral culture of *Theravada Buddhism*, her popularity in Western countries can be compared to the Dalai Lama's. The trendiness of Buddhism in contemporary Western culture may have contributed to amplify her fame. Moreover, she embodies a new generation of women leaders in Asia – next to Indira Gandhi in India, Maria Gloria Macapagal-Arroyo in the Philippines, Megawati Sukarnoputri in Indonesia, Khaleda Zia and Sheikh Hasina Wajed in Bangladesh, Sirimo Bandaranaike in Sri Lanka, or Benazir Bhutto in Pakistan.<sup>75</sup> She is compared to Nelson Mandela, not least because she sacrificed her private life for her political beliefs, and acquired a reputation for being uncorrupted and principled.<sup>76</sup> European policy-makers claimed they were profoundly inspired by ASSK and her struggle for democracy.<sup>77</sup> European sanctions also aimed at denouncing the illegitimacy of the military government.

Finally, the quixotic symbol of a photogenic woman promoting non-violent means in order to topple tyrannical militaries formed an ideal story to feed

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<sup>72</sup> Interview 42.

<sup>73</sup> Aung San Suu Kyi 1991.

<sup>74</sup> *Ibid.* 1997.

<sup>75</sup> Saw Myat 2008: 88-9.

<sup>76</sup> BBC News, August 2009. This comparison, drawn multiple times, is nonetheless inaccurate. Nelson Mandela and Walter Sisulu benefited from the support of the African National Congress' armed wing (Mandela 1994; Suttner 2010). The NLD did not enjoy strong connections with armed groups (Saw Myat 2008: 78ff.). This could partly explain why its nonviolent boycott policies were crushed by the SPDC.

<sup>77</sup> Brown 2009.

European media.<sup>78</sup> The European press painted Myanmar's political tragedy in strongly Manichean terms, whether right or not. ASSK's popularity in the media may have enticed EU policy-makers to devote continuous attention to her fate. During an interview, a senior FCO official admitted that (s)he 'recognise[s] in ASSK the value of a brand'.<sup>79</sup>

Constructivist theories highlighting the role of elites could account for the immense support given to ASSK. ASSK embodies the liberal values she aims to defend. This raises the question whether the support to ASSK by EU policy-makers owes to domestic pressure groups within the member states (electoral politics), or to the ideological commitment of high-level decision-makers to Myanmar's political struggle.

Within Myanmar, views on ASSK are seen in a more subtle context. Between 1988 and 2010, the military government has attempted to sideline her in the public sphere, by denying her freedom and opportunities to address her country folk. At the same time, there are indications that the government had made attempts to lure her into the establishment, by admitting the UN Special Envoy Tan Sri Ismail Razali as mediator, appointing Labour Minister General Aung Kyi as liaison officer between ASSK and the government in October 2007, and – according to unconfirmed reports – offering her positions in a future, civilian government.

In the period prior to the November 2010 elections, criticism started to mount against her decision to boycott the vote and her dismissive statements vis-à-vis those parties that had decided to campaign for election.<sup>80</sup> According to several interviews, Myanmar's domestic political debate may have alienated the NLD from some fringes of the urban intelligentsia in the country.<sup>81</sup> It is also perceived

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<sup>78</sup> This Manichaeism is embodied by the title of Timothy Garton Ash (2000)'s essay: *The Beauty and the Beast in Burma*. See also: Zöllner 2008: 26.

<sup>79</sup> Interview 33.

<sup>80</sup> ASSK reportedly described the decision to establish the NDF as 'undemocratic', as quoted in: Tonkin, 13 September 2010.

<sup>81</sup> Interview 23.

as a Western inconsistency that Myanmar has been sanctioned despite having some political space, although restrained, whereas other undemocratic regimes in Southeast Asia were not ostracised because a less radical opposition never called for international sanctions.<sup>82</sup>

### **3.2. Lack of Benchmarks to Measure the Achievement of Objectives**

During two decades, the EU consistently aimed at three primary objectives: 1) to secure ASSK's release from house arrest as well as the release of other prisoners of conscience, 2) to obtain the participation of the NLD in an open and democratic constitution drafting exercise, and 3) to honour the results of free, fair and open elections to which the NLD would participate as a political party. These injunctions were concentrated on the NLD's participation in the process of national reconciliation.

EU policy was however characterised by the absence of perspicuous and publicised benchmarks, indicating under which conditions sanctions would be repealed.<sup>83</sup> While calling for a 'substantive dialogue' between the government and opposition forces with a view to bringing about 'national reconciliation' process, the EU never specified what kinds of agreements should be reached between the SPDC and NLD. Neither did it state to what extent ethnic minorities should be included in such negotiations, since the NLD is mainly composed of the majority *Bama* ethnic group. The EU enjoined the SPDC to repeal laws censoring the debate on the constitution in the National Convention (NC). Nonetheless, the EU never outlined explicit criteria to determine when the NC would be considered 'democratic'. Council Declarations on Myanmar have tended to be evasive.

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<sup>82</sup> Interview 24; Camroux and Egreteau 2010: 277.

<sup>83</sup> Interview 6.

Various stakeholders may have interpreted such statements differently.<sup>84</sup> The numerous common positions reiterated the objective of bringing about 'substantive dialogue' between the political opposition and the military government. Nonetheless, this broad objective was understood in a variety of ways. A maximalist interpretation of the EU's objectives tended to prevail: sanctions would be repealed if Myanmar honoured the results of the 1990 elections.<sup>85</sup> Some member states interpreted EU objectives more flexibly. Germany objected that sanctions could be partially repealed if a progress of the human rights situation were to be witnessed on the ground. Improvements could be measured by specific milestones such as the release of political prisoners, the respect of cease-fire agreements with ethnic minorities, or a diminution in the use of forced labour by security forces.<sup>86</sup> Sanctions would not solely focus on the occurrence of a 'substantive dialogue' between the SPDC and NLD, but on the broader security outlook.<sup>87</sup>

This overt vagueness could hide internal benchmarks. As triggers of a review of the sanctions regime, the EU could set 'confidential internal benchmarks' that would be concealed from the public. Another option could reside in the existence of 'non-confidential benchmarks', which are kept from the public eye but shared with Myanmar's leaders. 'Non-confidential benchmarks' would entice the military government to modify its behaviour without enduring the pressure of public opinion.

The confidential character of such conditions for policy change would be difficult to prove, but evidence gathered from interviews points to the absence of such internal criteria.<sup>88</sup> Purely internal benchmarks for policy change could not, by definition, be seen part of a negotiating process with the SPDC. Possible European conditions communicated exclusively to the Myanmar authorities were

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<sup>84</sup> Interviews 25, 27, and 41.

<sup>85</sup> Interview 26.

<sup>86</sup> Interview 20.

<sup>87</sup> Interviews 13 and 20.

<sup>88</sup> Interview 6.

not confirmed by EU representatives who officially met with them.<sup>89</sup> In short, one can assume that the EU has never established internal benchmarks as part of a negotiation process and to trigger a change of policy.<sup>90</sup> In contrast with Myanmar, the EU pursued a 'benchmarks approach' towards another pariah state, Belarus, notably in 2001 when it offered specific steps in restoring relations in return for gradual moves by Minsk towards democratisation.<sup>91</sup>

In summary, the primary objectives of EU foreign policy towards Myanmar consist in promoting human rights, democracy, as well as national reconciliation.<sup>92</sup> More specifically, sanctions restrict relations with Myanmar in order to secure the release of ASSK, and the participation of political and ethnic opposition parties in an open and democratic National Convention. Nevertheless, European conditions for lifting sanctions were not very clear if some, but not all, of these objectives were attained.

#### **4. Interests of EU Policy-makers**

Another important variable influencing EU foreign policy-making is the existence of two contending approaches to deal with Myanmar: a principled and a flexible approach towards the SPDC. The principled approach prevailed in EU foreign policy at least since 1996, except in the area of humanitarian aid where the EU changed its policy in 2004. Four European embassies are present in Myanmar: France, Italy, UK, and Germany, in addition to a European Commission antenna (Humanitarian Aid Field Office), working under the Commission's delegation in Thailand and the ECHO regional outfit in Bangkok.

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<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> Stewart 2004: 33-34.

<sup>92</sup> Council of the EU, 24 March 1997: *Press Release*.

## 4.1. The Principled Position

### 4.1.1. EU Member States

Those taking the principled position tended to follow the pleas expressed by ASSK and the NLD to the international community. Its representatives called for international pressure as long as the government had not fully committed itself to a democratic transition. Principled policy-makers were rather maximalist in their approach. They contended that the EU should lift sanctions incrementally, after the regime commits itself to an irreversible transition, for instance after having staged new elections that the EU recognises as free and fair.<sup>93</sup> Engagement was decried for condoning a regime whose behaviour is anathema to liberal democracies. Most human rights campaigners, Northern member states, the Czech Republic, and a number of MEPs tended to advocate this principled position.

The prime objective of principled policy-makers is to promote human rights and democracy in Myanmar. Northern member states (i.e. the UK, Ireland, Denmark, the Netherlands, Finland, and Sweden) traditionally upheld liberal values in their foreign policy. The Czech Republic owed its principled stance on the Myanmar issue to the influence of former President Vaclav Havel, who had originally submitted ASSK's name to the Nobel Committee.<sup>94</sup> The position of Denmark has been partly determined by the death of its honorary consular representative in Insein prison in 1996. Apart from the UK, principled Northern European states did not enjoy noteworthy historical or economic relations with Myanmar.

Relations between Myanmar and the UK have been tenuous since independence in 1948. Myanmar belongs to the few British colonies that abruptly curtailed relations with the former Empire, together with Ireland and Ghana. Anti-colonial rhetoric has marked Myanmar's relations with its former colonial

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<sup>93</sup> Interview 34.

<sup>94</sup> Wintle 2007: 351.

metropole.<sup>95</sup> The government's mouthpiece *New Light of Myanmar* systematically accused the UK (together with the United States) of being responsible for most of its woes: economic hardship and international pariah status. By removing an openly hostile government, 'regime change' could advance British interests in Southeast Asia.

In contrast to the army, the political opposition led by ASSK is sympathetic to the UK, which has constantly supported the cause of democratisation since 1988. A staunch opponent of the SPDC, the UK is an 'indefectible supporter' of ASSK.<sup>96</sup> Having been married to a renowned British specialist in Tibetan Buddhism, and having studied at Oxford and conducted researches at the School of Oriental and African Studies (SOAS),<sup>97</sup> ASSK enjoyed certain links to the British academic and political elite. ASSK's unrivalled global stature enhanced the effectiveness of international campaigns for democracy in Myanmar.

During the last two decades, UK policy can be divided into three periods. Before 1996, the UK vindicated 'critical engagement' towards the junta, whereby it rejected an isolation policy.<sup>98</sup> Since 1996, the UK has become a proponent of tougher sanctions against the SPDC.<sup>99</sup> The election of New Labour in 1997 decisively strengthened this policy orientation. Since 2004, the UK has enhanced its sanctions policy by becoming the biggest provider of humanitarian aid. In the EU, the UK has been the primary defender of sanctions against Myanmar.

Afraid of unpopularity and boycott, British companies divested massively from Myanmar. The UK withdrew Export Credit Guarantees Department (ECGD) facilities, a cover scheme for investment. British authorities thus highlighted that commerce was insignificant for British economic interests:

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<sup>95</sup> Steinberg 2001a.

<sup>96</sup> Egretreau and Jagan 2008: 84.

<sup>97</sup> Houtman 1999: 30-31.

<sup>98</sup> House of Commons: *Debate of 24 October 1996*, col. 213.

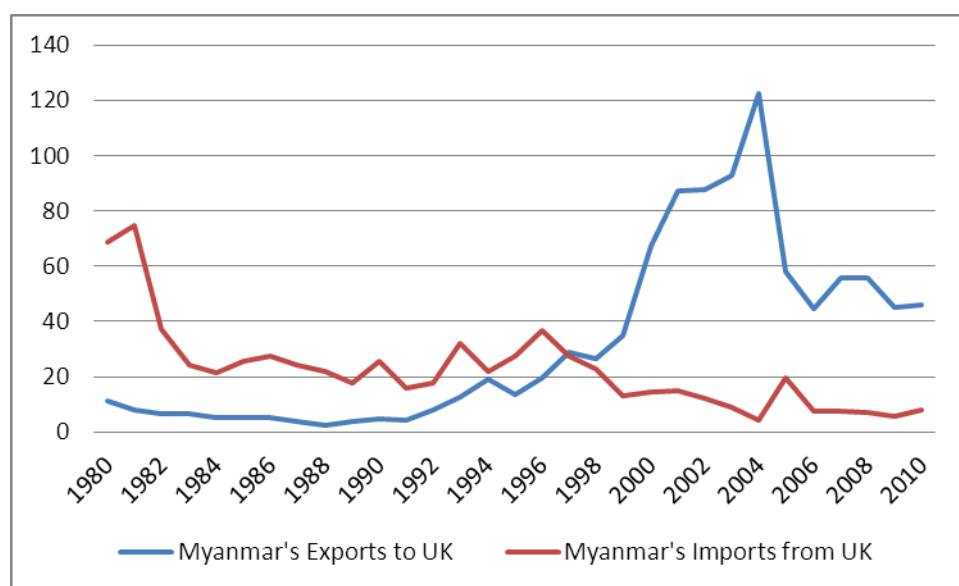
<sup>99</sup> Hristov 2009.



In 2008 UK import of goods from Burma were worth £36.3 million and exports were worth £3.5 million, while in 2007 UK imports of services from Burma were worth £1 million and exports £34 million.<sup>100</sup>

Figure 1 confirms this trend in the bilateral trade between Myanmar and the UK. However, it also shows that, despite increasingly trade-related European restrictions, Myanmar has run a trade surplus with the UK since 1997. By contrast, its balance of trade was negative from 1980 until 1997.

**Figure 1: Trade Myanmar-UK, 1980-2010** in million \$ (annual values)



Source: IMF (March 2012): *Direction of Trade*.

#### 4.1.2. The European Parliament

The European Parliament has unwaveringly supported ASSK and the NLD, ever since the SPDC disregarded the results of the 1990 elections. It has almost constantly voted for resolutions endorsing the NLD and censuring the military government. It has shown awareness of ethnic minorities' issues, notably by favouring the 'tri-partite dialogue'. It urged the SPDC to:

<sup>100</sup> UK Trade and Investment website March 2010. (These statistics can differ from those produced by the IMF).

[...] enter into a nationwide ceasefire and negotiate a political settlement with the ethnic nationality leaders, on the basis of the principles of the 1947 Panglong Agreement.<sup>101</sup>

The European Parliament has been a fervent advocate of sanctions against the regime as an adequate response to the SPDC's determination not to share power with democratically elected parties. It has recommended the increased diplomatic isolation of the government.<sup>102</sup> It did not hesitate to inveigh against decisions taken by the Council, for instance by criticising the EU's decision to waive the visa ban on SPDC representatives attending multilateral summits,<sup>103</sup> urging the European Commission not to log a WTO complaint against the Massachusetts Burma Act,<sup>104</sup> or disapproving of Ireland's decision to establish diplomatic relations with Myanmar.<sup>105</sup> The European Parliament welcomed the Troika delegations sent on behalf of the EU to Myanmar, but condemned the regime for not correcting its behaviour despite these visits.

The European Parliament Resolutions are, however, the product of a small number of interested MEPs. Hardly more than 10 percent of the full quorum usually votes on Myanmar issues.<sup>106</sup> It is also noteworthy that most European Parliament questions on Myanmar are raised by Anglo-Saxon, if not British MEPs. Certain MEPs continue to work closely with their domestic constituencies.<sup>107</sup> Well-connected organisations have even drafted some Parliaments' resolutions on behalf of certain groups of MPs, or MEPs.<sup>108</sup> For

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<sup>101</sup> EP: *Resolution of 13 March 2003*.

<sup>102</sup> Interview 34.

<sup>103</sup> EP: *Resolution of 6 September 2007*.

<sup>104</sup> EP: *Resolution of 12 June 1997*; EP: *Resolution of 17 September 1998*.

<sup>105</sup> EP: *Resolution of 11 March 2004*.

<sup>106</sup> Interview 6.

<sup>107</sup> EP: *Written Question of 16 September 2002*.

<sup>108</sup> Interview 36.

lobbyists, contacts to those drafting the legislation can be as important as high-level connections.<sup>109</sup>

#### 4.1.3. Non-State Actors

Although they are not directly involved in EU decision-making, non-state actors play a pivotal role by lobbying European policy-makers on the Myanmar issue. Human rights campaigners in Northern member states have pressured governments to impose blanket sanctions. Nonetheless, they did not gain as wide a resonance in Southern member states and in Germany. Most campaigners have amplified the message carried across by the NLD. They have been instrumental in crafting a tougher stance towards the junta, and lobbied European governments and institutions for this purpose. Campaigners tended to encourage an increase of sanctions, to reject high-level meetings with the junta, and to press the UNSC to impose a multilateral arms embargo on Myanmar.<sup>110</sup>

In reaction to the disregard for the 1990 elections, Myanmar pro-democracy activists sought asylum in foreign countries where they created institutions hoping to represent the pro-democracy movement.<sup>111</sup> Exiled activists have forged an influential network of Burma offices in Western countries.<sup>112</sup> The National Council of the Union of Burma (NCUB), founded in 1992, is a federation of

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<sup>109</sup> Andersen and Elliassen 1993: 30.

<sup>110</sup> See: websites of Burma Campaign UK (2010), Burma Center Netherlands (2010), Info Birmanie (2010), Danish Burma Committee (2010). Interviews 41 and 43.

<sup>111</sup> E.g.: the National Council of the Union of Burma (NCUB), the National Coalition Government of the Union of Burma (NCGUB), the Ethnic Nationalities Council (ENC), or the Federation of Trade Unions of Burma (FTUB).

<sup>112</sup> The 'Burma Bureaux' are associations created by sympathisers with the pro-democracy struggle in different countries. The most famous campaigners are: Free Burma Coalition (FBC), U.S. Campaign for Burma, Burma Campaign UK, Euro Burma Office (EBO) in Brussels, Burma Centre Netherlands, Burma Büro e.V. in Germany, Action Birmanie in Belgium, and Info Birmanie in France. The 'Euro Burma Network' is a Pan-European umbrella organisation, which gathers multiple 'Burma Bureaux' throughout Europe. However, the Euro Burma Network tends to represent principled aspirations held by the Burma Campaign UK, so that some organisations upholding more flexible views have left the network or never joined.

various opposition parties.<sup>113</sup> It nominates a government, the NCGUB, which was established in June 1996 by exiled NLD delegates, some of whom had been elected during the 1990 elections. The NCGUB's objective is to contribute to the restoration of democracy and human rights; the NCGUB claims it should be disbanded when this aim has been attained.<sup>114</sup> The Ethnic Nationalities Council (ENC) was founded in 2001, in order to foster enhanced unity among ethnic minorities and to prepare them to the 'tri-partite dialogue' between the NLD, ethnic minorities, and the central government. The Federation of Trade Unions of Burma (FTUB), headquartered in the US, represents Myanmar trade unions, which were forbidden organisations inside the country until 2011. These campaigners subsist via various sources of private and public funding, including from European governments, foundations, and agencies.

In 1997, lobbyists established a Euro-Burma-Office (EBO) in Brussels, with the aim of promoting the cause of Myanmar democracy to European institutions. The office has gained wide resonance within the Brussels' policy-making community, particularly the European Parliament, and used to receive funding from the European Commission.<sup>115</sup> Due to its position in Brussels, the EBO fulfils the function of campaigner and advocacy coordinator among transnational pro-democracy networks lobbying EU governments and institutions.

European trade union organisations such as the International Confederation of Free Trade Unions (ICFTU) and the European Trade Union Confederation (ETUC) have constantly pleaded for tightening the screws, justified *inter alia* by the army's forced labour practices. It is due to their initiative that the EU withdrew trade benefits under the GSP scheme from Myanmar.<sup>116</sup> This principled stance is also backed up by the Brussels-based think tank European Institute for Asian Studies (EIAS), which is close to some MEPs. It used to be funded by the European Commission until 2005, albeit not for its Myanmar-related activities.

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<sup>113</sup> NCGUB website 2011.

<sup>114</sup> *Ibid.*

<sup>115</sup> Euro-Burma Office website 2012.

<sup>116</sup> Frittin and Swanström 2010b.

Other organisations based in the member states have access to national government as well as to European institutions, such as Burma Campaign UK (founded in 1991 as the Burma Action Group<sup>117</sup>), UK-founded Amnesty International, Human Rights Watch, Global Witness, EarthRights International (ERI), Christian Aid, Paris-based Fédération Internationale des Ligues des Droits de l'Homme (FIDH), and Reporters Without Borders. They mobilise European media and civil society around the principled stance.<sup>118</sup> The increased international awareness of the Myanmar issue since 1988 can be best illustrated by comparing the relatively limited attention given by the international media to the bloodshed of 1988, with the immense resonance of the mass protests (labelled 'saffron revolution' by the international media) that took place between August and October 2007.<sup>119</sup>

#### **4.2. The Flexible Position**

Supporters of the flexible approach support a policy of engagement with Myanmar, which confronts the regime less openly. It is sceptical of the effectiveness of punitive measures. Consequently, advocates of this policy plead for maintaining an open, albeit critical, dialogue with the SPDC. On this view, sanctions could have been partially lifted even before new elections had been staged. Minor concessions from the SPDC – for instance releasing prisoners of conscience – could justify a temporary removal of sanctions.

Germany, Austria, France, Italy, Greece, Spain, Poland, Bulgaria, the European Commission and the EU External Action Service usually uphold the flexible approach.<sup>120</sup> Most of these actors defend these policies as a result of a general scepticism vis-à-vis the effectiveness of sanctions on Myanmar. Greece's position has been partly shaped by the personal interest of a Greek

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<sup>117</sup> Wintel 2007: 345.

<sup>118</sup> Amnesty International 2007.

<sup>119</sup> Zöllner 2008.

<sup>120</sup> Interview 8; 1 and 25; Youngs 2001: 139.

ambassador in the Myanmar issue.<sup>121</sup> Italy has promoted diplomatic engagement with the regime, notably with the nomination of an EU Special Envoy for Burma/Myanmar, Piero Fassino. Only two member states upholding the flexible approach have significant material interests in Myanmar: France and Germany.

#### 4.2.1. Germany

Bonn was the main provider of development aid to Myanmar throughout the Cold War. However, Germany was the first European country to cancel cooperation in the aftermath of the 1988 *coup*. With the political turmoil unfolding in Myanmar, bilateral relations soured dramatically. The German government subsequently discouraged investments in Myanmar by suspending *Hermes Bürgschaften*, a public insurance scheme that protects German private investments against political risk in foreign countries. Today, Germany has lost the privileged bilateral contacts and the prestige it used to enjoy in Myanmar.<sup>122</sup>

Germany's rationale, however, evolved owing to the entrenchment of the military junta. Within the EU, Berlin has become the main advocate of more flexible engagement towards the regime. Germany criticised economic coercion for being ineffective and for contributing to unemployment among ordinary Myanmar people.<sup>123</sup> This position is underpinned by the belief that ostracism cannot be effective against a regime that has been a quasi-autarky since 1962. Some German officials have vented their frustration by pointing out that imposing sanctions had the counterproductive effect of severing relations with the Myanmar authorities.<sup>124</sup>

This flexible position is defended by the Social-Democratic Party (SPD). Social-democrats argued that Willy Brandt and Egon Bahr's *Ostpolitik* towards the German Democratic Republic (GDR) could be emulated towards

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<sup>121</sup> Interview 1.

<sup>122</sup> Revel 2008.

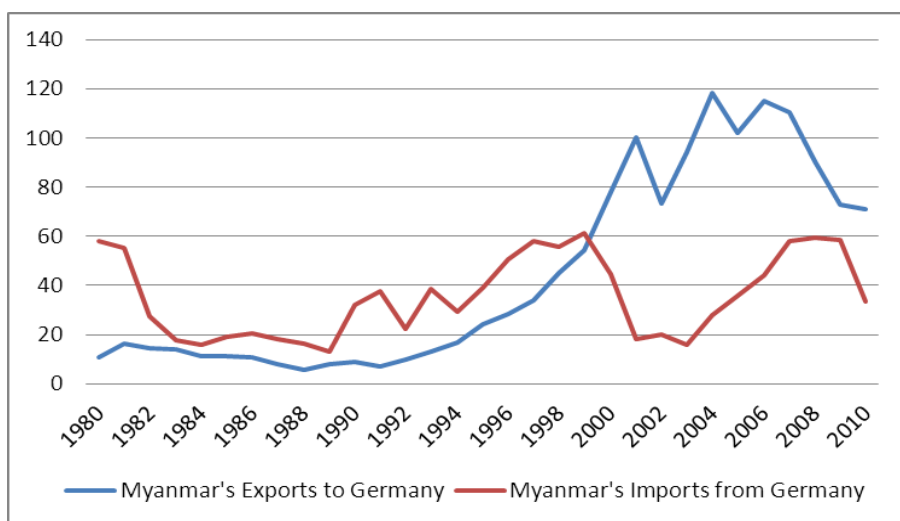
<sup>123</sup> Interview 20.

<sup>124</sup> Federal Government of Germany 2004: *Antwort*; interview 20.

Myanmar.<sup>125</sup> This position tends to be shared by other mainstream parties (e.g. Christlich Demokratische Union/CDU, Green Party). The Freie Demokratische Partei (FDP) is the only party in the Bundestag to have recently advocated a tightening of sanctions, although FDP foreign minister Guido Westerwelle did not favour such policy during his tenure from October 2009 until the time of writing.<sup>126</sup> Under Helmut Kohl's chancellorship, FDP foreign minister Klaus Kinkel encouraged high-level meetings with the SPDC.

According to Myanmar's Central Statistical Organisation (CSO), the bilateral trade volume in 2007 and 2008 reached \$429 million, with \$262 million in exports and \$166 million in imports. The main source of German imports is garments, while exports are machinery, chemical products, plastics and motor vehicles. German FDI in Myanmar reaches only about \$15 million.<sup>127</sup> Figure 2 illustrates Myanmar's trade with Germany. It shows that despite European restrictions on Myanmar's exports, Myanmar's balance of trade with Germany has become positive since 2000.

**Figure 2: Trade Myanmar-Germany, 1980-2010** in million \$ (annual values)



Source: IMF (March 2012): *Direction of Trade*.

<sup>125</sup> Hauswedell 2005: *Keynote Speech*; Revel 2008; Kramer 2009.

<sup>126</sup> Bundestag, 28 May 2008: *Antrag*.

<sup>127</sup> Ye Lwin 2009.

#### 4.2.2. France

French foreign policy towards Myanmar is driven by the promotion of human rights and democracy, as well as the protection of some economic interests. France's policy has been influenced by the controversial investments of Total in the Yadana offshore gas field since the early nineties. The company extracted, refined and supplied gas to Thailand (ca. 75 percent) and Myanmar (ca. 25 percent) in partnership with Unocal, the state-owned Myanmar Oil and Gas Enterprise (MOGE), and the Petroleum Authority of Thailand Exploration & Production (PTT-EP).<sup>128</sup> With an upfront investment estimated at \$1 billion, the production started in 1998.<sup>129</sup> (Nonetheless, Total's activities pale in comparison with investment from Chinese, Indian, Malaysian, and Singaporean extractive industries). These business activities prompted the French government to reject the imposition of commercial sanctions against Myanmar during the nineties, although it caused some embarrassment to a nation that takes its pride in having 'invented' the notion of universal human rights in 1789.<sup>130</sup> France has maintained its presence in Myanmar with a small office of the *Alliance Française* in Yangon.

Diplomatically, France has officially supported a 'critical engagement' strategy.<sup>131</sup> French foreign policy had been low-key until Bernard Kouchner became foreign minister in May 2007. The former human rights activist personally took the lead on the issue of Myanmar. Kouchner and President Sarkozy are the only French officials who have met representatives of the Myanmar opposition (Dr. Sein Win).<sup>132</sup> Kouchner argued that the UNSC should apply the Responsibility to Protect during the Cyclone Nargis in 2008. Kouchner also claimed sanctions were 'useless', and criticised the lack of European

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<sup>128</sup> Total's CSR website 2010; Tonkin 2008b: 1-2.

<sup>129</sup> Offshore-Technology website 2010: Yadana Gas Field.

<sup>130</sup> On human rights promotion in French foreign policy, see: Badie 2002.

<sup>131</sup> Assemblée Nationale, 25 April 2000: *Question*.

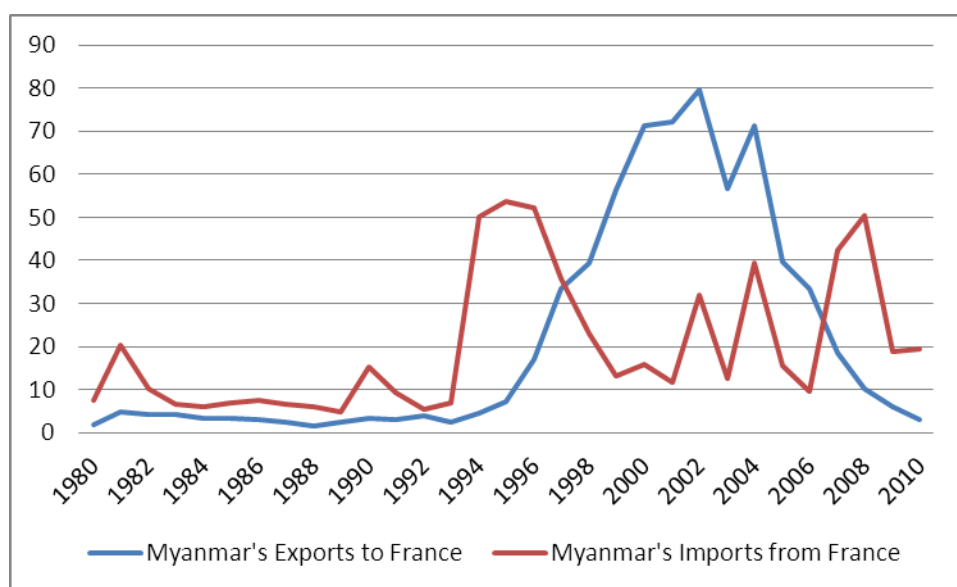
<sup>132</sup> Reuters, 10 October 2007.



openness towards the SPDC.<sup>133</sup> His successors have continued a principled course since November 2010.

Figure 3 illustrates the evolution of bilateral trade between Myanmar and France. It shows that, despite Total's investments, Myanmar's trade with France is relatively less significant than with Germany and the UK. It has been volatile since 1993.

**Figure 3: Trade Myanmar-France, 1980-2010** in million \$ (annual values)



Source: IMF (March 2012): *Direction of Trade*.

#### 4.2.3. The European Commission

The European Commission favours a flexible approach to Myanmar in order to strengthen basic human rights in the country, as well as to enhance the EU's relevance as an actor of international relations.<sup>134</sup> It tends to view categorical opposition to the regime as leading to a stalemate which the EU cannot sustain

<sup>133</sup> Democratic Voice of Burma, 8 October 2009.

<sup>134</sup> Interview 5. The EU External Action Service has replaced the Commission in the EU Council working groups since 2009. Given the continuity of staff, it can be assumed that the views of the Commission as portrayed above also hold true for the EEAS.

successfully. Commission officials subscribed to the view that, given the imbalance of strength between the opposition and the regime, it is improbable that the SPDC would ever recognise the 1990 elections.<sup>135</sup> A policy of categorical opposition to the regime therefore does not constructively promote national reconciliation in the country. Such a policy does not provide the EU with a sufficient margin of manoeuvre to effectively influence the political and humanitarian situation.<sup>136</sup>

The Commission has proposed various ways to craft a more flexible common policy. Since 2003, it has organised a Burma/Myanmar Day conference every second year, where epistemic communities exchange views on EU policy on the issue. The Commission's strategy of critical engagement with the regime was introduced explicitly during its 2005 conference. An independent report sponsored by the Commission stated *inter alia* that the EU's focus on supporting the NLD was reductive, and that the sanctions strategy obscured alternative avenues for seeking change in Myanmar.<sup>137</sup>

Diplomats in the Council Secretariat tend to subscribe to the Commission's view that a categorical confrontation with the SPDC is unlikely to alter the power imbalances in Myanmar's domestic politics. A Council Secretariat representative privately complained that the common foreign policy was 'paralysed' partly due to refusals by principled member states to experiment with alternative policies; accordingly, the European policy was designed to reassure policy-makers and their publics that they actively 'do something' for democracy.<sup>138</sup>

#### 4.2.4. Non-State Actors

In contrast with other non-state actors, the Brussels-based International Crisis Group (ICG) speaks for a more flexible policy. It contends that sanctions are

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<sup>135</sup> *Ibid.*

<sup>136</sup> Landaburu: *Keynote Speech of 26 April 2006.*

<sup>137</sup> R. Taylor and Pedersen 2005.

<sup>138</sup> Interview 8.

counter-productive.<sup>139</sup> The UK-based association Network Myanmar, too, is openly critical of sanctions.<sup>140</sup> Humanitarian NGOs (who operate in the country to deliver humanitarian assistance) plead for an increase in assistance, especially to people struggling to meet their basic needs. Humanitarian NGOs usually have less resonance in the European public than campaigners.

## 5. Conclusions

### 5.1. Summary

Drawing upon a Foreign Policy Analysis framework, the chapter has delivered a contextual overview of the main structures and actors that contribute to shaping EU foreign policy towards Myanmar. Three structural factors influence the making of EU foreign policy. First, the likely perception of Myanmar as a state lacking in strategic weight may induce the EU to scale up sanctions, since the material costs of severing relations with Myanmar were relatively low.

Second, the prominence of Myanmar's political opposition in the foreign policy debate could further orientate EU policy. However, there is an important chasm between Western and Asian approaches to Myanmar, particularly with the regional group ASEAN. The engagement policy of Myanmar's neighbours is likely to affect the effectiveness of EU foreign policy measures.

Third, EU policy objectives are mainly focused on securing ASSK's release from house arrest and enabling the NLD to participate in an open and democratic government. The absence of straightforward benchmarks to achieve the objective of 'national reconciliation' could leave the EU some room for manoeuvre to negotiate with Myanmar's government on sanctions and incentives. The vagueness of policy objectives could also create some misunderstanding on the policy course effectively charted by the EU.

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<sup>139</sup> International Crisis Group 2001a; 2001b; 2002a; 2002b; 2002c.

<sup>140</sup> Network Myanmar website 2012.

Finally, the actors of EU foreign policy are on the whole divided between those defending a principled stance, from those upholding a flexible approach to the SPDC. Advocates of a principled approach focus on a foreign policy that supports the democratic opposition, embodied by the NLD. Partisans of a flexible approach are more willing to negotiate with the military government.

## 5.2. Chronological Analysis of EU Foreign Policy towards Myanmar

Building upon this contextual analysis, the next three chapters deliver a chronological study of EU foreign policy. This investigation is guided by the following questions:

- Which developments prompted the EU to adopt new measures? Conversely, to which important developments did the EU *not* react?
- What measures did the EU consequently decide upon?
- What was the impact of the EU's measures on Myanmar's behaviour?
- Accordingly, which competing hypothesis best explains EU foreign policy decisions towards Myanmar?

The empirical material is organised around three phases of EU policy, which are punctuated by ASSK's successive releases from house arrest and subsequent re-arrests between 1988 and 1995; 1996 and 2003; 2004 and 2010. Indeed, ASSK was first arrested in 1988; released in 1995; arrested in 2000; released in 2002; arrested in 2003; and finally released in 2010. These recurring events embody important caesuras in the evolution of EU strategy, because securing ASSK's release has been one of the EU's main objectives. These developments have therefore contributed to shaping EU foreign policy in what can be identified as three distinct periods.

Moreover, systematically analysing the EU's reaction to ASSK's releases and arrests shall enable us to test the compliance hypothesis before concluding the study of each period. This hypothesis posits that partial compliance by a pariah state presents new momentum to revise EU foreign policy, while noncompliance leads the EU to scale up restrictions. The EU is thus expected to behave

differently whether the SPDC releases ASSK or puts her under house arrest. Such chronological analysis also helps to better understand the evolution of EU foreign policy over twenty years. If social constructivist approaches are correct, EU foreign policy may become more cohesive over the years, as member states have been increasingly interacting and successive Treaty reforms have progressively enhanced the EU's institutional machinery.<sup>141</sup>

Chapter Four covers EU foreign policy from 1988 until ASSK's first release from house arrest in 1995. From 1990 until 1995, EU foreign policy could be characterised as an approach of 'critical engagement', where sanctions were relatively limited.<sup>142</sup> Chapter Five examines EU foreign policy from the adoption of the Common Position 96/636/CFSP in 1996, until ASSK's third arrest in 2003. This period is defined by consistently tougher sanctions in support of democracy and human rights. Chapter Six is dedicated to the 'dual approach' crafted by the EU from 2004 until 2010. During this third period, the EU continued to decide significant measures despite an important logic of diversity among the member states. The case study is finally brought to a close in 2011, after general elections were held and ASSK released for a third time in November 2010. This three-pronged structure follows the chronological unfolding of political and economic events in Myanmar, in the EU, and internationally. Nonetheless, it may at times appear judicious to incorporate brief projections on other chapters, when the consequences of specific events reach beyond the period covered.

Each policy decision is analysed in three steps. The analysis shall successively examine: significant events shaping EU foreign policy towards Myanmar, the EU's reaction to these events (or lack of it), and the general impact of the EU's decision on Myanmar's behaviour. This impact assessment seeks to evaluate whether EU policy met its primary objectives, and thus clarify whether the achievement of declared goals motivated the adoption of specific measures. An appraisal of relevant hypotheses is weaved into this three-pronged analysis, in order to explain why the EU reacted the way it did. The conclusion of each

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<sup>141</sup> Tonra 2003: 7-8.

<sup>142</sup> Hristov 2009: 154.

individual chapter summarises key findings, and delivers an overall hypothesis assessment.

## Chapter IV

### The EU and Myanmar until 1995:

#### From a Non-existent Relation to ‘Critical Engagement’

The present chapter lays out the first period of EU foreign policy towards Myanmar, which spans from the Cold War origins of Myanmar’s relations with European countries until Aung San Suu Kyi’s first release from house arrest in 1995. During this time, the EU acted under its former Treaty mandate. Foreign affairs were in their infancy with the European Political Cooperation (EPC). The Treaties of Amsterdam and Maastricht in the mid-nineties provided the EU with a more robust political mandate.

A brief presentation of bilateral Cold War relations between European states and Myanmar (then known as Burma) is necessary to understand the historical legacies of EU foreign policy.<sup>1</sup> Following that, the time span that follows the imposition of formal sanctions in 1991 and goes until the adoption of a common position in 1996, is labelled ‘critical engagement’ in this thesis. Although the term had not been explicitly mentioned by the EU, its use is justified because the UK, France, and Germany all referred to it to label their national foreign policy.<sup>2</sup> This analysis is guided by two main questions:

- Why did the EU initially adopt sanctions against Myanmar?
- Subsequently, why did the EU continue the same policy despite the occurrence of domestic events in Myanmar that could have led the EU to scale its restrictive measures either up or down?

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<sup>1</sup> As mentioned in Chapter I, the original name Burma is used to refer to Myanmar’s history before 1988.

<sup>2</sup> Hristov 2009: 154; House of Commons, 7 February 1996: *Question*; Assemblée Nationale, 25 April 2000: *Answer*; Federal Government of Germany, 9 March 2004: *Antwort*.

In the first section, this chapter lays out Burma's relations with European states during the Cold War. The ensuing section analyses the EU's reactions to: the 1988 uprising; the 1990 elections; and the convening of the National Convention. The third section examines the fledgling EU foreign policy during the following years. The fourth section explores the EU's reaction to ASSK's release from house arrest in 1995. In the final section the core findings of the chapter are summarised and a hypotheses assessment for this early period is offered.

## **1. Burma's Relations with European States under the Cold War**

During the Cold War and particularly under the leadership of General Ne Win from 1962 until 1988, Burma maintained a foreign policy of neutrality that stymied the influence of outsiders. This policy was partly based on a refusal to take party in the confrontation between the Western and Soviet camps. This doctrine, labelled the *Burmese Way to Socialism* under General Ne Win's rule, implied relative autarchy, as well as economic and political isolation. As a consequence, Burma remained a marginal trade partner for European states. Bilateral trade increased slightly during the Cold War period. The European Community was one of Burma's biggest trading partners in 1988, with 19.2 percent of Burma's official trade (25 percent of Burma's imports, or \$61.9 million, and 9 percent of its exports, or \$13 million).<sup>3</sup> Nonetheless, only two members of the European Community had a noteworthy relationship with Burma: the UK and Germany.

### **1.1. Bilateral Relations with the UK**

From 1948 until 1962, UK was the main provider of economic assistance, although Burma opted out of the Commonwealth upon independence.<sup>4</sup> Anti-colonialism animated the Revolutionary Council's foreign policy. It had estranged relations with West-European countries. Burma has been resentful vis-à-vis the UK, the colonial power between 1886 and 1948. Formed by a majority of

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<sup>3</sup> IMF June 2012: *Direction of Trade*.

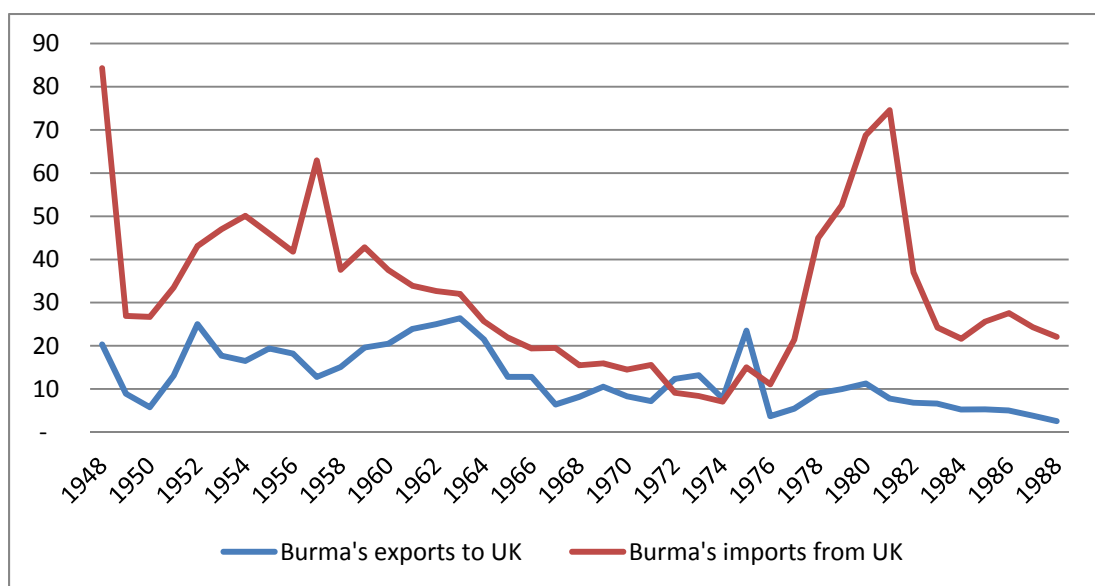
<sup>4</sup> *Ibid.*: 16; Steinberg 2001a: 25.



Buddhists and the majority *Bama* ethnic group, the central government denounced links between the British (particularly former British governor of Burma Lord Dorman Smith) and secessionist Christian minorities (e.g. Karens<sup>5</sup> and Chins) against Burmese independence. Burmese officials have commonly alleged that the assassination of Burma's national hero in 1947, General Aung San, was plotted with connivance from members of the colonial government.<sup>6</sup>

Upon seizing power in 1962, General Ne Win strengthened Burma's neutrality and relative self-isolation. Figure 4 shows that, throughout the period, Burma represented a marginal trade partner for the UK. Burma's imports from the UK reached their highest point of \$75 million in 1981, which still remained a marginal share of British total imports. Burma's exports never exceeded the threshold of \$26.4 million, reached in 1963. Despite this marginal economic interface, the UK maintained some relations with Burma's military state, notably by conducting training sessions for the Burmese navy.

**Figure 4: Trade Burma-UK, 1948-1988 in million \$ (annual values)**



Source: IMF (March 2012): *Direction of Trade*.

<sup>5</sup> House of Commons, 24 October 1996: *Debate*.

<sup>6</sup> Hla Min 2000: 20.

Burma's official policy of disengagement did not impede General Ne Win from maintaining cordial, though low-profile, relations with Western Europe, as well as with the communist bloc in the post-1962 period. Almost every year, the General used to conduct private trips to Europe, notably to the UK, Germany, and Austria, in which government affairs and private businesses were tightly interlinked.<sup>7</sup>

General Ne Win enjoyed cordial relations with some members of the royal family, notably with Princess Alexandra who invited him to her wedding with Angus Ogilvy on 24 April 1963. Queen Elizabeth offered him tea in 1974. He was also welcomed to Number 10 Downing Street.<sup>8</sup> Lord Mountbatten of Burma remained a frequent visitor. Princess Anne and Princess Alexandra also paid visits to Burma.

## 1.2. Bilateral Relations with Germany

As a non-colonial power in Southeast Asia, West Germany built Burma's confidence and became its closest West-European partner. With a total of DM 1.15 billion in development aid between 1956 and 1988, the Federal Republic of Germany (FRG) was the second biggest donor of development aid to Burma during the Cold War, after Japan.<sup>9</sup>

The relationship was low profile. It was only in 1968 that General Ne Win officially visited West Germany, although he used to sojourn in the country privately nearly every year. In 1986, President General San Yu officially visited West Germany, a visit reciprocated in 1987 by *Bundespräsident* von Weizsäcker.

The rationale behind the West German-Burmese relationship was, on the one hand, Burma's need for the FRG's development aid, which came in the form of financial assistance and technical cooperation. On the other hand, the FRG sought diplomatic recognition from Burma, as Bonn competed with East

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<sup>7</sup> Zöllner 1993a; 1993b.

<sup>8</sup> Tonkin 2006a: 2.

<sup>9</sup> Revel 2008: 1.

Germany for diplomatic recognition worldwide. According to the *Hallstein Doctrine* (1955-1969), the FRG would sever diplomatic ties with any country that recognised the German Democratic Republic (GDR). By awarding substantial development aid, West Germany ensured that Burma never opened an embassy in East Berlin, despite ideological solidarity between both socialist states. Drawing upon neo-realism, we can understand the FRG's foreign policy as determined by the bipolar structure of the international system.<sup>10</sup>

The FRG's development aid was also motivated by the vested interests of an industrial company, Fritz Werner GmbH, with an expertise in light weaponry production.<sup>11</sup> Fritz Werner enjoyed privileged links to the West German government – it was a state-owned company until 1992 – as well as to the Burmese leaders. General Ne Win maintained friendly personal relations with Fritz Werner's Chief Executive Officer, Dr. Meyer. He used to privately visit Fritz Werner's headquarters in the small city of Geisenheim during his yearly trips to Western Europe. Fritz Werner was the only Western enterprise allowed to operate in Burma during the socialist period between 1962 and 1988.<sup>12</sup>

Despite these personal relationships, German diplomats and businessmen were not able to persuade the Burmese authorities to relax their doctrine of relative self-sufficiency and socialism. In 1965, the FRG's embassy had to close its *Goethe-Institut* owing to anti-Western policies. It has never been re-opened (unlike the USA, UK, or France, who operated their cultural institutes within their respective embassies until the government eventually abandoned this xenophobic policy).<sup>13</sup> In 1968, the FRG sponsored a project aimed at extracting and refining gas in the Martaban Golf. The Germans stated their intentions to exploit the field, but Burma never allowed the federal institute *Bundesanstalt für Geowissenschaften und Rohstoffe (BGR)* and the company Deminex to extract gas from these offshore fields. Fear of foreign intrusion prevailed over economic

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<sup>10</sup> Rittberger 2001.

<sup>11</sup> GmbH: *Gesellschaft mit begrenzter Haftung*, or Limited Liability Company.

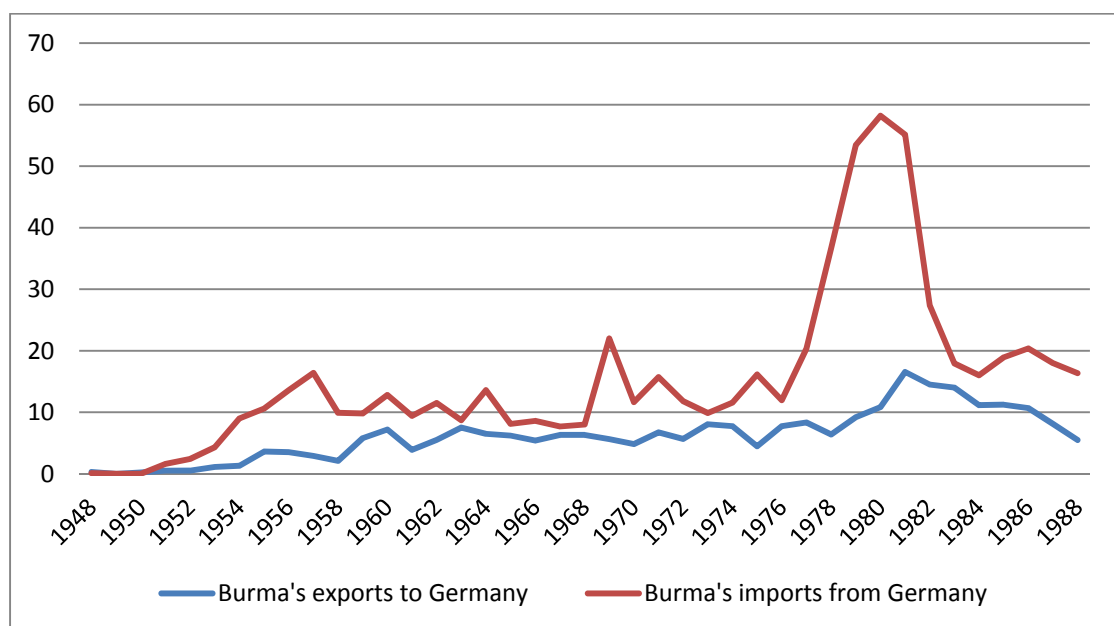
<sup>12</sup> Zöllner 1993a; 1993b; Steinberg 2000: 153; Revel 2008: 1-29.

<sup>13</sup> Email exchange 8.

incentives.<sup>14</sup> Hence, Burma's independent policy led European policy-makers to perceive the regime's behaviour as impervious to their demands.<sup>15</sup>

Figure 5 indicates that Burma represented a marginal trade partner for the FRG despite the commercial interests of Fritz Werner. Burma's imports from Germany peaked in 1980 at \$58 million. Its exports were highest in 1981 at \$16.6 million. These amounts constituted a marginal share of the FRG's total trade. Bilateral trade with the GDR was almost insignificant.

**Figure 5: Trade Burma-Germany, 1948-1988** in million \$ (annual values)



Source: IMF (March 2012): *Direction of Trade*.

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Given the history of Burma's relations with Western Europe, European policy-makers tended to believe, during and in the aftermath of the Cold War, that it was difficult to influence the behaviour of this self-isolated state. From a European

<sup>14</sup> Revel 2008: 18 & 23.

<sup>15</sup> House of Commons, 12 June 1996: *Question*; Federal Government of Germany, 9 March 2004: *Antwort*; Assemblée Nationale, 25 April 2000: *Answer*.

perspective, the ‘interaction capacity’<sup>16</sup> between European countries and Burma was very low. With the exception of West Germany, European states were not allowed to significantly invest in Burma under socialist rule. West Germany was permitted to do so but within the rigid boundaries of Burma’s policy of neutrality.

By the end of the General Ne Win era, the government relied on development aid from foreign countries, especially Japan and the FRG, as well as international organisations. Owing to its anaemic economy, Burma was reduced to the status of LDC in 1987, a specific UN category for low-income countries that allows for increased multilateral assistance. Nonetheless, the World Bank (WB) and the International Monetary Fund (IMF) suspended cooperation with Burma later during the same year, because there was a lack of governmental transparency when using multilateral funds.<sup>17</sup> In the last months of his reign, General Ne Win attempted to address his country’s economic woes, which precipitated the ‘8.8.88’ demonstrations.<sup>18</sup>

## **2. Upheavals in Myanmar’s Domestic Politics**

### **2.1. 1988 Uprising**

#### **2.1.1. Events in Myanmar**

The dire state of Myanmar’s economy worked as a catalyst for upheaval. Embedded in a quasi-totalitarian political system, the official doctrine of the *Burmese Way to Socialism* led to economic bankruptcy.<sup>19</sup> In September 1987, 25, 35 and 75 Kyats notes were declared illegal and no compensation was paid for their cancellation. In combination with other economic reforms such as the

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<sup>16</sup> Buzan and Little 2000: 80.

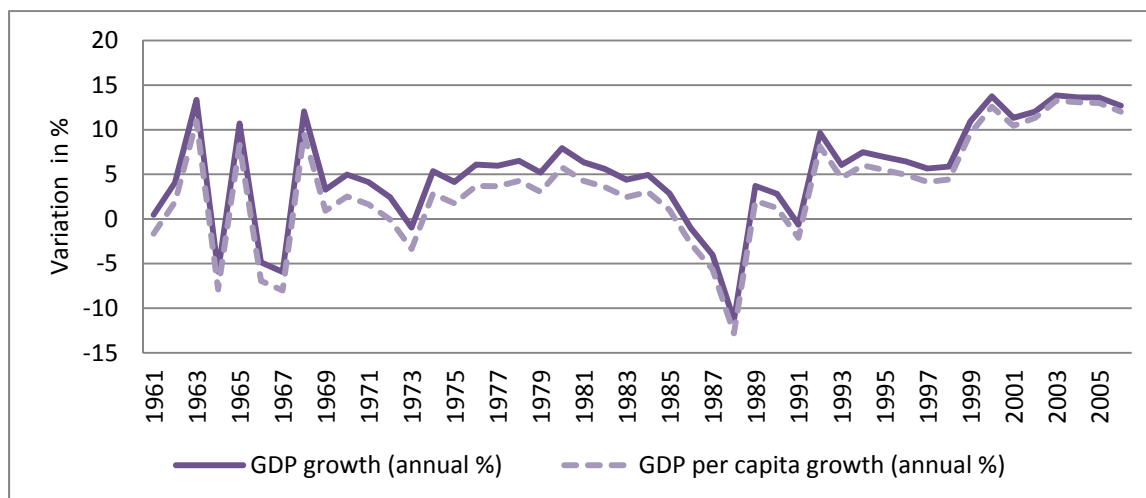
<sup>17</sup> Steinberg 2000: 296.

<sup>18</sup> The current official name ‘Myanmar’ will be used from now on to emphasise that EU-Myanmar relations enter in a new phase with the downfall of Ne Win’s regime. Burma officially changed its name to Myanmar in 1989.

<sup>19</sup> Saw Myat (2008: 37ff.) defines Myanmar under Ne Win as a ‘sultanic regime’. A sultanic regime corresponds to a specific type of quasi-totalitarian state, where the state authority is exclusively concentrated in the hands of a single person (see also: Stephan and Linz 1996: 66-83).

liberalisation of food prices, this measure provoked hyperinflation: nominal rice prices soared three times in a few months.<sup>20</sup> Figure 6 shows that GDP growth collapsed between 1986 and 1988. In 1988, GDP per capita growth reached its lowest point with -12.82 percent.

**Figure 6: Myanmar's GDP Growth Rates, 1961-2006**



Source: World Bank (2011): *WDI*.<sup>21</sup>

The economic crisis induced an overwhelming popular outburst in the capital Yangon and other major cities. Resentments against the state-controlled and single party Burmese Socialist Programme Party (BSPP) intensified after student Phone Maw's death on 13 March 1988. People went to the streets and called for political reforms. Confronted with mounting pressure for change, General Ne Win unexpectedly resigned from his positions as President and BSPP chairman on 23 July 1988, and promised multi-party elections.<sup>22</sup>

Instead of calming the protests, General Ne Win's resignation provoked heightened anti-government demonstrations, which culminated on 8 August

<sup>20</sup> Steinberg 2001a: 4ff.

<sup>21</sup> Original figure by: Collignon 1997: 5.

<sup>22</sup> Saw Myat 2008: 88ff.

1988. The political opposition retrospectively dubbed the student-led uprising '8.8.88'. General Ne Win finally decided to quell the unrest. Over 3,000 people were killed in the five days following the demonstrations.<sup>23</sup> The total number of casualties from August until September 1988 remains disputed, but could have amounted to 5,000 (or even more).<sup>24</sup>

Opposition groups nonetheless continued to proliferate. ASSK entered the political arena by addressing a crowd on 26 August 1988 in front of the Shwedagon Pagoda, a mythical monument and a powerful symbol of Buddhist culture. After a series of shuffles within the tottering transitional government, a clique of Generals staged a *coup* on 18 September 1988. They established the State Law and Order Restoration Council (SLORC), which snuffed out the demonstrations.

Although ASSK did not actively take part in the 8.8.88 movement, she swiftly emerged as an essential leader in Myanmar's opposition politics. The early people-power movement was disordered and original student leaders had enjoined her to act as their figurehead.<sup>25</sup> She later co-founded the National League for Democracy (NLD) on 27 September 1988, but only after SLORC had already come to power. Her party became paralysed soon after its creation due to relentless harassment.

Between 1988 and 1989, SLORC imprisoned student activists and artists who had galvanised the people-power movement, as well as NLD secretary general ASSK and its vice-chairman Tin Oo. Other students fled from Yangon to the Thai-Myanma and Indo-Myanma borders after student unions were persecuted. In November, they created the All Burma Student Democratic Front (ABSDF), the first student army in the world.<sup>26</sup> The ABSDF joined the ranks of ethnic insurgencies (e.g. Karen) against the central government. ASSK and NLD

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<sup>23</sup> Steinberg 2001a: 4-8; Egretreau 2010: 41.

<sup>24</sup> Lintner 1990: Chapter IV.

<sup>25</sup> Interview 49.

<sup>26</sup> Saw Myat 2008: 75.

distanced themselves from these armed movements, by staying in urban centres and promoting peaceful resistance. Nonetheless, ASSK was also put under house arrest on 20 July 1989. At that time, maintenance of martial law allowed for detention without charge of trial for a period of up to three years.

Following the demonetisation of November 1987, Burmese expatriates and exiles had already held demonstrations outside embassies in the UK, Germany and USA. As dissidents escaped Myanmar in the aftermath of the reassumption of power by the military in September 1988, campaigning organisations started to spring up throughout Western countries.<sup>27</sup> This movement became the Committee for the Restoration of Democracy in Burma (CRDB). With member organisations in Germany, the UK, and the USA, the CRDB initially appeared to be the main focus of overseas activism and was admitted into the larger opposition group the Democratic Alliance of Burma (DAB).

By 1991, internal rifts and squabbles had divided the CRDB in several countries. As the CRDB split, it began to be eclipsed by new groups formed by recently exiled veterans of the 1988 movement and solidarity NGOs set up by foreign supporters (like the British charity Prospect Burma, which was founded in 1989).<sup>28</sup> International human rights organisations started to produce reports critical of Myanmar's human rights records.<sup>29</sup> In 1990, Amnesty International launched a campaign, which was marked by the publication of reports in November of that year.<sup>30</sup>

### **2.1.2. The European Community's Reaction**

Prior to 8.8.88, there was no interface between the European Community (EC) and Myanmar. A Commission delegation had visited Yangon in 1988 with a view

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<sup>27</sup> IDEA 2001: 133, footnote 192.

<sup>28</sup> *Ibid.*: 164.

<sup>29</sup> Human Rights Watch 1991; 1993; 1995.

<sup>30</sup> Amnesty International 1990a; 1990b. See also: IDEA 2001: 164.



to cementing a future cooperation agreement. The SLORC's putsch discouraged these early attempts.<sup>31</sup>

In the absence of an already established common policy towards Myanmar, the European Community did not formally take specific measures in reaction to the 1988 events. The official response was limited to rhetoric. The Community and its member states adopted statements condemning the government's human rights abuses.<sup>32</sup> Measures taken unilaterally by the member states were not formally coordinated at the Community level until 1991. Nevertheless, member states decided, on 28 September 1988, to suspend bilateral development assistance.<sup>33</sup> This was yet not a statutory measure.

On 2 January 1989, the resident ambassadors from the United States, EC member countries, and Japan, left Yangon to avoid attending a national reception on 4 January in celebration of Myanmar's Independence Day.<sup>34</sup> This first diplomatic boycott did not reflect a common European policy; it only involved the four European states who had an embassy in Yangon. The resident ambassadors intended to show their disapproval of the human rights abuses committed by the national authorities.

On the issue of cooperation, the picture was mixed. France had suspended the delivery of diesel engines to Yangon when the political upheaval broke out.<sup>35</sup> The FRG, Myanmar's second bilateral donor, unilaterally restrained development cooperation. In December 1988, Berlin froze all new development aid, and suspended an outstanding budget line of DM 50 million that had not yet been disbursed.<sup>36</sup> The *Bundestag* reinforced the government's decision by voting for a

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<sup>31</sup> European Commission 1988: *Bull. 7/8*: 2.2.38.; Khaliq 2008: 207.

<sup>32</sup> European Commission 1988: *Bull. 7/8*: 2.4.7.; *Ibid.* 1988: *Bull. 7/8*: 2.4.4. quoted in: Khaliq 2008: 90.

<sup>33</sup> Frittin and Swanström 2010a: 1; Soe Myint Aung 2003.

<sup>34</sup> *Washington Post*, 12 January 1989, quoted in: Peterson Institute for International Economics 2006.

<sup>35</sup> Camroux and Egreteau 2010: 271.

<sup>36</sup> Revel 2008: 32.

motion to cancel all new funds in response to the 1988 turmoil.<sup>37</sup> This change in West Germany's foreign policy represents a 'problem/goal change' according to David Hall's terminology.<sup>38</sup>

The US cancelled all arms sales and assistance with the exception of humanitarian aid on 22 September 1988. Drawing upon the bandwagoning hypothesis, it is striking that the European member states informally decided to suspend European development assistance to Burma on 28 September 1988, or only six days after the US imposed analogous penalties. However, there is no evidence of direct US pressure on the European Community to follow suit to its policy. In any case, European restrictions were non-statutory.

On 14 April 1989, the US suspended Myanmar's eligibility under its General System of Preferences (GSP). The EU did not immediately emulate this measure, since member states had first delayed the imposition of statutory sanctions. It is noteworthy that only some individual European states, like the FRG, decided statutory sanctions in the aftermath of the 1988 events.<sup>39</sup>

Since the EC did not impose statutory sanctions despite gross human rights violations in Myanmar, the compliance hypothesis does not pass its first test. Only single member states unilaterally reacted to these events, the EC did not formally act as a whole. It is only in 1990 that the EU was to react, and in that case, to SLORC's decision not to honour the 1990 election results.

This lack of resolve seems best explained by neo-realism. The bipolar structure of the international system between US and Soviet powers was constraining the space for the European Community to act decisively as an actor in its international relations. Human rights were explicitly recognised as an important concern of the European Community, but European member states did not have the institutional capacity to take stringent measures in their defence. While the European Political Cooperation (EPC) had a political *finalité* from the

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<sup>37</sup> Interview 21.

<sup>38</sup> Hall 1993: 279.

<sup>39</sup> S. Jones 2007: 112.

outset, a formal political mandate came only after the end of the Cold War with the enforcement of the Treaties of Maastricht and Amsterdam (in 1993 and 1997). In 1988, the then European Community had no proper mandate to act.<sup>40</sup> From a neo-realist perspective, the bipolar structure of the international system considerably hindered the construction of a full-fledged common defence and foreign policy. It made impossible the development of common European institutions with a mandate to act more resolutely.<sup>41</sup>

In sum, the 1988 uprising represents a watershed in the history of European relations with Myanmar, although it did not directly trigger effective policy measures from the EU. The suppression of the people's outbreak crystallised the positions held by the key actors of Myanmar's domestic politics (e.g. the SLORC's takeover; the emergence of ASSK as charismatic opposition leader) for the next twenty years to come. Later EU foreign policy has been determined by the dynamics borne out of the 1988 upheaval, although the EU first limited its reaction to declaratory diplomacy.<sup>42</sup>

## **2.2. 1990 Elections**

### **2.2.1. Myanmar's Elections and National Convention**

On 27 May 1990, SLORC held multi-party elections for the first time since the military had seized power in 1962. They were supposed to lead to the multi-party system promised by General Ne Win when he resigned as head of state in July 1988. The elections lacked clarity of purpose. SLORC gave some indication that they would bring about a new government, but also stated that an assembly was needed to draft a new Constitution, since the 1974 Constitution had been

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<sup>40</sup> Hristov (2009: 108-9) also attributed this lack of formal reaction by the European Community to the EPC's inchoate development as an institution making multilateral foreign policy.

<sup>41</sup> Posen 2004; and 2006: 146-196.

<sup>42</sup> European Commission 1988: *Bull. 7/8*: 2.2.38.; *Ibid.* 1988: *Bull. 7/8*: 2.4.7.; *Ibid.* 1988: *7/8 Bull.*: 2.4.4. quoted in: Khaliq 2008: 90.

suspended in 1988.<sup>43</sup> ASSK, in an interview with *Asiaweek*, said that the first task of the new assembly would be to draft a Constitution.<sup>44</sup>

In contrast to negative views prior to the poll, the EC considered the 1990 election result as generally free and fair, mainly because the opposition won them.<sup>45</sup> This judgement, however, is contestable, as results are not necessarily the best indicator of an election's fairness.<sup>46</sup> For three reasons there was ground to dispute the election's conformity with international standards:

- Major opposition parties were disbanded and not allowed to participate, like the Democratic Party for a New Society (DPNS) founded by student leader Moe Thee Zun in 1988. After SLORC took over, leaders of the 8.8.88. political movement had to flee the country or be arrested;
- In about 20 percent of the territory – mostly in ethnic areas – no poll was held as a result of armed conflict and insecurity; and
- ASSK and other opposition leaders were refused participation.

ASSK was at first allowed to contest the elections by the electoral commission. It is only after a member of the main competing party – the National Unity Party (NUP) – appealed twice against her candidature that she was found ineligible. The decision was taken on the following grounds: she was said to owe allegiance to the Queen of England, being the wife of a British subject, she had her permanent address in Oxford rather than Myanmar, and a suspect of terrorism had been arrested on her premises.<sup>47</sup>

The government openly published the election results. NLD won 392 out of 485 seats (nearly 60 percent of the votes and 80 percent of the seats), whereas the NUP won 10 seats. SLORC had not formally backed NUP, but may have hoped that pro-establishment NUP would secure a majority. The 1990 vote was

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<sup>43</sup> R. Taylor 2008; Tonkin April 2007.

<sup>44</sup> Tonkin, 26 February 2010; Tonkin, April 2007.

<sup>45</sup> European Commission 1991: *Bull.* 7/8: 1.4.10; *ibid.*: 1991: 1/2 *Bull.*: 1.4.3.

<sup>46</sup> Massicotte 2004: 43ff.

<sup>47</sup> Tonkin, 17 March 2010; Hla Min 2000: 17ff.

recognised by many as being against the government and for the political opposition embodied by NLD.<sup>48</sup>

After having contested the purpose of the election, the government launched a constitution drafting exercise to be drawn by the NC, made up of elected and appointed delegates. A Coordinating Commission of the NC first met on 14 April 1992, which set the six objectives of the NC: 1. Non-disintegration of the Union; 2. Non-disintegration of national unity; 3. Perpetuation of national sovereignty; 4. Promotion of a genuine multiparty democracy; 5. Promotion of the universal principles of justice, liberty and equality; 6. Participation by the Defence Services in a national political leadership role in the future state.<sup>49</sup>

The NLD objected that the NC should not convene until the following conditions were met: repeal of martial law, recognition of the 1990 election results, and release of all political prisoners. These calls were subsequently reiterated by the European Union, which made the NLD's pleas its own.<sup>50</sup> The NLD aired its concern that the NC objectives were laid out by the Coordinating Commission without consulting the people's representatives. It disagreed with specific goals, such as the NC's sixth objective of maintaining the army's participation in government.<sup>51</sup>

The SLORC denied that they ignored the result, asserting that it was the election winners who attempted to seize power prematurely before a constitution had been approved in a national referendum. The main argument was that, in the absence of a Constitution, the NLD had no legal mandate to govern. An unofficial motivation was the SLORC's belief that a ruling NLD would publicly try army officers and informers suspected of involvement in repressing the opposition. In the aftermath of the 1990 election, NLD spokesman Kyi Maung had triumphantly speculated that some members of the SLORC (like MI-head General Khin Nyunt)

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<sup>48</sup> Michael Aris' comments, in: Aung San Suu Kyi 1991: xxiv; Saw Myat 2008: 93ff.

<sup>49</sup> *Irrawaddy*, March 2004.

<sup>50</sup> Interview 6.

<sup>51</sup> *Irrawaddy*, March 2004.

'might reasonably feel themselves pretty insecure [for having lost the election] [...]: In actual fact, how many Germans stood trial at Nuremberg?'<sup>52</sup>

The NC's 702 delegates were nominated on 10 July 1992. Among them, only 99 elected Members of Parliament were invited to attend. According to the opposition magazine *Irrawaddy*, 70 percent of the delegates were township level officials handpicked by the military.<sup>53</sup> The NLD initially took part in the NC, although it was critical of the entire process.

The government regularly suspended the NC because of diverse issues, notably disagreements with ethnic representatives over the federal structure of the new state.<sup>54</sup> Hence, the NC convened irregularly from January 1993 until its finalisation fifteen years later in April 2007. It was suspended between 1996 and 2004.<sup>55</sup> It was only on 11 March 2010 that the election result from 1990 was officially voided in the run-up to the 2010 general elections.<sup>56</sup>

### 2.2.2. The European Reaction to the 1990 Elections

The SLORC's refusal to follow up on the result of the 1990 elections marks a turning point in the EC's relations with Myanmar. The EC welcomed the holding of free and fair elections, but rebuked the SLORC's decision to ignore their result.<sup>57</sup> Démarches and statements adopted by the member states became more exasperated as it became evident that the election result would remain without practical consequences.<sup>58</sup>

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<sup>52</sup> *Asiaweek*, 13 July 1990: 28.

<sup>53</sup> *Irrawaddy*, March 2004.

<sup>54</sup> Saw Myat 2008: 118.

<sup>55</sup> Wintle 2007: 420. To define the historical evolution of Myanmar's politics more accurately, two National Conventions could be distinguished – one which started in 1993 and aborted in 1996, and another one which was initiated in 2004 and eventually led to the 2010 election.

<sup>56</sup> Reuters, March 2010; interview 46.

<sup>57</sup> European Commission 1991: *1/2 Bull.*: 1.4.3.

<sup>58</sup> European Commission 1990: *Bull.* 6: 1.5.2; *ibid.*: 1990: *Bull.* 6: 1.5.10; *ibid.*: 1991: *Bull.* 1/2: 1.4.3; *ibid.*: 1991: *Bull.* 5: 1.4.10.

The European Parliament awarded the Sakharov Prize for Freedom of Thought to ASSK in 1990. ASSK was the fourth laureate of this prestigious award, following Anatoli Marchenko, Nelson Mandela, and Alexander Dubček. British MEPs who had met with ASSK's husband Dr. Michael Aris helped to convince the European Parliament to attribute this award to her, although she had started her political career only two years previously.<sup>59</sup>

The member states of the Community adopted a series of coordinated measures aiming at supporting democracy and human rights in Myanmar. In conformity with the compliance hypothesis, the member states decided on negative measures to try to compel Myanmar to honour the result of the 1990 election. Despite controversy over the elections' purpose, and that they led to a constitutional process, the member states took sides with the domestic opposition. The Council's involvement could be related to their general statement that the respect of human rights in third countries was a legitimate component of EU foreign policy:

The different ways of expressing concern about violations of rights, as well as requests designed to secure those rights, cannot be considered as interference in the internal affairs of a state, and constitute an important and legitimate part of their [EU member states] dialogue with third countries.<sup>60</sup>

EU member states banned the sale of military equipment to Myanmar in 1990 (but not its shipment).<sup>61</sup> The decision was confirmed by a Declaration of the General Affairs Council on 29 July 1991.<sup>62</sup> Military cooperation was informally downgraded by expelling military staff from Myanmar's diplomatic missions in

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<sup>59</sup> Interview 37.

<sup>60</sup> Council of the EU, 28 and 29 June 1991: *Declaration*. For other declarations on the European commitment to defend human rights and democracy, see: Council of the EU: *Declaration of 21 July 1986*; *ibid.*: *Declaration of 14 December 1973*; European Commission: *Communication of 25 March 1991*.

<sup>61</sup> The official document could not be retrieved, but the secondary literature mentions 1990 as the year when the arms embargo was informally imposed (Hristov 2009: 109; Kramer 2010: 18; SIPRI website October 2011).

<sup>62</sup> European Commission 1991: *Bull.* 7/8: 1.4.10.

Europe and withdrawing the member states military attachés from Myanmar.<sup>63</sup> This measure was to be formally enshrined five years later with Common Position 1996/635/CFSP. Deploring the decision to ignore the elections results, the twelve member states of the Community issued statements in November 1991 on the detention of ASSK.<sup>64</sup> The Community and its member states decided to coordinate their action and suspend all non-humanitarian development aid, so that the possible delivery of assistance was substantially curtailed.<sup>65</sup> The Community's action was strengthened by parallel restrictions placed by some member states. Germany unilaterally cancelled all training of military officers, which had nonetheless continued to take place on a yearly basis hitherto.<sup>66</sup>

Existing business interests did not dissuade Germany from imposing sanctions that carried some economic cost. The restrictions Germany unilaterally imposed on bilateral cooperation with Myanmar brought the expansion of German business interests in the country to a standstill, since Fritz Werner's businesses were partly financed by German development funds. Having imposed unilateral penalties, Germany had relatively little economic interest in Myanmar after 1989. This empirical finding disconfirms claims by campaigners and Myanmar opposition media that the flexible policy of particular EU member states (and particularly of Germany) was a mercantilist policy driven by economic interests.<sup>67</sup> Other EU members continued to suspend development aid as a non-statutory measure.

The decision not to honour the 1990 election increased the international awareness of the Myanmar issue. It created momentum for the formation of a number of single-issue NGOs in Europe and the US. The NLD founded an exile branch located in England in the beginning of the nineties. The Burma Action Group UK was founded in 1991. Later revamped as Burma Campaign UK, it

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<sup>63</sup> Eriksson 2005: 11.

<sup>64</sup> European Commission 1991: *Bull. 11*: 1.4.14.

<sup>65</sup> *Ibid.*: *Bull 1/2*: 1.4.3.

<sup>66</sup> Revel 2008: 32.

<sup>67</sup> BC UK website 2010, Irrawaddy website 2010, and Democratic Voice of Burma website 2010.



sought to intensify the campaign to influence UK foreign policy.<sup>68</sup> Burma Center Netherlands was founded in 1993 with similar objectives in the Netherlands. In addition to the single-issue 'Burma Bureaux' that steadily spread throughout Europe, many UK-based human rights NGOs promptly pleaded to punish the regime: Amnesty International, Human Rights Watch, Global Witness, EarthRights International (ERI), and Christian Aid. Nevertheless, there is no evidence that these pressures effectively influenced the foreign policy of the EU or of any of its member states at this early stage of EU-Myanmar relations.

### **2.2.3. Impact of EU Measures**

The arms embargo, the suspension of assistance, and the withdrawal of European military attachés, did not have the intended impact on Myanmar's behaviour. One reason is that these early Community measures remained limited in scale. They did not encompass economic restrictions. At the time, the adoption of an economic embargo had not yet been proposed.

The 1990 European arms embargo had a limited impact on Myanmar. Member states had never been major suppliers, mostly because of their more expensive items they had on offer. The ban on development aid by European donors like Germany made the services of European defence companies, such as Fritz Werner, even less affordable. Myanmar had diversified its network of suppliers and enjoyed military cooperation with other countries, such as China, Russia, North Korea, and Israel - and to a lesser extent, India, South Korea, Pakistan, Serbia, Ukraine, and, before their entry into the EU, Poland and Slovakia.<sup>69</sup> The European embargo on arms shipment was introduced only later in 2000, so that arms could legally be shipped via European vessels. The export of European nonlethal items (e.g. military boots) still took place during the early years of the

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<sup>68</sup> IDEA 2001: 164.

<sup>69</sup> Interview 47; Camroux and Egreteau 2010: 279; Egreteau and Jagan 2008; Em Marta 1993: 17.

arms embargo.<sup>70</sup> However, few European companies were willing to run the reputational risk of supporting the military government. The *Bundestag* alleged that Fritz Werner had exported dual-use civilian products, such as gas and thermo bottles that could have been used to deliver poison gas.<sup>71</sup> Ongoing cooperation programmes, including those in the defence sector, were continued unabated until the projects expired.<sup>72</sup> Myanmar military officers were thus trained until autumn 1991 in Sonthofen, notably to acquire knowledge of ABC weapons.<sup>73</sup>

Germany's ban on assistance may have had significant impact in terms of governmental loss of revenues and international exposure. In 1988, Germany's bilateral ODA amounted to \$37.1 million; it had reached a peak of \$75.3 million in 1983.<sup>74</sup> Germany's two-decades ban on assistance has certainly had unintended negative effect in terms of lost development opportunities, particularly in the underfunded sectors of education and health, the transfer of technical know-how, and capacity building.

It has been suggested that international bans on aid, notably by Japan and Germany, led the SLORC to open up its economy, in order to diversify sources of revenues.<sup>75</sup> Nevertheless, suspending development aid did not prompt Myanmar to mend its ways on the political scene. ODA has constantly been considered with suspicion by a Myanmar leadership anxious to prevent foreign meddling into the state's sovereign affairs. Foreign minister Aung Win made a notorious statement at the Chilston Park conference of October 1998, concerning Myanmar's categorical refusal of all foreign aid (in this case from the World Bank) that would come attached with political strings:

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<sup>70</sup> Revel 2008: 54ff.

<sup>71</sup> Bundestag, 24 September 1991: *Antwort*; Bundestag, 23 October 1990: *Antwort*.

<sup>72</sup> Interview 48.

<sup>73</sup> Bundestag, 14 March 1995: *Antwort*.

<sup>74</sup> Revel 2008: 17.

<sup>75</sup> Steinberg 2001a; Hashimoto 1988.

[...] We welcome any assistance from anywhere that is offered with goodwill and sincerity. And we will consider it when it comes. But for us, giving a banana to the monkey and then asking it to dance is not the way. We are not monkeys.<sup>76</sup>

Germany's ban on development aid was unilaterally decided in December 1988. It did not implicate the EU. It is only later in 1991 that the ban on development aid formally took place in the EU framework. The collective EU ban on assistance had a negligible impact on the regime's behaviour, since Germany, the main European donor of aid to Myanmar, had already halted all new programmes.

Withdrawing European military attachés may have yielded a counterproductive impact.<sup>77</sup> Such symbolic measure did not exert tangible pressure on the SPDC. Besides, it cut viable diplomatic channels to a military government that could have felt more confident engaging with military counterparts rather than civilians. The withdrawal of military attachés also kept European embassies from acquiring proper security intelligence. To conclude, despite their commitment to condemn human rights violations, European member states faced difficulties to decide common foreign policy measures that could influence Myanmar's behaviour effectively.

### **3. 'Critical Engagement' with Myanmar (1991-1996)**

#### **3.1. Economic and Diplomatic Policy**

From 1990 until the adoption of Common Position 96/635/CFSP, EU policy was coordinated in a loose legal and institutional framework. This foundation for EU policy was initially defined by the measures adopted in 1988 and 1990 and by the subsequent Council Declaration of 29 July 1991. This loose framework gave the member states ample room for manoeuvre so that they could conduct their national foreign policy independently from one another.

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<sup>76</sup> *Irrawaddy*, December 1998.

<sup>77</sup> Camroux and Egreteau 2010: 279.

The UK, France, and Germany independently called their approach a policy of 'critical engagement', which was eventually placed in a wider European framework.<sup>78</sup> On the one hand, these principles entailed condemnation of Myanmar's behaviour in diplomatic statements as well as limited bans on targeted sectors, such as an arms embargo and restrictions on assistance. On the other hand, the approach did not proscribe national trade and foreign investment in sectors not related to the defence industry. This policy could hence be interpreted as concealing material interests of the largest member states, who were eager not to impose economic sanctions on an economy newly opening to foreign investment.<sup>79</sup>

Some European states had a vested interest in maintaining friendly economic relations with Myanmar, as a country that had recently opened its borders to foreign investors. In 1992-1993, the official growth rate published by the government reached 10 percent.<sup>80</sup> Official figures showed 6 percent growth in 1994 and 8.2 percent in 1995.<sup>81</sup> The French ambassador from 1994 until 1999, Bernard Pottier, characterised the period from 1994-1996 as 'euphoric' for foreign investors.<sup>82</sup>

The French company Total started to invest in the Yadana offshore gas field in 1991 (investment evaluated at \$1 billion in 2008).<sup>83</sup> The French government supported this investment in 1994 by guaranteeing it under the COFACE scheme (*Compagnie Française d'Assurance pour le Commerce Extérieur*).<sup>84</sup> This

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<sup>78</sup> House of Commons, 7 February 1996: *Question*; Assemblée Nationale, 25 April 2000: *Answer*; Federal Government of Germany, 9 March 2004: *Antwort*. Interpretation of the texts confirmed during interview 6.

<sup>79</sup> Youngs 2001: 141ff.

<sup>80</sup> IDEA 2001: 139. These numbers are indicative, for official statistics are known for their lack of reliability.

<sup>81</sup> *Ibid.*; Hadar 1998; Economist Intelligence Unit 1995. The data published by the WB (2011) differs from these statistics, as figure 6 illustrates.

<sup>82</sup> Pottier 1999.

<sup>83</sup> Offshore-Technology website 2010.

<sup>84</sup> Assemblée Nationale, 25 April 2000: *Answer*.

insurance scheme has later dissuaded the French government from imposing an investment ban on European companies operating in Myanmar.<sup>85</sup>

French diplomacy, however, was not limited to mercantilism. In 1992, France drafted a resolution at the UN Human Rights Commission, which triggered the nomination of a Special Rapporteur on the situation of human rights in Myanmar.<sup>86</sup> The resolution was sponsored by all EC member states. The Human Rights Rapporteur is still in place at the time of writing. This resolution was castigated by the Myanmar representative Kyaw Win as ‘a political resolution through and through’.<sup>87</sup>

In this early period, initiatives by smaller member states, and the European Parliament, were rebutted or ineffective. In 1992, the European Parliament condemned the military government and quoted a report from the Swiss International Centre for the Dignity of Children, which claimed that 40,000 Myanmar women and children had been sent to Thailand for prostitution.<sup>88</sup> In early December 1993, the Netherlands expressed its support for a ‘critical engagement’ approach, whereby the EU would tentatively step up pressure on the regime, while at the same time increasing humanitarian aid, and offering support to the NLD.<sup>89</sup> Copenhagen supported the Netherlands’ proposal to strengthen the arms embargo by extending it to the shipment of weapons.<sup>90</sup> Nonetheless, the measures were not adopted. The EU finally applied these measures only in 2000, when the UK – a big member state – issued a similar proposal. This inability of small member states and the European Parliament to effectively influence EU foreign policy backs up the large member states

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<sup>85</sup> Interview 42.

<sup>86</sup> IDEA 2001: 147; UN High Commissioner for Human Rights: *Resolution 1992/58 of 3 March 1992*.

<sup>87</sup> UN Economic and Social Council, 17 July 1992: *Statement*.

<sup>88</sup> Hristov 2009: 111.

<sup>89</sup> *Ibid.*: 112; Kramer 2009: 19.

<sup>90</sup> Hristov 2009: 113.

hypothesis, which contends that only big member states decide EU foreign policy.

Some member states pushed for critical engagement. In February 1994, the Greek Presidency prepared a synopsis paper, stating that Greece regretted the Myanmar government's tight control of the NC. Nevertheless, it welcomed the lifting of martial law, the re-opening of universities, the release of 1,600 prisoners of conscience, and ceasefire negotiations with the three main ethnic insurgent groups (Karenni, Mon, and Karen).<sup>91</sup> In April 1994, Athens identified nine points of action for an EU strategy of critical engagement.<sup>92</sup> The review was criticised by NGOs, claiming that European commercial interests above all underpinned the plea for a new policy of 'critical dialogue'.<sup>93</sup> The timing of the review, which coincided with the July 1994 EU–ASEAN ministerial meeting, could give credence to such claims, although there is no empirical evidence to back them up. In-line with the US policy review, which took place at the same time, the EU came up with the following demands:

- the release of Daw Aung San Suu Kyi and all other political prisoners;
- meaningful dialogue between the SLORC and the NLD;
- free access to Burma by foreign IDOs;
- the liberalization of the economy; and
- progress on the creation of democratic institutions.<sup>94</sup>

With the exception of ASSK's release, these 'benchmarks' were rather hazy. It would prove difficult to ascertain when they have effectively been reached.

In addition to Greece, the only big member state to effectively advocate for diplomatic engagement was Germany. Foreign minister Klaus Kinkel met with his SLORC counterpart Own Gyaw in 1994.<sup>95</sup> In comparison with the UK, domestic

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<sup>91</sup> *Ibid.*: 113-4. Karen stands for people from the Karen ethnic group (with most Karens residing in Myanmar's Delta and in Yangon, rather than in the *Karen* state); Karenni stands for the Karenni ethnic group, which mainly resides in the *Kayah* state.

<sup>92</sup> *Ibid.*: 115; Kramer 2009: 20.

<sup>93</sup> IDEA 2001: 166.

<sup>94</sup> *Ibid.*: 139.

<sup>95</sup> See: Hristov 2009: 115.

constituencies play an insignificant role in German foreign policy towards Myanmar. Interests groups in Germany (e.g., Burma Bureau e.V.<sup>96</sup>, AsienHaus in Essen) are not as influential as the Burma Campaign in the UK. Beyond sporadic surges of attention, public interest in Myanmar is generally lacking.

In February 1995, the German deputy foreign minister travelled to Yangon. This visit was criticised as a public relations blunder, for it occurred simultaneously with an influx of 10,000 refugees on the Thai-Myanma border. This stream of fugitives was caused by the assault of the Myanmar army on Manerplaw, the Karenni headquarters. The British embassy launched a second 'British Week' promoting trade, which also received bad press by British campaigners.<sup>97</sup>

The military standoff at the Thai-Myanmar border intensified the UK and the Netherlands' principled positions. The European Parliament issued a resolution on 16 February 1995 condemning gross human rights violations. The French Presidency issued a statement in March condemning the decision to leave ASSK under house arrest, despite previously stated intentions to release her.<sup>98</sup>

European human rights groups denounced the 'critical engagement' approach with the SPDC.<sup>99</sup> For them, it struck a poor balance between thriving business interests and weak diplomatic opprobrium. They called instead for a ban on investment and trade that would impose more sanctions than the US, or at least align EU and US policy.

This ideological connection between European domestic pressures and US foreign policy does not necessarily corroborate the bandwagoning hypothesis. There is no empirical evidence of direct links between European human rights groups and US foreign policy. The Clinton administration faced similar domestic

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<sup>96</sup> e.V. stands for *eingetragener Verein*, or 'registered association'.

<sup>97</sup> *Ibid.*: 116; IDEA 2001: 139.

<sup>98</sup> Hristov 2009: 118-119.

<sup>99</sup> Burma Campaign UK website May 2010; Burma Center Netherlands website 2011; interview 41.

pressures, for instance from Senator Mitch McConnell who introduced the Burma Freedom and Democracy Act on 29 December 1995, proposing to ban US investment, assistance, and travel in Myanmar, as well as to ban imports from this country. But the US did not yet adopt these proposed restrictions.

### 3.2. Humanitarian Aid

The low level of assistance pledged to Myanmar by the main proponents of the 'critical engagement' approach gives further credence to the argument that it concealed the material interests of the big EU member states. In relation with the suspension of ODA, the level of humanitarian aid provided by the EU and its member states had fallen to very low levels during the nineties. During this period, most EC assistance awarded was allocated to refugees along the Thai-Myanma borders, and channelled via the UNHCR, and NGOs like the Thai-Burma Border Consortium (TBBC). This included the sum of 26 million Thai Baht in form of food and medicines to 75,000 Karen refugees.<sup>100</sup> The UK, which later became the biggest donor of humanitarian aid, spent a limited amount of aid throughout this period. As exhibited in the table below, the UK did not deploy the necessary means to 'engage' in Myanmar during this early period. Yearly assistance never even reached a million pounds.<sup>101</sup>

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<sup>100</sup> Hristov 2009: 116; Kramer 2009: 20.

<sup>101</sup> House of Commons, 24 October 1996: *Debate*.



**Table 2: DFID Assistance to Myanmar, 1993/1994-1999/2000** in thousand £

Year	Assistance
1993/94	195
1994/95	250
1995/96	324
1996/97	314
1997/98	262
1998/99	795
1999/00	559

Source: UK Governmental Statistical Service (2010).

This lack of allocated aid could at first be explained by Myanmar's lack of compliance with EU demands. In a classical realist perspective, Hans Morgenthau argued that aid has practically no impact in countries like Myanmar, where government policy (or developmental incompetence) precludes economic development. Aid could therefore be cut, since it would not meet its targets.

A civilization, such as the Burmese, which deprecates success in this world because it stands in the way of success in the other world, puts a cultural obstacle in the path of industrial development, which foreign aid by itself cannot overcome.<sup>102</sup>

[In such countries,] [...] foreign aid requires drastic political change as a necessary condition for its success. Foreign aid must go hand in hand with political change, either voluntarily induced from within or brought about through pressure from without.<sup>103</sup>

A complementary explanation for this reluctance to provide aid is related to domestic pressures from campaign and diaspora groups, which became increasingly vocal as the political stalemate in Myanmar grew more protracted. UN Resident Coordinator Charles Petrie (2003-2007) was to later regret that domestic pressures affected donor governments.<sup>104</sup> Campaign groups were

<sup>102</sup> Morgenthau 1962: 305.

<sup>103</sup> *Ibid.*: 306.

<sup>104</sup> Petrie 2008: 21.

afraid of a diversion of aid from the 'border' to 'inside'. Some also argued that by alleviating people's suffering, regime change would be delayed.<sup>105</sup>

The campaigners' underlying argument was that assistance did not tackle the roots of Myanmar's woes, which are intrinsically political. ASSK tirelessly stressed that 'good governance is the answer to Burma's humanitarian problems'.<sup>106</sup> Aid could worsen these issues by bolstering the SPDC's stranglehold. The state's endemic corruption would tend to funnel funds away from the people targeted.<sup>107</sup> The European Parliament was equally critical of the EU's delivery of assistance programmes in Myanmar.<sup>108</sup> Among other MEPs, Glenys Kinnock explicitly warned the Commission:

[...] there would be widespread dismay and consternation if any decision was taken to channel EC funds through the line ministries of the military junta in Rangoon.<sup>109</sup>

In sum, the EU's decision to decrease aid partly related to fulfilling secondary objectives of sanctions, i.e., meeting domestic demands to punish Myanmar.

### 3.3. Impact of the Ban on Aid

The curtailment of aid for twenty-three years has had counterproductive effects. Despite the difficulty to accurately quantify the developmental costs generated by the absence of European aid projects in Myanmar, this boycott could arguably amount to billions of dollars over the years. ODA by only one member state (Germany) already amounted to DM1.15 billion (or €588 million) in less than a quarter century.<sup>110</sup> Hence, an analogously long ban on development

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<sup>105</sup> *Ibid.*

<sup>106</sup> Aung San Suu Kyi, August 2002: *Interview*.

<sup>107</sup> These fears stem from various problems linked with lack of visibility. For instance, in July 2008, the Under-Secretary General for Humanitarian Affairs John Holmes acknowledged that the UN had lost \$10 million due to a foreign exchange scam with the Myanmar government (Buncombe, 30 July 2008).

<sup>108</sup> EP, 6 April 1998: *Written Question No. 3172/97*.

<sup>109</sup> EP, 18 April 2002: *Written Question E-2236/01*.

<sup>110</sup> Revel 2008: 16.

aid by *all* EU member states may represent a loss of developmental capital that is considerably higher than €588 million. This estimate is conservative because it does not even take into account: total aid by all EU member states; cancelled aid programs that are not quantified as ODA; assistance granted by European non-state actors (e.g. NGOs, funds, or foundations), which may easily amount to millions; and innovative mechanisms for financing development, which usually do not figure in ODA statistics.<sup>111</sup>

Efficient aid tends to generate multiplier effects for the economy of low income countries, by providing mechanisms to catalyse finance, basic services, and technical expertise where a fragile government does not have the capacity (or in Myanmar's case, the tradition) to intervene, such as priority social areas.<sup>112</sup> For example, Myanmar's social expenditures (health and education combined) fell from 5.3 percent of GDP in the financial year 1989/1990 to 3.1 percent in 1994/1995.<sup>113</sup> The situation has not substantially changed over time, since Myanmar's health expenditures amounted only 2.0 percent GDP in 2008.<sup>114</sup> Aid projects can facilitate access to health care and education facilities, improve food security and water sanitation, open up remote areas by building infrastructures, and build local capacities.<sup>115</sup>

While the EU reduced development aid to insignificant levels, this LDC ranks at the bottom of the OECD list of thirty-eight 'fragile states'.<sup>116</sup> In 2007, it received only \$4 per capita in ODA. In 2009, the country received \$8 (while Laos and Vietnam got up to 10 times more). Myanmar is off track on most MDG

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<sup>111</sup> Atkinson 2004: 2.

<sup>112</sup> UNDP 1991.

<sup>113</sup> Collignon 1997: 11.

<sup>114</sup> WHO webpage 2010: *country profile Myanmar*. Social expenditures are often compared to relatively high military expenditures, although, according to the *Military Balance*, there is no reliable statistics on Myanmar's military expenditure (IISS 2009; 2011).

<sup>115</sup> UNDP 2005: Chapter III.

<sup>116</sup> OECD 2007.

indicators.<sup>117</sup> Myanmar is singled out, even among the group of aid recipients with a deficient democratic record; not-free countries which receive a share of EU aid greater than 50 percent of total aid included in 2004: Afghanistan, Algeria, Cameroon, Central African Republic, Cuba, Equatorial Guinea, Iraq, Côte d'Ivoire, Mauritania, Rwanda, Saudi Arabia, Syria, Togo, Tunisia, and Zimbabwe.<sup>118</sup> This puts Myanmar people at a direct disadvantage relative to countries in analogous situations of poverty and MDG underperformance.

Finally, delivery of development assistance has not provided leverage to press for political change. Western financial offers were unsuitable carrots to induce a behavioural change by a government that is more concerned with security issues than human rights and economic development. The ban on development assistance constrained aid and engagement in sectoral policy dialogues. It did not only affect the military government, as any negative consequence hit the population at large.<sup>119</sup>

## **4. Aung San Suu Kyi's Release from House Arrest (1995)**

### **4.1. Events in Myanmar**

Military leaders held a series of talks with ASSK in September and October 1994, the first time since she was placed under house arrest.<sup>120</sup> On 10 July 1995, the SPDC released ASSK, along with other prisoners of conscience. The EU welcomed these releases in diplomatic declarations.<sup>121</sup>

The SPDC continued to conclude cease-fire agreements with three main remaining ethnic insurgent groups (Karenni, Mon and Karen). It signed a MoU with the UNHCR on the re-admittance of Rohingya refugees from Bangladesh

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<sup>117</sup> The most important areas concern indicators 2.1: Net enrolment ratio in primary education; 4.1: Under-five mortality rate; and 7.8: Proportion of population without proper access to water.

<sup>118</sup> European Commission, March 2011: *Atlas*.

<sup>119</sup> Interview 5.

<sup>120</sup> Soe Myint Aung 2003.

<sup>121</sup> Council of the EU, 13 July 1995: *Declaration*; EP, 3 July 1995: *Resolution*.

into Myanmar.<sup>122</sup> These events shed some light on the political priorities of the military leadership at that time: ensuring domestic regional stability was important, but not negotiating democracy reform with the opposition.

To the disappointment of EU policy-makers, talks with NLD did not resume, despite ASSK's release from house arrest. Upon her release, ASSK said at a press conference that the choice must be between 'dialogue or utter devastation'. This statement rankled the Generals for years to come.<sup>123</sup> The SPDC made few additional concessions to the NLD, having already released some 1,600 prisoners of conscience by February 1994.

Negotiations between the regime and the NLD stalled over the question of the NC, tasked to draft a new constitution. The SPDC initially summoned the NLD to join the NC as a condition for starting negotiations. On 28 November 1995, the NLD requested a review of the Convention's working procedures. It sought to repeal orders that censored debate and allowed for criminal prosecution of those who spoke against the army during the Convention. The NLD also complained that there had been no movement whatsoever towards meaningful debate in the NC, which was enduring five months of procrastination.<sup>124</sup> Authorities rejected the NLD's request out of hand. Therefore, the 86 NLD delegates decided to boycott the NC meetings.

Guided by ASSK, Tin Oo and Kyi Maung, the NLD announced it would walk out from the NC on 29 November 1995 (only one day after having requested the review).<sup>125</sup> This decision owed in fact to ASSK's determination to boycott the NC.<sup>126</sup> The party took this decision on the ground that, as the winner of the 1990 election, it was being sidelined within the NC by the military government and

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<sup>122</sup> Hristov 2009: 113.

<sup>123</sup> SPDC, 4 October 2007: *Statement*.

<sup>124</sup> See: Wintle 2007: 379.

<sup>125</sup> *Ibid.*

<sup>126</sup> Tonkin, 26 February 2010.

affiliated groups. The NLD also complained about the lack of inclusiveness of the process with other groups, and undemocratic rules.

Tonkin contended that, in conjunction with the legal context, responsibility for the stalemate between the government and NLD partially fell on the NLD's principled stance. The NLD abruptly walked out of the NC without seeking a way out of the crisis.<sup>127</sup> Seen from outside, both parties adamantly maintained their incompatible positions: the SPDC refused to share or to cede power, as long as the constitutional transition was not firmly ensured; while the NLD urged the SPDC to first recognise the 1990 election results that would have given them a mandate to govern without military oversight. Following the boycott by the NLD, the number of MPs elected in 1990 made up less than 3 percent of all NC delegates. For the EU, this lack of representativeness de-legitimised the constitution drafting exercise.

#### **4.2. The EU's Reaction to the NLD's Withdrawal from the National Convention**

As a consequence, the Spanish EU Presidency, in December 1995, denounced the NC, claiming it did not reflect democratic principles. It exhorted the SLORC to resume dialogue with the NLD.<sup>128</sup> The EU, however, did not take an official position with regards to the NLD's decision to boycott the junta-led NC.

The EU's position was supported by advocacy groups in Europe, like the Burma Campaign UK – with whom it is alleged that ASSK had communicated when allowed by the authorities.<sup>129</sup> The belief of European public opinion, the media, and among policy-makers persisted that diplomatic and economic pressure could give rise to political change in Myanmar.<sup>130</sup> Some pundits asserted that Western pressure secured ASSK from house arrest in 1995 – and

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<sup>127</sup> *Ibid.*

<sup>128</sup> Hristov 2009: 118.

<sup>129</sup> Wintle 2007: 399.

<sup>130</sup> Interview 41.

also led to talks between her and the SPDC leadership in 1994 and 2001.<sup>131</sup> Western countries were responding to ASSK's calls for pressure by incrementally imposing sanctions against the SPDC. Hence, increased pressure on the military government accompanied ASSK's release. From 1995 until 2000, ASSK faced manifold restrictions that aimed to block her from leaving the capital and to travel up-country. The EU, France, the UK, the US, and Norway demanded that she be allowed to travel freely.<sup>132</sup>

Several elements explain why the EU did not review its sanctions policy, despite ASSK's release in 1995. All corroborate the compliance hypothesis. First, Brussels seemed wary that ASSK's release on 10 July 1995 was only a cosmetic measure to bring respite from international demands in order to smooth Myanmar's approaching accession to ASEAN.<sup>133</sup> The EU refrained from repealing negative measures in the expectation that further steps towards democratisation would follow. It was generally suspected that the dialogue process between the opposition and the government would halt as soon as Myanmar entered ASEAN.<sup>134</sup>

Second, many EU policy-makers objected that ASEAN should reject Myanmar's membership application owing to its poor human rights record. Hence, revising European restrictions would have officially endorsed ASEAN's constructive engagement policy. The EU did not revise its restrictive approach in order to compel Myanmar to continue its reforms before joining ASEAN.

With the benefit of hindsight, the interpretation that Myanmar's reforms would stop after joining ASEAN seems well founded. Myanmar's bid ultimately succeeded in April 1997 amid widespread Western censure. It did not mend its ways after it entered ASEAN. The talks with the opposition actually flew in the

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<sup>131</sup> Youngs 2001: 141. Myanmar expert Mary Callahan (1995: 158ff.), however, does not make any case of Western pressure. She attributes ASSK's 1995 release to domestic factors and ASEAN diplomacy.

<sup>132</sup> Wintle 2007: 401.

<sup>133</sup> Interview 46.

<sup>134</sup> Interview 6.

face of European expectations with the NLD's withdrawal from the NC. ASSK was eventually put under house arrest again in 2000.

Last but not least, a third reason not to reward ASSK's release was that, one year after her release in 1996, the arrest and demise in prison of the honorary consul of a member state outraged the entire EU, as the next chapter shall show. Hence, even if the EU had at the time considered rewarding the SPDC for releasing ASSK, the dismal treatment of a European representative by the Myanmar authorities would have cut short proposals to rescind sanctions.

The compliance hypothesis therefore explains why the EU did not change its policy after ASSK's release in 1995. The absence of policy change mainly owed to the junta's behaviour, which infringed human rights, and hoped to enter ASEAN despite its human rights situation. EU policy-makers did not give credit to the declared intentions of the SPDC leadership to enter into a meaningful dialogue with the political opposition.<sup>135</sup>

## **5. Conclusions**

### **5.1. Summary**

This chapter demonstrated that, during this early period, EU foreign policy represented little more than the lowest common denominator. Apart from diplomatic statements, no statutory measure was taken in condemnation of the 1988 uprising. The EU did not adopt formal measures until 1991, which consisted in an arms embargo and a suspension of development aid. In the subsequent years, the EU neither scaled up sanctions nor did it offer incentives to the military regime. During this period, the EU did not heed the NLD's calls to enforce economic penalties against Myanmar.

EU sanctions did not constrain the national foreign policy of the member states. The EU did not adopt significant economic or diplomatic restrictions that would have harmed economic interests of some EU member states, or impeded

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<sup>135</sup> Interview 1.



diplomatic relations with Myanmar. The only diplomatic penalty (i.e. withdrawing military attachés) did not threaten European interests, given Myanmar's lack of strategic importance for all European countries. The implicit approach of 'critical engagement' enabled the member states to conduct their own national foreign policy in a European framework that was loose and not constraining. EU foreign policy condemned Myanmar's behaviour, but respected the diverse interests of EU member states.

This finding on the lowest common denominator is corroborated by the marginal impact of strictly EU measures. In a unilateral move, Germany had already suspended new bilateral assistance programmes in 1988, before its formal adoption by the European Community in 1991. These bilateral restrictions were significant because Germany was Myanmar's second biggest provider of development aid, in addition to contributing to flourishing business operations by supporting the investments of a German state-owned company. By contrast, Yangon's interaction with other EU member states was tenuous. Therefore, EU sanctions *per se* had less economic impact on the SPDC than the bilateral measures imposed by Germany almost three years before. On the other hand, however, the political opprobrium conveyed by common European sanctions was more stringent than restrictive measures by a single European country.

Sanctions were enforced because of Myanmar's flagrant human rights violations, and the EU's commitment to condemn such gross abuses. The EU continued the same policy for two reasons. Apart from the Netherlands who advocated a tighter arms embargo with support from Denmark, EU member states did not propose tougher sanctions, notably because some of them (notably two big member states) had identified an economic interest in Myanmar's opening economy. On the other hand, persistent human rights violations did not allow the EU to scale down the restrictive measures already in place.

## 5.2. Assessment of Hypotheses

### 5.2.1. Bandwagoning Hypothesis

The bandwagoning hypothesis offers plausible explanations of the EU's reaction to the events of 1988 and 1990. The lack of reaction to the putsch of 1988 could be informed by the Cold War context. Human rights and democracy did not yet feature at the forefront of Western foreign policy. It is only in the aftermath of the fall of the Berlin Wall in 1989 and the subsequent break-up of the Soviet Union that human rights became a more central concern of EU foreign policy.<sup>136</sup> The bipolar structure of the international system therefore explains why the EU did not effectively react to the clampdown on the 1988 uprising.<sup>137</sup>

The dramatic shift in the structure of the international system could also explain why the EU reacted more robustly to Myanmar's disregard for the 1990 election results than to the quelling of the 1988 uprising. The novel unipolar structure of the international system around US power induced US allies to more aggressively promote America's values on the global stage, under the banner of liberalism.<sup>138</sup> By the end of the Cold War, the US and the EU were formally committing themselves to the achievement of common goals, notably to: 'support democracy, the rule of law and the respect for human rights and individual peace [...]'.<sup>139</sup> To that end, they set up an institutional framework for consultation on foreign policy issues, which entailed bi-annual consultations between high-level American and European decision-makers.<sup>140</sup> In any case, the EU adopted measures similar to those wielded by the US: first informally in September 1988<sup>141</sup> and then formally in 1991.<sup>142</sup>

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<sup>136</sup> Hill and K. Smith 2000: 443.

<sup>137</sup> IDEA 2001: 132.

<sup>138</sup> Cox and Ikenberry 2000: 1-2.

<sup>139</sup> Council of the EU: *Joint Declaration of 22 November 1990*; *ibid.*: 3 December 1995: *New Transatlantic Agenda*.

<sup>140</sup> *Ibid.*

<sup>141</sup> Frittin and Swanström 2010a: 1; Soe Myint Aung 2003.

<sup>142</sup> European Commission 1991: *Bull. 1/2*: 1.4.3.

However, the EU approach differed noticeably from the US insofar as it did not impose economic penalties. Such sanctions would have precluded the expansion of European economic interests in a newly opening market. It did not withdraw Myanmar from GSP treatment at that point, although the US had already implemented this measure on 14 April 1989. The EU therefore bandwagoned with the US, but maintained a degree of independence and safeguarded its material interests. Consequently, the bandwagoning hypothesis finds broad support during the early period covered in this chapter.

### **5.2.2. Compliance Hypothesis**

The compliance hypothesis was confronted with three tests: the events of 1988, 1990, and 1995. This hypothesis did not pass the test in dealing with events in 1988. The lack of reaction to the clampdown on the 1988 uprising could be attributed to other factors, such as the bipolar structure of the international system, and, correlatively, the inchoate development of EU foreign policy during these early years. European penalties were not very sturdy, notably due to the nascent character of EU foreign policy under the initial European Political Cooperation framework.

The compliance hypothesis passed the test for the 1990 elections. It seems logical that the EU imposed restrictions on Myanmar in order to punish Yangon for its decision not to honour the 1990 election results. The hypothesis also passed the test for 1995, when the EU decided not to immediately reward the SLORC for allowing ASSK to leave her house arrest, in the expectation that further reforms would follow.

### **5.2.3. Large Member States Hypothesis**

Since this chapter concluded that EU foreign policy was the product of the lowest common denominator among the member states, it is not surprising that the large member states hypothesis was confirmed throughout the period

covered. In-line with predictions of liberal intergovernmentalism, the material interests of the UK and France guided EU foreign policy. Paris had vested interests to maintain an economic interface with Myanmar, owing to Total's business ventures in Yadana. London was eager to expand business opportunities for British companies. Prospects for economic benefits deterred these two big member states from proposing economic sanctions on a state endowed with natural resources, which was just opening its economy. This policy contrasts sharply with the one carried out by Germany, which acted unilaterally against its commercial interests by privileging human rights.

Proposals by smaller member states, like the Netherlands and Greece, were not effectively taken into account by the Council. The European Parliament distinguished its normative stance by bestowing the Sakharov Prize upon ASSK. Nevertheless, the Parliament did not exert a noticeable influence on the very measures decided by the Council.

Domestic groups campaigning on the issue of human rights in Myanmar did not play a tangible influence on EU foreign policy either. Existing campaign groups (like the CRDB) were not well organised. With the exception of the European Parliament, they did not represent their collective interests effectively in the EU.<sup>143</sup> Consequently, national interest formation in EU member states followed the economic objectives of national business groups.

None of the member states, whether big or small, have altered their national interest during the interaction with other stakeholders at the EU level. Despite the massive human rights violations committed in 1988 and 1990, the EU had relatively little interest in the Myanmar issue. The common policy was limited to diplomatic statements and few effective decisions. EU measures did not damage the material interests of its member states. The foreign policy could therefore be interpreted as the result of lowest common denominator preferences among the member states, in-line with predictions of liberal intergovernmentalism.

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<sup>143</sup> IDEA 2001: 164ff.

#### 5.2.4. Consensus Hypothesis

The consensus hypothesis possesses a limited explanatory power during this early period, mainly because the consensus among policy-makers on the nature of the common foreign policy was not yet firmly established. A consensus could hardly emerge without institutional mechanisms for regular policy consultation.

The only issue area where EU member states built a stronger consensus consisted in a boycott of aid delivery and an arms embargo, which they unanimously agreed to implement. In the diplomatic sector, member states carried out their own national diplomacy. Sanctions were non-existent in the economic sector, where EU member states agreed not to change the *status quo*.

Despite its restrained explanatory power during this early period, the consensus hypothesis did pass a crucial test. The EC's reaction to a violation of democratic principles in 1990 underlines the ideological origins of EU foreign policy towards Myanmar. In contrast with the European sluggishness in the aftermath of the crackdowns of 1988, the EC imposed negative measures because of the decision not to honour the polls results.

This reaction to the 1990 election supports a proactive cosmopolitan interpretation of EU policy. EU member states converged around the necessity to support the political opposition. This symbolic solidarity with Myanmar's pro-democracy movement is captured by Paul Taylor's definition of proactive cosmopolitanism.<sup>144</sup> The EU's dedicated support of the NLD was justified by a shared commitment to liberal values: the NLD defended democracy, human rights, and non-violent political activities – unlike other opposition parties like the ABSDF, which embraced armed struggle as a means to restore democracy.<sup>145</sup> EU policy-makers recognised a community of inalienable values between the EU and the NLD. This community of values was strengthened when the European Parliament awarded the Sakharov Prize to ASSK. Supporting kin values is a key

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<sup>144</sup> P. Taylor 1999: 540.

<sup>145</sup> Saw Myat 2008: 75f.

characteristic of a liberal foreign policy, which reflected positively upon the EU's identity.<sup>146</sup>

The sanctions of the early nineties should therefore be set back into the broader context of EU foreign policy-making. With the end of the Cold War, the then European Economic Community started to orientate its foreign policy towards a more firmly grounded defence of human rights in third countries. The European Council enunciated in June 1991 that promoting human rights was one of the cornerstones of European Cooperation. It pinpointed its particular attachment to the principles of parliamentary democracy and the primacy of law.<sup>147</sup> A consensus was therefore starting to emerge on the use of sanctions as tools of democracy promotion by the EU. While economic interests may have precluded the adoption of economic sanctions, domestic business lobbies do not explain why sanctions were effectively adopted in 1991. This analysis echoes Drezner's refutation of pluralist explanations of the initiation of sanctions:

The domestic politics approach does not explain the initiation of sanctions attempts; senders do not initiate coercion attempts in response to domestic pressure, but rather from a rational calculation of the sender's interests in the international system.<sup>148</sup>

The next chapter shall now cover EU foreign policy from 1996 until 2003.

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<sup>146</sup> Doyle 2008: 66.

<sup>147</sup> Council of the EU, 28 and 29 June 1991: *Declaration*; *Ibid.*: *Resolution of 28 November 1991*.

<sup>148</sup> Drezner 1999: 128.

## Chapter V

### The EU and Myanmar between 1996 and 2003:

#### UK Norm Entrepreneurship and European Consensus

The preceding chapter stressed that, between 1988 and 1995, large EU member states did not propose to reinforce existing sanctions on Myanmar. This policy contrasts sharply with the one adopted during the following period. The EU ratcheted up restrictive measures considerably from 1996 until 2003.

This chapter investigates why the EU scaled up penalties, despite the previous policy by some members – mainly large states – to promote their bilateral economic interface with Myanmar's opening economy. Another paradox is that the EU tightened penalties after Myanmar had already joined ASEAN in 1997. Yangon's membership in the regional organisation was likely to undermine the impact of EU sanctions.

This chapter covers the period extending from James Nichols' demise in 1996, until ASSK's third arrest in 2003. Divided in five sections, the chapter first spells out how the UK fostered a European consensus on a principled policy. The second section probes why this emerging consensus did not include broad-brush statutory economic restrictions. The third section explains why the consensus was redefined between 1999 and 2002, notably with regard to EU relations with ASEAN. The penultimate section examines how the compliance hypothesis is challenged by specific events, including the EU's Troika meetings with Myanmar and ASSK's second release from house arrest in 2002. The final part discusses the validity of the four competing hypotheses during the period extending from 1996 until 2003.

## 1. The UK Builds a Consensus on a Principled EU Foreign Policy

It was not until 28 October 1996 that the EU articulated a common position, although the Community had censured the Myanmar government in response to its disregard for the 1990 election results.<sup>1</sup> It is therefore critical to explain why the EU changed its policy in 1996. This new policy course was strengthened considerably the next year, after the election of New Labour in the UK.

### 1.1. The Common Position 1996/635/CFSP

#### 1.1.1. Demise of James Nichols

James Leander Nichols was honorary consul representing Denmark, Norway, Finland, and a correspondent for Switzerland.<sup>2</sup> In April 1996, the Myanmar authorities sentenced Nichols to three years in jail for the unauthorised use of fax machines and telephones. The hidden reason behind this sentence was that, using these devices, he had allegedly enabled ASSK to communicate with the outside world.<sup>3</sup> Suffering from fragile health (e.g. diabetes), he died in custody on 22 June 1996.<sup>4</sup> The Myanmar government rejected calls for the UN Special Rapporteur to conduct an independent autopsy, as was notably expressed by the Irish Presidency on behalf of the EU on 5 July 1996.<sup>5</sup> Myanmar's lack of 'satisfactory explanation'<sup>6</sup> for the demise of James Nichols provided a concrete impetus for action by the EU.

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<sup>1</sup> European Commission 1991: *Bull.* 1/2: 1.4.3.

<sup>2</sup> According to records from the European Parliament, Nichols was a '[Burmese national] of Greek extraction' (EP, 26 February 1997: *Written Question No. 2275/96*).

<sup>3</sup> Nichols was a close friend of ASSK. The Thai newspaper *The Nation* presented Nichols as ASSK's godfather (*Nation*, 1 May 1996).

<sup>4</sup> Tamen 2004: title 3.1. James Nichols was incarcerated in Insein prison with common criminals, and not with prisoners of conscience (interview 23).

<sup>5</sup> European Commission 1996: *Bull.* 7/8: 1.4.7. See also: Tamen 2003: 28; Lintner 2006; Hristov 2009: 119.

<sup>6</sup> European Commission 1996: *Bull.* 7/8: 1.4.7.



### 1.1.2. EU Reaction to the James Nichols' Case

#### i. The 1996 Meetings

Before deciding to ratchet up sanctions, the EU held three Troika meetings in order to seek explanations for James Nichols' demise. An informal meeting was held at the margins of the ASEAN Post-Ministerial Conference (APMC) on 24 July 1996. The EU convoked a bilateral meeting with Myanmar's minister for foreign affairs, Ohn Kyaw, on the occasion of the 51<sup>st</sup> United Nations General Assembly on 26 September. The Commission set forth:

The European Union was disappointed at the outcome as Burma/Myanmar did not seem interested in pursuing a meaningful dialogue with it.<sup>7</sup>

Another Troika meeting was convened in October 1996 with Myanmar's foreign minister Win Aung at the margins of the UN General Assembly.<sup>8</sup> This last meeting was deemed 'most unsatisfactory'.<sup>9</sup>

This lack of progress could be attributed to different factors. The EU put various topics on the agenda, which were all intertwined.<sup>10</sup> Acceding to one demand (i.e. explaining James Nichols' death) would have led Myanmar to make further concessions in other areas (e.g. recognising the grim state of Myanmar prisons). Besides, European diplomacy was perceived as meddling into Myanmar's internal affairs by overtly siding with domestic opposition parties.<sup>11</sup>

#### ii. Dynamics Endogenous to the EU

Danish foreign minister Niels Helveg Petersen was determined to step up international pressure to punish the imprisonment of Denmark's representative, as well as to condemn repeated human rights violations.<sup>12</sup> Copenhagen's

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<sup>7</sup> European Commission: *Answer of 17 January 1997*.

<sup>8</sup> Khaliq 2008: 201, footnote 59.

<sup>9</sup> European Commission: *Answer of 14 March 1997*.

<sup>10</sup> Interview 46.

<sup>11</sup> Interview 24.

<sup>12</sup> *Copenhagen Post*, 2 July 1998.

proposal for economic sanctions was on the Council's agenda on 16 July, even before the EU had the opportunity to meet with Myanmar. The General Affairs Council declared it would 'consider possible further restrictive measures in co-operation with other countries concerned'.<sup>13</sup> (This statement implicitly referred to international consultations, notably with the US).<sup>14</sup> The unproductive meetings with Myanmar encouraged Denmark to vociferously push for the imposition of sanctions on trade and investment.<sup>15</sup> In July, a leading Danish pension fund sold \$10.45 million holdings in Total for fear of international boycott against the company.<sup>16</sup>

In parallel but not systematically connected to the James Nichols' case, the European Parliament mounted pressure to act by tabling multiple resolutions in 1995 and 1996, while individual MEPs asked many questions about forced labour, child labour practices, political prisoners rights, and the general human rights situation in Myanmar.<sup>17</sup> It called on the Council to 'apply all the pressure required to secure democratization in the country'.<sup>18</sup> MEP Glenys Kinnock voiced consternation on Myanmar's accession to the ASEAN Regional Forum (ARF), to which the EU is a party.<sup>19</sup>

The Commissioner for Humanitarian Aid, Emma Bonino, visited Myanmar and some camps along the Thai-Myanma border. She met with ASSK in Yangon (but not with the government).<sup>20</sup> She undertook the visit on her own initiative.<sup>21</sup>

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<sup>13</sup> Council of the EU: *Conclusions of 16 July 1996*.

<sup>14</sup> Interview 5.

<sup>15</sup> Khaliq 2008: 201; Hristov 2009: 122ff.

<sup>16</sup> *Financial Times*, 19 July 1996: 1, quoted in: Peterson Institute for International Economics, August 2006. See also: Soe Myint Aung 2003.

<sup>17</sup> EP, 16 February 1995: *Resolution*; EP, 3 July 1995: *Resolution*; EP, 22 January 1996: *Resolution*; EP, 10 June 1996: *Resolution*; EP, 6 December 1995: *Written Question*; EP, 18 October 1995: *Written Question*; EP, 26 July 1996: *Written Question*; EP, 27 August 1996: *Written Question*; EP, 12 December 1996: *Written Question*.

<sup>18</sup> EP, 10 June 1996: *Resolution*.

<sup>19</sup> EP, 12 July 1996: *Written Question*; EP, 11 July 1996: *Written Question*.

<sup>20</sup> Hristov 2009: 119.

<sup>21</sup> Interview 6.

Although Denmark initially called for sanctions, it was in fact the UK's proposal that was ultimately adopted. Hristov ascribes the UK's position to US pressure to impose sanctions on Myanmar – an allegation for which little empirical evidence is available though.<sup>22</sup> Another more plausible explanation is that ASSK had recorded calls for international sanctions on a tape smuggled out of Myanmar to attempt influencing the international community.<sup>23</sup> Furthermore, the UK strengthened its resolve to support the democratic opposition after the NLD had withdrawn from the NC on 29 October 1995.<sup>24</sup> Pro-NLD campaigners, including ASSK's husband Michael Aris, held extensive meetings with British and European officials, especially with members of parliaments.<sup>25</sup>

On 27 May 1996, the SPDC arrested 262 of NLD's elected members of parliament who were attending the first NLD party congress, marking the anniversary of the 1990 elections after ASSK's release.<sup>26</sup> The arrest caused uproar among principled EU member states and the European Parliament.<sup>27</sup> The European Parliament repeatedly incited the Commission and the Council to apply pressure on Myanmar to release the many prisoners of conscience.<sup>28</sup> Renewed detentions of NLD activists and elected MPs in September 1996 may have contributed to the adoption of the Common Position 1996/635/CFSP.<sup>29</sup> In sum, policy inputs stemmed from Myanmar's domestic politics, institutional dynamics at the EU level, and domestic politics within the UK.

The UK thus supported Denmark's initiative to impose sanctions, but refrained from imposing a European investment ban. British foreign secretary Malcolm Rifkind declared: 'Any decision to impose economic sanctions against the military

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<sup>22</sup> Hristov 2009: 122.

<sup>23</sup> *Ibid.*: 122.

<sup>24</sup> Interview 46.

<sup>25</sup> Interview 37.

<sup>26</sup> EP, 10 June 1996: *Resolution*.

<sup>27</sup> Hristov 2009: 121.

<sup>28</sup> EP, 30 June 1997: *Resolution*; EP, 1 June 1998: *Resolution*; EP, 3 April 2001: *Written Question*; EP, 26 September 2002: *Written Question*; EP, 12 December 2002: *Written Question*.

<sup>29</sup> IDEA 2001: 139.

government in Burma should be made by the UN Security Council'.<sup>30</sup> The large member states hypothesis is corroborated here because it was the UK, and not Denmark's proposal that was ultimately adopted. Sanctions were brought into effect following a proposal by a big member state. Furthermore, the restrictions did not jeopardise European material interests.

Nevertheless, and in contrast with liberal intergovernmentalism, the drivers of foreign policy were not material but ideological. Other EU member states felt they had to demonstrate European solidarity with outraged Denmark as well as towards the NLD.<sup>31</sup> A mix of theoretical approaches is therefore needed to explain EU foreign policy-making. Liberal intergovernmentalism rightly identifies the big member states as the core decision-makers, but it cannot unveil the real drivers of the foreign policy. By acting together, EU member states demonstrated that European solidarity mattered more than their diversity of views. Constructivism aptly captures this social dynamic in EU policy-making.

### iii. The Adopted Measures

The sanctions put in place by Common Position 96/635/CFSP reaffirmed the measures already coordinated by the member states since 1990: expulsion and withdrawal of military personnel attached to the embassies in the member states and in Myanmar; an embargo on arms, munitions and military equipment; and the suspension of non-humanitarian assistance (with exceptions). Restating these negative measures in the framework of a common position reinforced their formally binding character.<sup>32</sup> Additional restrictions were implemented in Common Position 96/635/CFSP: a visa ban on targeted members of the SLORC, armed forces and their families; suspension of visits by high-level European

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<sup>30</sup> Pederson 2008: 35.

<sup>31</sup> Interview 6.

<sup>32</sup> A 'Common Position' was a politically binding policy framework under the pre-Lisbon-Treaty setup. To the extent that it referred to (EU) Community competences, an implementing Regulation was regularly added (initiated by the European Commission and adopted by the Council). Under the Lisbon Treaty, the system remains essentially the same, but the term 'Common Position' has been replaced by 'EU Decision'.

officials to Myanmar. The common position thus brought the period of 'critical engagement' to an end – although it formally 'reaffirms [the EU's] determination to resume such dialogue at any time.'<sup>33</sup> This common position has been renewed every twelve months, and the measures eventually scaled up.

The Common Position 96/635/CFSP was mainly a political document that aimed at showing solidarity with Denmark and Myanmar's oppressed democratic opposition. The common position did not entail new measures, with the exception of the visa ban and moratorium on high-level visits to Myanmar. Neither did it bring up the obstacles met by the National Convention. Therefore, the measures adopted were not far from the *status quo*. Competitive bargaining among the largest member states explains why the policy decided in 1996 could still be characterised as a product of the lowest common denominator, despite its ideological drivers. The bandwagoning hypothesis is not necessarily disconfirmed by the adoption of this new policy, although the EU's decision was essentially motivated by intramural dynamics. On 3 October, President Clinton barred Myanmar government leaders from entry into the US.<sup>34</sup> On 25 October, the Irish Presidency announced the EU would replicate the same measure.

#### iv. Competitive Bargaining

The rebuttal of Copenhagen's proposal is explained by the reluctance of the three big EU member states to adopt economic restrictions. The preceding chapter already mentioned that Myanmar was considered an untapped market with potential entry points to other Asian countries.

France rejected economic sanctions in order to defend Total's business interests. This position could be characterised as derived from mercantilism, or

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<sup>33</sup> Council of the EU: *Common Position 96/635/CFSP of 28 October 1996*.

<sup>34</sup> *New York Times*, 4 October 1996: A6, quoted in: Peterson Institute for International Economics, August 2006.

economic nationalism.<sup>35</sup> Conservative French MPs alleged that the Socialist Party (PS) was backing Total's investments under François Mitterrand's Presidency (1981-1995) and again during Lionel Jospin's cohabitation government from 1997 until 2002.<sup>36</sup> There is, however, no proof of direct connections.

The dearth of pressure by the French civil society eased this position, which protected national business ventures. In a Gaullist tradition usually upheld by Jacques Chirac from 1995 until 2007, French foreign policy consisted in a *domaine réservé* under the President's authority. Civil society tended to exert little influence.<sup>37</sup> Despite the principled involvement of campaign groups then and in subsequent years (e.g. Info Birmanie, Reporters sans Frontières, Ligue des Droits de l'Homme, Amnesty International France, SOS Aung San Suu Kyi) and of a few French celebrities (e.g. singer Jane Birkin, actress Catherine Deneuve), French public opinion showed only minor interest in Myanmar.

The decision not to impose economic restrictions is also related to goal-orientated approaches to sanctions policy.<sup>38</sup> French, German and even the British foreign ministries subscribed to the view that sanctions would be ineffective against a country that had subsisted under relative autarky for more than twenty-five years.<sup>39</sup> This interpretation corroborates the large member states hypothesis: the agreement between big member states not to impose economic sanctions determined EU foreign policy.

Doubt was voiced by some member states and the Commission 'on the usefulness of economic sanctions to achieve political objectives'.<sup>40</sup> The Quai

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<sup>35</sup> Krasner 1978; Gilpin 1975. On the question of commercial (and energy) interests of French foreign policy, see: de La Genière 1986.

<sup>36</sup> Assemblée Nationale: *Written Question of 25 April 2000*.

<sup>37</sup> Badie and Fardeau 2003: 14-15.

<sup>38</sup> Pape 1997: 94-5; Morgan and Schwebach: 45-46; Tsebelis: 3-4; Leyton-Brown: 308ff.

<sup>39</sup> House of Commons, 7 February 1996: *Question*; Assemblée Nationale, 25 April 2000: *Question*; Federal Government of Germany, 9 March 2004: *Antwort*.

<sup>40</sup> European Commission: *Answer of 24 June 1997*.

d'Orsay dismissed the argument that a ban would exert influence on the SPDC, stating that Total's investment was only 0.5 percent of Myanmar's total FDI.<sup>41</sup>

Foreign minister Védryne uttered:

All European countries consider that it [Myanmar's government] is little sensitive to the actions they may undertake, because it does not live from external aid, whose contribution to the national economy is marginal.<sup>42</sup>

Germany opposed sanctions against trade and investment for normative reasons. The German government expressed its concern that economic sanctions would bear deleterious impact on the population, while inflicting negligible harm on the junta.<sup>43</sup> Germany had few relevant economic interests left in Myanmar. During the Cold War, German investments had been sponsored by the state, so that the ban on development aid had eliminated German economic interests inherited from the Ne Win era.

Also the UK was not persuaded by the effectiveness of economic sanctions proposed by Denmark (and British domestic campaign groups).<sup>44</sup> The rationale behind this position was that economic sanctions would cut off bilateral relations, and threaten the 'critical dialogue' with Myanmar.<sup>45</sup> Like the Quai d'Orsay, Whitehall highlighted that no international consensus prevailed on sanctions, and that UK bilateral trade with Myanmar was minimal.<sup>46</sup> Notwithstanding, the UK

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<sup>41</sup> Assemblée Nationale, 25 April 2000: *Answer by the foreign affairs minister Hubert Védryne*. Foreign minister Védryne does not use the term FDI, but 'part de marché' ('market shares'). The Quai d'Orsay's calculation seems nonetheless understated. According to field interviews with professionals working with Total, the revenues extracted from the Yadana pipelines amounted to ca. \$2 billion a year in 2009 (Interview 24). The newspaper *Myanmar Times* reported in its 20-26 August 2007 edition that the Yadana project earned a total US\$2.16 billion in 2006. Another estimate for the consortium's earnings in 2007 is US\$2.8 billion (Nicksch 2008: 19; Tonkin 4 November 2010). The European Parliament noted in 1998 that: 'European multinational oil companies now provide almost a third of the total legal foreign investment committed in Burma and an even higher proportion of funds disbursed' (EP, 12 October 1998: *Resolution*, par. G.).

<sup>42</sup> Translation by the author. (In this context, external aid seems understood as development assistance as well as FDI). Assemblée Nationale: *Answer of 25 April 2000*.

<sup>43</sup> Federal Government of Germany 2004: *Antwort*.

<sup>44</sup> House of Commons, 12 June 1996: *Question*; House of Lords, 22 July 1996: *Question*.

<sup>45</sup> House of Lords, 22 July 1996: *Question*.

<sup>46</sup> *Ibid.*

suspended Department of Trade and Industry (DTI) delegations to Myanmar by mid-1996, notably due to mounting pressures from Westminster and civil society to sever relations with a state offending human rights.<sup>47</sup> The election of New Labour further orientated UK foreign policy towards a principled stance.

## 1.2. Reformulation of British Interests

### 1.2.1. Election of New Labour

On 1 May 1997, the election of New Labour to government had a lasting impact on EU foreign policy towards Myanmar. Upon taking office, foreign minister Robin Cook vowed to carry out a foreign policy with ‘an ethical dimension’, which would make ‘Britain once again a force for good in the world’.<sup>48</sup> This pledge was later buttressed by Tony Blair’s ‘doctrine of the international community’ set out on 22 April 1999 at the Economic Club of Chicago. This governmental campaign sought to distinguish Labour’s foreign policy from that of the Conservative Party, which Labour had castigated for its ‘narrow realpolitik’.<sup>49</sup>

The issue of Myanmar became a showcase for a vigorous human rights policy. This principled stance also aimed to contrast with the stance of John Major’s administration, which was at first disinclined to impose economic sanctions on Myanmar. This principled policy was crafted at the highest level of the Labour party, notably by PM Tony Blair (1997-2007) and foreign minister Cook (1997-2001), who have repeatedly expressed their support of ASSK.<sup>50</sup> Blair had invited ASSK to join the Labour’s pre-election party conference in 1997.<sup>51</sup> PM Tony Blair and Chancellor of the Exchequer Gordon Brown sent her New Year and birthday

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<sup>47</sup> House of Commons, 12 June 1996: *Question*.

<sup>48</sup> Cook: *Press conference of 12 May 1997*.

<sup>49</sup> *Ibid.*

<sup>50</sup> BC UK website 2010; Tonkin 24 October 2009; Brown 2007; interview 46.

<sup>51</sup> BC UK, 10 June 2005.



wishes (on 19 June).<sup>52</sup> This leadership placed the UK as the EU's primary sender of sanctions on Myanmar.

This personal involvement of high-level policy-makers in UK policy led Downing Street to exert considerable leverage on the UK's stance. In fact, the Prime Minister's Office tended to circumvent Whitehall from important political decisions.<sup>53</sup> The Westminster model of democracy enables a concentration of power in the hands of the Cabinet.<sup>54</sup> Tony Blair's presidential style of Premiership increased this prominence.<sup>55</sup>

This politicisation of UK foreign policy was also brought about because of the salience of domestic pressure groups focused on Myanmar. According to a FCO representative, the UK's policy towards Myanmar is 'possessed by the Parliament'.<sup>56</sup> An 'All Party Parliamentary Group on Burma', presided by the time of writing by the Baroness Kinnock of Holyhead, was founded. British MPs, co-established a 'European Parliamentary Caucus on Burma' with MEPs and MPs from other European countries to 'raise[s] awareness about Burmese problems within Europe'.<sup>57</sup> Westminster's support to the political opposition can be justified by the close links between individual MPs and campaigners, as well as by solidarity with fellow elected Myanmar MPs, whom SPDC has persecuted in the aftermath of the 1990 elections. BC UK attracted frequent media attention, notably by rallying celebrities to the cause of democracy in Myanmar (e.g. entrepreneur Richard Branson, U2 singer Bono, former Beatle Paul McCartney, Damien Rice, or bands like U2, REM, and Coldplay).<sup>58</sup> Its representatives were invited at Number 10.<sup>59</sup> Prominent politicians were personally implicated with the

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<sup>52</sup> Tonkin, 1 January 2010: 1-2; FCO, October 2008: *Latest News*.

<sup>53</sup> Interviews 6 and 46; Tonkin 2010c.

<sup>54</sup> Lijphart 1984.

<sup>55</sup> Kavanagh 2005: 8ff.; Hill 2005: 400-401.

<sup>56</sup> Interview 1.

<sup>57</sup> EPCB website 2012.

<sup>58</sup> Youngs 2001: 142; Wintle 2007: 355; BC UK website 2010.

<sup>59</sup> Interview 3.

campaign (e.g. MEP Glenys Kinnock has been a longstanding BC UK board member).<sup>60</sup>

### 1.2.2. European rather than Unilateral Sanctions

Confronted with the refusal of some member states to impose economic sanctions, New Labour envisaged embarking on unilateral sanctions outside the European framework. Campaigners, certain MPs, and British MEPs like Glenys Kinnock, urged the Labour government and the European Commission to act under the authority of Article 60.2 Rome Treaty.<sup>61</sup> This Article authorises a member state to impose sanctions unilaterally on a non-EU country where there are 'serious political reasons and on grounds of urgency'.<sup>62</sup>

Whitehall clarified that unilateral UK sanctions would contradict the free movement of European goods and capital. The UK preferred to stay attached to the European framework in order to reap benefits from 'politics of scale' (to borrow Ginsberg's expression).<sup>63</sup> For the total trade between the EU and Myanmar was four times greater than with Myanmar's single largest EU trading partner, Germany.<sup>64</sup> In light of impending EU sanctions against Myanmar, former British Foreign Secretary Robin Cook stated:

I am bound to say I think actually it would be pointless for Britain itself to try and apply its own economic sanctions... We are upholding the European Union approach to Burma.<sup>65</sup>

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<sup>60</sup> Email exchange 1.

<sup>61</sup> House of Commons: *Examination of 10 October 2007*, question 404; BC UK website 2010: *Actions: Sanctions Briefing*; EP, 8 April 1999: *Written Question*.

<sup>62</sup> Rome Treaty, Art. 60 (2); EC Treaty, Art. 73g (2); Burma Campaign UK 2010b; European Commission: *Answer of 5 October 1998*.

<sup>63</sup> Ginsberg 1998.

<sup>64</sup> IMF 1998: 517; *ibid.*: 18.

<sup>65</sup> Quoted after S. Jones 2007: 117; interview given by the British Foreign Secretary, Robin Cook, 14 May 1998.

### 1.2.3. New Labour's Non-statutory Measures

The UK found a middle ground by imposing unilateral non-statutory sanctions. By doing so, the British government dodged the imposition of unilateral statutory sanctions, which would have undermined the European approach.<sup>66</sup> At the same time, unilateral but non-statutory sanctions mollified domestic pressures.

The UK unilaterally suspended financial support for companies trading with Myanmar, discouraged tourism, and urged British companies to divest, including Premier Oil and British-American Tobacco (BAT).<sup>67</sup> BAT was one of the largest British investors in Myanmar with its BAT/Rothmans joint venture with Economic Holding Myanmar.<sup>68</sup> By the end of the nineties, Whitehall had encouraged British companies to withdraw from the country.<sup>69</sup> The UK's Export Credits Guarantee Department (ECGD) withdrew all finance cover facilities. Burton (UK) and British High Street divested in 1997; followed by British American Tobacco (BAT) in 2003.<sup>70</sup> In September 2002, Premier Oil reviewed its operations due to pressure by its own shareholders and the British government.<sup>71</sup> Lloyds, Pricewaterhouse Cooper, and Rolls Royce also pulled out.<sup>72</sup> By 1999, FDI to Myanmar had 'decreased by 90 percent from its peak'.<sup>73</sup> By the time of writing, only small-sized British businesses operate in Myanmar.<sup>74</sup> Apart from Total, the biggest European

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<sup>66</sup> It is noteworthy that the UK adopted a different European policy towards Libya in 1984, when it unilaterally cut diplomatic ties with Tripoli following the assassination in London of Mrs. Fletcher, a British policewoman. The European Community implemented a European arms embargo only two years later following the EPC ministerial meeting of 27 January 1986, and diplomatic sanctions on 14 April 1986 (Council of the EU: *Statement of 27 January 1986*; *ibid.*: *Statement of 14 April 1986*).

<sup>67</sup> Hristov 2009: 122.

<sup>68</sup> EP, 18 September 2003: *Written Question*.

<sup>69</sup> Khaliq 2008: 211, footnote 112.

<sup>70</sup> *Ibid.* BAT's investments were sold out to Singaporean partners (Hristov 2009: 239).

<sup>71</sup> Youngs 2001: 141; Pederson 2008: 38. Notwithstanding, Premier Oil is reported to have invested US\$650 million into the Yetagun gas pipeline (Hristov 2009: 193, footnote 423; Fawthrop, 10 October 2002). Premier Oil's withdrawal did not create an economic vacuum, for the investment was then sold out to the Malaysian bidder Petronas (Hristov 2009: 239).

<sup>72</sup> BC UK website 2010.

<sup>73</sup> Bowman: *British ambassador address of 29 April 2006*.

<sup>74</sup> *Ibid.*

MNCs pulled out of Myanmar: BHS, Heineken, Carlsberg, the Burton Group, and Ericsson – the latter was influenced by its loss of a contract in San Francisco due to the city's sanctions against companies having dealings with Myanmar.

In sum, the UK's policy change was not caused by the interaction with other member states at the EU level, but by new British elites' conviction to adopt a policy that would bolster liberal values. This reflects Hoffmann's explanation of foreign policy change as caused by the institution of a new government within an EU member state.<sup>75</sup> It therefore confirms liberal intergovernmental expectations.

#### **1.2.4. Impact of European Divestments**

The impact of these divestments is challenging to quantify. It is difficult to assess how many potential investors eventually ditched their plans. Moreover, Asian competitors have filled many market sectors abandoned by Europeans. Finally, high price volatility and business risks make it challenging to predict how much European companies would have sustainably invested in the country. Myanmar's precarious business climate makes it likely that some companies would have later reconsidered their expansion plans, even if business activities had not been officially discouraged by the UK and other EU member states.

In any case, these non-statutory sanctions had a formidable impact. At least a dozen big European companies effectively pulled out of Myanmar between 1997 and 2003. Potential investors also cancelled their plans. By opening its economy, Myanmar was hoping to attract Western direct investment. Non-statutory sanctions may have produced more damage on Myanmar's economy than statutory EU sanctions, not least because reputational risks had deterred European companies from venturing into Myanmar. So far as statutory sanctions are concerned, the EU had few cards to play as the economic, commercial, and industrial interface with Myanmar was so modest, and eventually only marginal.<sup>76</sup>

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<sup>75</sup> Hoffmann 1966: 905.

<sup>76</sup> Email exchange 2.

On the Myanmar side, the authorities attempted to demonstrate that Western sanctions did not have a substantial impact on the behaviour of foreign companies. Statistics by the Myanmar Investment Commission showed that the UK was among the first investors. The UK, however, contests the numbers published by Myanmar, notably because they include UK overseas territories that are not reported in UK statistics. Moreover, there is a substantial difference between the investment that is approved by the Myanmar authorities and the realised investment, which is more modest. Finally, official Myanmar statistics are known for being unreliable, while they are also the only comprehensive data provider. In any case, table 3 indicates that Myanmar's three biggest foreign investors are: China, Thailand, and the UK (when including overseas territories).

**Table 3: Cumulative Foreign Investment in Myanmar, 1988 - end May 2009**

(Approved, not realised investment, as registered with the Myanmar Investment Commission)

Country	No. of projects	\$ million
China (28 May 2011)	72	15,800.0
Thailand	59	7,406.8
UK (includes UK Overseas Territories)	50	1,861.0
Singapore	72	1,553.2
Malaysia	33	660.7
Hong Kong	31	504.2
France	2	469.0
US	15	243.6
Indonesia	12	241.5
Netherlands	5	238.8
South Korea	37	238.8
Japan	23	213.0

Source: Myanmar Investment Commission (May 2011), quoted in: Network Myanmar website (2012).

### 1.3. Meetings with ASEAN (1997-1999)

#### 1.3.1. Diplomatic Boycotts

Myanmar's entry into ASEAN on 23 June 1997 strengthened the consensus among Europeans to carry out a policy of diplomatic pressure on ASEAN. Principled member states, particularly the UK and the Netherlands, persuaded

other European states to engage in such a policy. This position was also justified by the visa ban imposed since 25 October 1996 against members of the Myanmar government. Some MEPs, in cooperation with lobby groups like the Euro-Burma-Office, had pressured the EU not to welcome Myanmar into the ARF.<sup>77</sup> The European Parliament also refused to fund Myanmar's participation in any ASEAN-EU projects.<sup>78</sup>

Due to Myanmar's poor human rights record, the EU refused to enter into treaty relations with that country. In 1980 the (then) European Economic Community entered into a Cooperation Agreement with the (then) five members of ASEAN.<sup>79</sup> The Community subsequently expanded contractual relations with those states that joined ASEAN – with the sole exception of Myanmar. EU heads of states decided to boycott EU-ASEAN, ASEAN Regional Forum (ARF), and ASEM summits if Myanmar was to attend. The argument was that ASEAN had not consulted them about Myanmar's entry into the process after it had joined the regional group in 1997. Myanmar's participation in meetings with the EU would have badly reflected on the EU's identity as a 'club', in which all members have to explicitly adhere to principles of democratic governance.<sup>80</sup> ASEAN-EU ministerial meetings were indefinitely called off as a result of the visa ban. On 26 June 1997, the Council expressed the view that the ASEAN-EU dialogue was a forum which the Union should use to raise 'the issue of human rights in Myanmar'.<sup>81</sup>

It also stated that Myanmar's accession to ASEAN did not automatically mean membership in ASEM.<sup>82</sup> The EU confirmed this statement at the ASEAN Post Ministerial meeting in Kuala Lumpur in July, where it was announced that

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<sup>77</sup> EP, 14 March 1997: *Written Question*.

<sup>78</sup> Chalermphanupap 1999.

<sup>79</sup> European Commission, 10 June 1980: *OJ L144/2*; Japan Center for International Exchange and University of Helsinki Network of European Studies 2006: 34.

<sup>80</sup> Camroux 2008: 32.

<sup>81</sup> EP, 30 June 1997: *Resolution*: par. 6; EP: *Resolution of 12 June 1997*; Khaliq 2008: 202.

<sup>82</sup> Keva 2008: 79.

Myanmar could not participate in the ASEM 2 summit in London. Malaysian Prime Minister Mahathir Mohamad recriminated in September, warning that ASEAN could boycott this summit as well.<sup>83</sup> But Mahathir's reaction was not approved by other ASEAN leaders.<sup>84</sup> UK foreign minister Robin Cook firmly rejected Myanmar's participation in the second ASEM summit held in London on 3-4 April 1998, owing to the SPDC's failure to enter into a dialogue with ASSK.<sup>85</sup> A temporary compromise was found to the intractable problem of ASEM membership: new applications for membership into ASEM would require approval from all participants, so that membership in either regional organisation did not automatically imply partnership with ASEM.<sup>86</sup> In the second part of 1998, the Belgian ambassador proposed to involve ASEAN to step up pressure on Myanmar.<sup>87</sup> The Austrian Presidency presented *démarches* to each ASEAN ministry of foreign affairs (except Myanmar).

The visa ban applied even for the ASEAN-EU Joint Cooperation Committee (JCC), which was not held from February 1997 until the Bangkok meeting of 24-27 May 1999.<sup>88</sup> This cancellation delayed mutual development programmes.<sup>89</sup> European ministers hastened to block the ASEAN-EU Ministerial Meetings for three years until the Vientiane meeting of 11 December 2000.<sup>90</sup> The Berlin AEMM, scheduled for 30 March 1999, and the ASEAN-EU JCC were both cancelled as a consequence of the visa ban and the uncompromising stance of

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<sup>83</sup> Japan Center for International Exchange and University of Helsinki Network of European Studies 2006: 41.

<sup>84</sup> Camroux 2006a: 13.

<sup>85</sup> Camroux 2006a: 13-14; Synnott 1999.

<sup>86</sup> Forster 1999: 753; Loewen 2005: 71-72; Japan Center for International Exchange and University of Helsinki Network of European Studies 2006: 41.

<sup>87</sup> Hristov 2009: 125.

<sup>88</sup> ASEAN Secretariat: *Joint Press Release of 27 May 1999*.

<sup>89</sup> Pederson 2008: 36.

<sup>90</sup> European Commission 2000: *12 Bull. 1.6.78*.

the SPDC over the case of ASSK's dying husband. Michael Aris was denied an entry visa to see his wife despite being terminally ill.<sup>91</sup>

A settlement was found for the ASEAN-EU JCC meeting in Bangkok on 25-26 May 1999. Myanmar was allowed to attend as a non-signatory country, just like Laos and Cambodia, with no speaking rights. On the other hand, the EU conceded not to bring up any extraneous political issues outside the purview of the JCC.<sup>92</sup> However, this informal agreement did not resolve the issue of the visa ban on high-level Myanmar officials with regards to summits held in EU territory.

### 1.3.2. Impact of EU Measures

In this regional context, EU diplomacy has created a serious reputational stigma for Myanmar. The boycott of summits with ASEAN may have induced some Asian states to pressure Myanmar on human rights issues. Despite these intramural challenges to the ASEAN way, however, even the more critical member states like the Philippines refrained from exerting diplomatic pressure that could have infringed upon the sovereignty of another ASEAN state. ASEAN could not adopt statutory sanctions on Myanmar.<sup>93</sup>

Instead of bowing to international pressure, Myanmar further entrenched itself into political isolation, particularly from the West. Yangon intensified its relations with allied countries, including within ASEAN. While the symbolic impact of EU diplomatic sanctions was certainly strong, it did not substantially affect Myanmar's behaviour. The history of Myanmar's interactions with the rest of the region has illustrated that even ASEAN could extract few concessions from SPDC.<sup>94</sup> The SPDC tended to prioritise its domestic security to integration into the international system. Jürgen Haacke characterised this behaviour as the 'political-security imperative', which means securing the military's hold on power

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<sup>91</sup> European Commission, 14 March 1997: *Answer*; Hristov 2009: 125-126.

<sup>92</sup> Chalermphanupap 1999.

<sup>93</sup> European Commission: *Answer of 5 June 2000*.

<sup>94</sup> Haacke 2006: 41-60.



so as to thwart potentially secessionist rebellions by ethnic factions – whatever the international consequences for Myanmar.<sup>95</sup> This imperative is reflected by the regime's commitment to three main causes: 'Non-disintegration of the Union,' 'Non-disintegration of National Sovereignty,' and 'Consolidation of National Sovereignty.'<sup>96</sup> The military government refused to compromise with ASSK and NLD, because the opposition challenged the military's role at the helm of the state.<sup>97</sup>

Some European policy-makers decried the counterproductive effects of the visa ban. The suspension of high-level visits under the CFSP Decision – notwithstanding sporadic contacts – prevented communicating political messages. It conveyed a denial-of-dialogue attitude to the government. While it is impossible to ascertain whether the military leaders would have been more responsive to European concerns, had there been in place a proactive attempt for dialogue, practitioners recognise that the ban did not force the SPDC to negotiate with the political and ethnic opposition.<sup>98</sup>

The striking feature of the EU's Myanmar policy towards ASEAN is the emphasis laid on symbols (i.e. refusing to shake hands with military dictators), rather than on the effectiveness of its promotion of democracy and human rights. Myanmar could offset these boycotts by developing a web of relations with its less critical neighbours. EU-ASEAN and ASEM statements do not have any enforcement mechanisms, so that Myanmar's presence on the agenda of international summits was unlikely to yield 'much impact on Myanmar's policy'.<sup>99</sup>

The EU's inability to persuade ASEAN to reject Myanmar's membership laid bare the impotence of EU sanctions to influence Myanmar's neighbours during the period covered. Asian countries were critical of the signals sent by the EU,

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<sup>95</sup> *Ibid.*: 17-19.

<sup>96</sup> Seekins 2005: 448, footnote 30.

<sup>97</sup> Haacke 2006: 21-22.

<sup>98</sup> Interview 6.

<sup>99</sup> T. Wilson 2007: 92-93.

which contravened ASEAN's 'sacrosanct principle of non-interference'.<sup>100</sup> Karen Smith contended that the EU's lack of effectiveness is more flagrant when examining the European inability to influence Myanmar's neighbours.<sup>101</sup> It is not so surprising that the 'quasi-totalitarian state'<sup>102</sup> in Myanmar seemed insensitive to EU demands. Although the EU enjoys regular contacts with Myanmar's more liberal neighbours, it has not been able to coax them into complementing its strategy of pressure on the SPDC. In effect, EU and ASEAN strategies towards Myanmar have offset each other.

ASEAN has at times infringed upon the principle of non-interference, for instance by expressing demands for tangible reforms in Myanmar (as early as during the 2005 East Asia Summit in Kuala Lumpur).<sup>103</sup> Tivo Kivimäcki thus noted that the regional meetings might have, over time, led both the EU and ASEAN to add nuance to their respective approaches towards Myanmar.<sup>104</sup> Nevertheless, such secondary effects hardly exerted a sustainable influence on the SPDC's behaviour. Despite rhetorical statements critical of Myanmar's domestic affairs, ASEAN members generally continued to provide political protection and intensify their economic interface with Myanmar. If the tertiary objectives of EU policy consisted in changing ASEAN strategy towards Myanmar, then this goal has been conspicuously unattained.

Reflecting upon the undeclared objectives of EU sanctions policy, a mix of various theoretical approaches could explain why the EU continued such a vocal, but, for obvious reasons, ineffective boycott policy on ASEAN. A first explanation could be based on ideological motivations of EU foreign policy, notably the influence of liberal cosmopolitanism.<sup>105</sup> Policy-makers had decided measures they felt morally responsible to implement. Snubbing Myanmar's participation in

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<sup>100</sup> Camroux 2008: 32.

<sup>101</sup> K. Smith 2006: 164-166.

<sup>102</sup> Saw Myat 2008: 37ff.

<sup>103</sup> Camroux 2006b: 2; Camroux 2007: 566.

<sup>104</sup> Kivimäcki 2008.

<sup>105</sup> P. Taylor 1999: 538-565.

multilateral summits served the purpose of symbolically defending liberal values. This policy stemmed from the EU's internal identity, which could not accept to normalise relations with a state having such deplorable human rights record.<sup>106</sup> The ideological underpinnings of EU foreign policy were more important than the effectiveness of sanctions.<sup>107</sup>

From a liberal perspective, this symbolic measure could also have been derived from the secondary objective to heed pressures from domestic constituencies. Multifarious domestic actors, such as the European Parliament, national parliaments (particularly in the former colonial power UK, the Netherlands, and Denmark), the media, and campaign groups had urged national governments and the Council not to allow Myanmar into regional meetings.

This less benevolent interpretation can be wedded to rational choice approaches to sanctions.<sup>108</sup> Boycotting meetings with Myanmar was the least costly alternative, and 'politically risk-free'.<sup>109</sup> From a realist perspective, inter-regionalism and multilateral meetings do not bring much benefit to states.<sup>110</sup> They can be suspended without substantially damaging the national interest of EU member states. Silka Keva advanced that the EU's stance towards ASEAN was induced by the EU's relative lack of strategic interest in Myanmar:

Burma/Myanmar has provided a safer and more limited platform for human rights and democracy discussion for the ASEM partners, in which, at least for the EU, there is less to lose economically and politically [than in China's treatment of human rights].<sup>111</sup>

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<sup>106</sup> Camroux and Egretreau 2010: 270.

<sup>107</sup> Interview 5.

<sup>108</sup> Baldwin 1999/2000.

<sup>109</sup> Tonkin, October 2009b.

<sup>110</sup> Carr 1964: 87; Waltz 1986; Keohane 1986 and 1989; Morgenthau and Thompson 2001; Balfour 2008: 17ff.

<sup>111</sup> Keva 2008: 83.

## 2. Setting the Boundaries of the European Consensus (1997-2000)

Despite the emerging European consensus following the adoption of the Common Position 96/635/CFSP, European enthusiasm for a punitive strategy was limited when it came to wielding economic penalties. This unwillingness to impose economic restrictions was first embodied by Paris' stance with regards to the Generalised System of Preferences (GSP).

### 2.1. Withdrawal from the Generalised System of Preferences (1997)

#### 2.1.1. EU Policy

On 24 March 1997, the EU removed Myanmar's access to the GSP,<sup>112</sup> to which it had benefited since 1994.<sup>113</sup> The GSP was withdrawn to punish SPDC for using forced labour.<sup>114</sup> This decision was the first economic penalty the EU officially placed on Myanmar. In-line with the rationalist tenet of the large member states hypothesis, this withdrawal did not affect European economic interests since it suspended a preferential treatment of which Myanmar was a beneficiary.

The EU justified this restriction due to the use of forced labour by the Myanmar army, concerning 800,000 forced workers. This finding was underscored by a European Commission report.<sup>115</sup> The Myanmar authorities had refused to allow Commission representatives to conduct a field enquiry, declaring that forced labour was not practiced in the country.<sup>116</sup> The Commission had therefore to rely on external testimonies from the International Confederation of Free Trade Unions (ICFTU) and the European Trade Union Confederation (ETUC), given on 7 June 1995.<sup>117</sup> These organisations are known for their principled stance on the Myanmar issue. In June 1995, the European Parliament supported the ICFTU

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<sup>112</sup> Council of the EU: *Regulation of 24 March 1997*.

<sup>113</sup> Council of the EU: *Regulation of 19 December 1994*.

<sup>114</sup> Kryvoi 2007: 229ff.

<sup>115</sup> Council of the EU: *Regulation of 24 March 1997*.

<sup>116</sup> IDEA 2008: 140.

<sup>117</sup> Council of the EU: *Regulation of 24 March 1997*.

action in a resolution calling on the European Council and member governments to:

[...] investigate possible cooperation between companies of the European Union in Burmese projects applying forced labor and examine the desirability of imposing economic sanctions.<sup>118</sup>

The Commission submitted its proposal to the Council on 19 December 1996.<sup>119</sup> It was endorsed by the Council on 24 March 1997.<sup>120</sup> The adoption of the proposal demonstrates that transnational lobby groups can influence specific measures decided by the EU, in-line with social constructivist predictions.

By extension, the GSP suspension implied the denial of benefits under the Everything-But-Arms Initiative (EBA) introduced in 2001, to which Myanmar would be otherwise entitled as a LDC. The EBA grants LDCs duty-free and quota-free access to the EU market for all products except arms and ammunitions.<sup>121</sup>

This withdrawal was the result of domestic pressures at the EU and national levels. ASSK provided 'strong support' for the withdrawal of EU preferences, which triggered a rally call among various European constituencies.<sup>122</sup> The European Parliament adopted resolutions to that end.<sup>123</sup> Trade unions, non-governmental organisations, including human rights groups and consumer organisations, promoted the adoption of economic restrictions by the EU.<sup>124</sup> Domestic pressures within EU member states and transnational lobbies in Brussels hence contribute to explaining why sanctions have been scaled up in 1997.

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<sup>118</sup> IDEA 2001: 140.

<sup>119</sup> Council of the EU: *Regulation of 24 March 1997*.

<sup>120</sup> *Journal of Commerce*, 25 March 1997: 3A, quoted in: Peterson Institute for International Economics, August 2006.

<sup>121</sup> European Commission: *Answer of 16 October 2002*.

<sup>122</sup> Economic and Social Committee, 28 April 1997: *Opinion*.

<sup>123</sup> EP, 10 June 1996: *Resolution*; EP, 22 January 1996: *Resolution*.

<sup>124</sup> Economic and Social Committee, 28 April 1997: *Opinion*.

Although the motion was proposed by the Commission, the decision to suspend the GSP was the outcome of a bargaining process between principled and flexible member states.<sup>125</sup> Youngs points out that France insisted that the decision to remove GSP provisions would not be presented as an ‘explicitly political position aimed at human rights and democracy’.<sup>126</sup> France was reluctant to set a legal precedent since violations of labour rights happen in many countries, especially poor ones. France’s position also attempted to shield Total’s investments. There were allegations that Total had benefited from the use of forced labour by Myanmar security forces near the Yadana gas pipeline.<sup>127</sup> Several members of the European Parliament and of the Assemblée Nationale had raised the issue.<sup>128</sup> Although illegal in international law, campaigners advocated for a retroactive ban on European investments, which would have compelled Total to divest. The economic cost of Total’s withdrawal would have been eventually carried by the French state, since Total’s Yadana project was covered by COFACE, the French insurance company for external trade.<sup>129</sup> Paris was therefore constrained to endorse the proposal concerning the GSP withdrawal, but pressed for a European Commission-led initiative limited to the issue of forced labour. Bargains by France to safeguard its economic interests show that the large member states hypothesis proffers a plausible explanation of how the GSP withdrawal was decided.

The long decision-making process from 1995 until 1997 strengthens the liberal intergovernmental hypothesis that a bargaining process prevailed between principled and flexible member states, led by France.<sup>130</sup> To add weight to this interpretation, the Commission neither reviewed its policy during fifteen years of implementation, nor did it heed the ECOSOC’s recommendation that:

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<sup>125</sup> Interview 6.

<sup>126</sup> Youngs 2001: 140.

<sup>127</sup> ICFTU Report 2002.

<sup>128</sup> EP, 15 January 2004: *Written Question*; Assemblée Nationale: *Rapport du 13 octobre 1999*; Assemblée Nationale: *Question of 25 April 2000*.

<sup>129</sup> Interview 17.

<sup>130</sup> Interview 6.

[...] if the situation in Myanmar does not change in the future, the Commission should repeat its request to the government every year.<sup>131</sup>

A liberal intergovernmental interpretation could also be corroborated by the fact that Myanmar seemed singled out. The European Economic and Social Committee (EESC) noted that the suspension of GSP benefits with Myanmar would set a 'vital precedent' in the EU's history.<sup>132</sup> Nevertheless, it was reproduced only with Belarus in 2007, for which Myanmar served as a precedent.<sup>133</sup> Unlike Myanmar, Belarus is not an LDC. Legally, the GSP withdrawal is not a sanction under the EU's Common Foreign and Security Policy. Politically, it enters partially into the remit of the EU sanctions regime, as it attempts to impel the government to changing its ways, i.e. into abolishing the practice of forced labour.<sup>134</sup>

Analogously poor labour conditions in other countries did not lead to the same measure: the EU did not penalise Bangladesh, Cambodia or Pakistan. The International Labour Organisation also reproved these countries for widespread use of child and forced labour.<sup>135</sup> The EU explicitly threatened Pakistan with removal of the GSP, but later refrained from withdrawing this preferential treatment.<sup>136</sup>

### 2.1.2. Impact of EU Measures

Derived from liberal intergovernmentalism, this interpretation of the GSP withdrawal as a symbolic measure resulting from a bargaining process between member states seems corroborated by the fact that the penalty could not have yielded much economic impact by the time it was decided. First, the GSP

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<sup>131</sup> Economic and Social Committee, 28 April 1997: *Opinion*.

<sup>132</sup> *Ibid.*

<sup>133</sup> This measure served nonetheless as a legal precedent for Belarus (Khaliq 2008: 215); Council of the EU, 30 December 2006: *Regulation No. 1933/2006*.

<sup>134</sup> Portela 2010.

<sup>135</sup> Tamen 2003: 23; 29; ILO 2004; Kissack 2008.

<sup>136</sup> EP, 22 January 1996: *Resolution*.

withdrawal affected only 1.23 percent of Myanmar's total exports as of 1995. Therefore, the economic cost incurred by the GSP withdrawal could only amount to a marginal share of Myanmar's GDP.<sup>137</sup> Table 4 shows that only 5.41 percent of Myanmar's total exports were directed towards the EU. Only €40.3 million were eligible for GSP treatment in the fiscal year 1994/1995. The effective GSP utilisation ratio by Myanmar stood at internationally low levels since only €14.7 million (or 36.6 percent) of the eligible amount benefited of GSP.<sup>138</sup>

**Table 4: Effective Utilisation of GSP as Share of Myanmar's Exports, 1994-1995**

	Value (€)	Share of total exports
<b>Myanmar's total exports (1995)*</b>	1,197,860,000	..
<b>Myanmar's exports to EU (1995)*</b>	64,752,989	5.41%
<b>Eligibility to GSP (1994/1995)**</b>	40,332,000	3.37%
<b>Effective utilisation of GSP (1994/1995)**</b>	14,762,000	1.23%

Source: Author's calculations based on (\*) IMF (2012) data and (\*\*) Collignon (1997: 25).<sup>139</sup>

Second, the restriction was symbolic because it was set off the target.<sup>140</sup> Forced labour does occur under the responsibility of local army commanders, but not in the private sector where the armed forces have no stake.<sup>141</sup> Yet, the measure mostly targeted private firms exporting to the EU – and to a lesser extent public companies trading with the EU. Private firms are unlikely users of

<sup>137</sup> Collignon (1997: 25) advanced that Myanmar's trade with the EU represented no more than 0.06 percent of total GDP so that the costs incurred by the GSP withdrawal represented an infinitesimal value of Myanmar's GDP. The conclusion is correct, but it is unclear how the figure was produced as the WB (2012) did not publish GDP data for 1995.

<sup>138</sup> Collignon 1997: 2. See also: Tamen 2003: 52; IDEA 2008: 140-141. See also: *International Herald Tribune*, 19 December 1996: 3; *Financial Times*, 19 December 1996: 6; *Inside US Trade*, 3 January 1997; *Journal of Commerce*, 25 March 1997: 3A (quoted in: Peterson Institute for International Economics, August 2006).

<sup>139</sup> IMF 2012 data covers year 1995 for the then 15 members of the EU (IMF data was unavailable for Belgium and Luxembourg). Collignon data covers financial year 1994/1995.

<sup>140</sup> Interview 6.

<sup>141</sup> ILO Yangon indicates that there is no evidence of forced labour in the private sector.



forced labour, whereas local army officers could be held responsible for these practices. The armed forces were the intended target of this sanction, but private businesses paid the price.

Third, trade soared between 1996 and 2004 as a result of Myanmar opening its economy – and despite the 1997 GSP withdrawal. Myanmar exports to the EU spiralled from \$102 million in 1996 to \$500 million in 2004.<sup>142</sup> The terms of this increased trade volume were however unequal since Myanmar did not benefit from GSP benefits like other LDC counterparts. Myanmar producers had to pay custom taxes to the EU, unlike those of Laos or Cambodia.<sup>143</sup>

This soaring trade was short-lived, especially in the booming textile sector. Before the GSP withdrawal, the effective GSP utilisation ratio for textile stood between 1.8 percent when the benefit was introduced and 10.4 percent when it was withdrawn.<sup>144</sup> One reason was the absence of a significant domestic spinning industry, since EU rules of origin require the use of local yarn as input. Despite the GSP withdrawal, textile exports saw an increase between 1996 and 2004, thanks to the sharp depreciation of the local currency, and to the existing country-quota system implemented under the Multi-fibre Agreement (MFA) through 2004. Thus, Myanmar's garment industry grew from 25 to 291 textile factories between 1994 and 1999. However, in part due to the expiry of the MFA on 1 January 2005, textile exports later collapsed. 149 factories had closed by 2005, taking the jobs of 30,000 to 44,000 workers, most of them women.<sup>145</sup> Unlike its LDC peers, Myanmar authorities and the garments industry were not advised to prepare. They were therefore unable to cope with the new

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<sup>142</sup> IMF (2012). Tamen (2003: 52) quotes a volume of Myanmar exports that is discordant with IMF data.

<sup>143</sup> In the case of the blanket and targeted import bans later imposed in 2003 by the US and in 2007 by the EU, some producers shipped products to neighbouring countries (e.g. Singapore, which does not benefit from GSP) in order to eschew the Myanmar label as country of origin and then export to Western markets. The import bans were therefore circumvented by exporters ready to pay import duties twice. Such exporters benefited from lower profit margins than competitors from other LDCs, thus limiting possible trickle-down effect of trade, such as higher wages for employees (Interview 39).

<sup>144</sup> Interview 6.

<sup>145</sup> Myint Soe 2007: 4-7.

international textiles regime. Furthermore, international investors had more incentive to invest in LDCs that benefited from the GSP than in Myanmar where the exports costs to the EU were higher.<sup>146</sup> As a consequence, the GSP withdrawal indiscriminately affected the population since the lost market shares for Myanmar exports resulted in loss of jobs and income opportunities. The penalty was not really harmful when it was decided in 1997, but it yielded unintended damage in the long-term.

In a regional context, the period until the late 1990s saw large parts of the European textile industry being permanently shifted from Europe to Asia (e.g. Bangladesh, Thailand, or Cambodia). Investment flows from Europe to South- and Southeast Asia resulted at the time in durable production and trade patterns that have lasted until the time of writing. In a number of Asian countries, the production capacities thus established yielded impressive benefits for the population, *inter alia* with regards to employment and welfare creation. Myanmar was left behind, despite its recognised production capacity due to low labour costs. By comparison with Cambodia (a country with similar levels of poverty, problems in governance, and levels of corruption), garment manufacturing has risen from an insignificant sector in the nineties to an essential economic driver, in part thanks to preferential access to European and American markets. The sector accounted in 2008 for around 14 percent of Cambodia's GDP, 82 percent of exports, and employed 45 percent of its manufacturing workforce.<sup>147</sup> It can therefore be assumed that, while failing to alter the SPDC's behaviour, the GSP withdrawal resulted in serious economic damage for Myanmar. Under the 2011 GSP/EBA system, Myanmar's duty-free access would have implied a reduction from average Most Favoured Nation (MFN) tariffs of 11.2 percent for textiles and 8 percent for fishery products respectively, down to zero.<sup>148</sup>

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<sup>146</sup> Interview 22.

<sup>147</sup> Saheed 2008: 14.

<sup>148</sup> Interview 7.

To conclude, the GSP withdrawal had mainly a symbolic function with no domestic cost for the EU. Its impact on Myanmar's economy has been initially marginal, but unexpectedly counterproductive in the long term since it impeded the creation of job opportunities instead of effectively addressing practices of forced labour. Several reports by NGOs and UN agencies highlighted that international pressure may have led to the incremental decrease in forced labour practices.<sup>149</sup> This reduced frequency could also be attributed to the complementary influence of hybrid strategies, including the ILO's policy that combined diplomatic pressure with engagement on the ground.<sup>150</sup>

Despite these shortcomings, the withdrawal was perceived as a partial success by lobbyists. It was deemed a success because the influence exerted by campaigners on policy-making was unprecedented in the EU's history. Yet, its success was limited insofar as the penalty did not quickly yield tangible impact on the SPDC. Campaign groups therefore continued their calls for tougher economic penalties.

## **2.2. Discouraging Tourism (1998)**

### **2.2.1. EU Policy**

On 26 October 1998, the Council decided to strengthen the common position by prohibiting the issuance of transit visas and extending the visa ban to cover Myanmar authorities in the tourism sector. It echoed the view, put across by campaigners, that it was inappropriate for tourists to visit Myanmar. Common Position 98/612/CFSP suspended 'high-level bilateral government (ministers and officials of political director level and above) visits to Burma/Myanmar'.<sup>151</sup> Member states made statements discouraging European tourists from traveling

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<sup>149</sup> Camroux and Egreteau 2010: 277.

<sup>150</sup> Horsey 2010.

<sup>151</sup> Council of the EU, 30 October 1998: *Decision 98/612/CFSP*.

to Myanmar.<sup>152</sup> The Council also envisaged the possibility of economic and financial sanctions against Myanmar, but did not enact such restrictions.<sup>153</sup>

This measure was the result of endogenous dynamics within the EU, rather than induced by exogenous factors. It was enforced after Myanmar had organised its 'Visit Myanmar Year 1996'. This tourism promotion initiative was condemned by the NLD and, in Europe, by members of parliaments and human rights campaigners. There were unconfirmed reports of severe human rights abuses perpetrated by military troops supervising the security of the construction of infrastructure promoting tourism, notably near the archaeological site of Bagan. Slow dynamics of decision-making led to the sanctions being taken retrospectively after the tourism year. Following liberal intergovernmentalism, these sanctions were applied because they did not significantly damage the economic interests of big European companies.

This liberal intergovernmental interpretation seems reductive, however. Ideational factors had been progressively outweighing economic interests. Sanctions promoting human rights had contributed to the tarnishing of the reputation of companies doing business in a pariah state. SMEs from the tourism sector, and more significantly Total, complained of bearing the collateral impact of sanctions. By the late nineties, bad publicity was an important reason that led British and Danish companies to withdraw from Myanmar.

### **2.2.2. Impact of EU Measures**

The visa ban on entities related to tourism carried a symbolic impact. It did not immediately influence the junta's behaviour with respect to the demands expressed by the EU. It bore indirect sectorial costs on smaller European companies and tour operators. These self-inflicted economic inconveniences were negligible for European countries.

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<sup>152</sup> House of Lords: *Report of 9 May 2007*; Tonkin, 4 May 2011.

<sup>153</sup> Council of the EU: *Answer of 16 November 1998*.

Statements against European tourism and the 1998 sanctions against authorities involved in tourism kept European tourists from travelling to Myanmar. This impacted negatively on Myanmar's socio-economic development. 7 million tourists from the EU visit ASEAN countries each year, but only a tiny portion goes to Myanmar. Table 5 compares the economic weight of the tourism sector with the number of visitors to selected Southeast Asian countries. Despite a renowned cultural and natural heritage, Myanmar barely received 4 percent of the regional visitors in 2010. The small number of visitors is mainly a direct consequence of Western sanctions and of statements that discouraged tourists. The tiny Myanmar tourism sector employs 1.2 million people, or 5.2 percent of the country's workforce.<sup>154</sup> This small share of tourism mirrors the size of Myanmar's services sector, which represented 16 percent of Myanmar's GDP in 2007/2008. Strengthening tertiary activities, however, is an important step towards the emergence of a middle class, which can act as an agent of democratisation.

**Table 5: Size of Tourism in Southeast Asia, 2010 data**

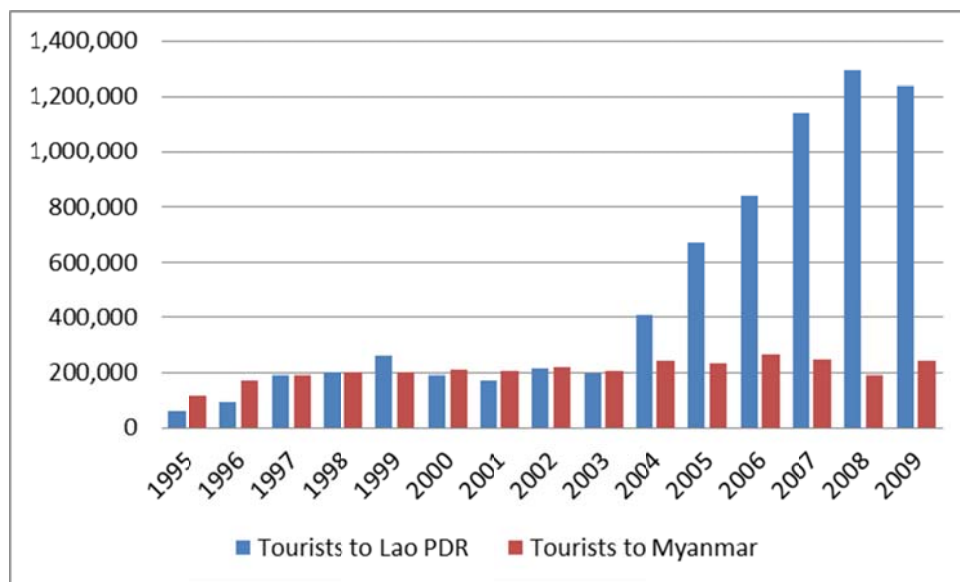
	<b>Number of visitors</b>	<b>Tourism's share of GDP</b>
<b>Myanmar</b>	311,000	5.0%
<b>Laos</b>	2,400,000	8.5%
<b>Cambodia</b>	2,500,000	n.a.
<b>Vietnam</b>	5,400,000	13.0%
<b>Thailand</b>	15,800,000	14.0%
<b>Malaysia</b>	25,000,000	13.0%

Source: World Tourism Organisation (2011) and interview 6.

Figure 7 compares the number of international tourist arrivals in Myanmar and Laos between 1995 and 2009. It shows that the number of tourists increased 20 times in comparatively poor Laos. By contrast, the number of arrivals nearly stagnated in Myanmar, despite being endowed with a bigger touristic potential. Until 2003, however, Myanmar had on average more tourists than Laos.

<sup>154</sup> Tonkin 2006a: 3; Tonkin 2006b.

**Figure 7: International tourism, number of arrivals in Myanmar and Laos, 1995-2009**



Source: World Bank (2011): *WDI*.<sup>155</sup>

The Austrian foreign ministry issued a report in 2003 which concluded that, on balance, tourism has more positive than negative implications.<sup>156</sup> Smaller hotels are locally and privately owned, while owners of international class hotels are either Myanmar businesses or international joint ventures. In comparison with Cuba (which attracts two million tourists per annum), there is little state involvement in the hospitality sector. The state receives about 10 percent of total earnings in the shape of land rentals, taxation and its own outlets. 90 percent of earnings go to the private sector as staff wages or gross income.<sup>157</sup>

Regular calls for 'responsible tourism' have been seemingly responded to: approximately half of all international arrivals are independent travellers. Only a quarter booked a package tour, but almost all Western package deal tourists are handled by private agencies in Myanmar and this particularly includes cruise

<sup>155</sup> As defined by WDI, 'International inbound tourists (overnight visitors) are the number of tourists who travel to a country other than that in which they have their usual residence, but outside their usual environment, for a period not exceeding 12 months and whose main purpose in visiting is other than an activity remunerated from within the country visited' (WB 2011).

<sup>156</sup> Tonkin 2006a: 3; Tonkin, 2006b.

<sup>157</sup> Interview 6; World Trade and Tourism Council website 2010.

liners.<sup>158</sup> More such tourism may indeed help to overcome the wall of isolation that the tourism boycott has helped to create.<sup>159</sup>

### 2.3. Consensus on the Absence of Blanket Sanctions (1998-2000)

Despite the growing agreement within the EU to punish Myanmar for its reprehensible non-respect of basic human and civil rights, policy-makers set boundaries to the European consensus by agreeing not to impose a ban on trade and investment. The European decision not to impose blanket economic sanctions was based on the EU's determination not to infringe WTO agreements. This would have set a legal precedent for the EU, which EU member states as well as the Commission were keen to elude. The Commission later explained that a trade embargo would be illegal and detrimental to the welfare of Myanmar people.<sup>160</sup>

As regards trade relations, Burma/Myanmar is a member of World Trade Organisations (WTO) and its trade is therefore protected by WTO Rules from any discriminatory treatment.<sup>161</sup>

The Massachusetts Burma Law of 20 June 1997 prohibited the Commonwealth of Massachusetts' state agencies from contracting companies doing business in Myanmar, independently from their nationality. It also imposed a 10 percent negative preference against companies active in Myanmar.<sup>162</sup> This law (subsequently emulated by other American states and public entities) also impacted against European companies active both in Myanmar and in the state of Massachusetts.<sup>163</sup> In addition to these penalising extraterritorial regulatory

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<sup>158</sup> NLD asserted that cruise liners bring substantial income to the state, although these liners only use private companies for onshore excursions. Interviews 6 and 18.

<sup>159</sup> House of Lords: *Committee of 12 October 2007*.

<sup>160</sup> Pederson 2008: 39.

<sup>161</sup> European Commission: *Answer of 16 October 2002*.

<sup>162</sup> Schaeffer 2002: 3.

<sup>163</sup> 'From 1996 to 2000, twenty-three other states, cities and counties followed the Massachusetts initiative: Alameda county, CA; Ann Arbor, MI; Berkeley, CA; Boulder, CO; Brookline, MA;

effects, the law would have created a legal precedent for the European Communities.

The EC declared that this law infringed the Government Procurement Agreement (GPA) rules signed with the US.<sup>164</sup> In September 1998, the European Commission filed a complaint at the WTO against the state of Massachusetts. This complaint fomented a stir in the Congress and among the US diplomatic corps.<sup>165</sup> By all accounts, the WTO complaint put EU foreign policy in harmony with WTO non-discrimination principles.<sup>166</sup> The EU defined the European consensus by discarding blanket economic sanctions on Myanmar, thus preserving core economic interests of its member states.

This decision was taken after several meetings between European and American officials, at the outset mediated by the UK consul in Boston and later with EU officials together with the UK.<sup>167</sup> As part of the negotiations, the EU offered to drop its WTO-complaint if Massachusetts amended specific measures, so that formal sanctions on Myanmar could have remained in place without hurting European companies. Nevertheless, negotiations collapsed, notably because the EU was unable to propose additional restrictions it would take against the SPDC.<sup>168</sup>

It is noteworthy that the UK government did not oppose the European complaint against the Burma Massachusetts Act, despite its principled stance

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Carrboro, NC; Chapel Hill, NC; Los Angeles, CA; Madison, WI; Massachusetts; New York, NY; Newton, MA; Oakland, CA; Pablo Alto, CA; Portland, OR; Quincy, MA; San Francisco, CA; San Cruz, CA; San Monica, CA; Somerville, MA; Takoma Park, MD; Vermont; and West Hollywood, CA' (Peterson Institute for International Economics 2006; see also: Schaeffer 2002: 11).

<sup>164</sup> The GPA of 1979 did not cover procurement practices of sub-national governments. However, the so-called 'federal state clause' of GATT Art. 24 (2) clarified that federal states are fully responsible for the actions of their component units (Schaeffer 2002: 3; 5-6).

<sup>165</sup> In August 1998, ambassador Barshefsky had announced her intention to defend the Massachusetts law in any WTO panel proceeding. Rep. Congressman Dennis Kucinich (D-Ohio) introduced a bill in the same month that would have barred the US Department of Justice from using funds to challenge state laws inconsistent with trade agreements (Schaeffer 2002: 11).

<sup>166</sup> European Commission: *Answer of 16 October 2002*.

<sup>167</sup> *Financial Times*, 24 June 1997: 6; *ibid.*: 9 July 1997: 4, quoted in: Peterson Institute for International Economics, August 2006.

<sup>168</sup> Schaeffer 2002: 10.



and domestic pressures in favour of economic sanctions. This policy shows that, at least in this instance, British economic interests prevailed over the defence of human rights. This pragmatism is reminiscent of the policy led by the Conservative government before 1997. Therefore, this stance should not be attributed to an alteration of initial preferences following social interaction with other EU policy-makers, but to the defence of important British interests spanning two decades.

The bandwagoning hypothesis is not refuted by the Burma Massachusetts Act. The case has never been directly transposed into US foreign policy. The Federal Court of the United States nullified the law on 20 June 2000 by ruling that the State Act was pre-empted under the Supremacy clause of the US Constitution.<sup>169</sup> Neo-realism does not consider that domestic politics – below the federal level – represent an important variable to explain the interactions between actors of International Relations.

The Burma Massachusetts Act enticed domestic constituencies in EU member states to call for tougher sanctions on Myanmar. In 1997, MEPs already suggested that the Commission issued:

[...] a proposal as soon as possible for an end to investments on the part of the Union so that, together with the US, maximum pressure can be put on Burma.<sup>170</sup>

The European Parliament and UK Parliament passed resolutions urging the Commission to retreat from its challenge of the Massachusetts law.<sup>171</sup> Registering the complaint induced European countries (e.g. the UK) to unilaterally discourage trade with Myanmar. In its Resolution of 19 February 1998, the European Parliament had already proposed adopting informal restrictions to the Commission. In October 1998, newly nominated Dutch minister of foreign affairs van Aartsen and the minister of development cooperation Herfkens expressed, for the first time, the Netherlands' public support for

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<sup>169</sup> Supreme Court of the United States, *Crosby v. National Foreign Trade Council*, 19 June 2000.

<sup>170</sup> EP, 22 January 1998: *Written Question No. 1632/97*.

<sup>171</sup> EP: *Resolution of 12 June 1997*; EP: *Resolution of 17 September 1998*; Guay 2000: 361.

economic sanctions in the form of an investment ban. But French cooperation minister Charles Josselin stated that France would oppose any proposal for economic sanctions, which would fail to achieve their political objectives and harm the civilian population.<sup>172</sup>

The prevalence of the UK's position in EU policy towards Myanmar sheds light on how America's principled stance may have indirectly influenced the EU. Hardening the European stance served to counterbalance the impact of the WTO complaint. British diplomats mentioned that they 'exchange views on Burma policy quite frequently' with their American counterparts.<sup>173</sup> Historically, the UK has been intent to follow the grain of American democracy promotion – and even more so under Blair's Premiership.<sup>174</sup>

There is, however, no empirical evidence of direct US pressure on the UK to scale up sanctions. British domestic groups independently favoured a policy of sanctions emulating the US. They lobbied the parliament and government – and European institutions (although to a lesser extent) – to follow suit on US bans on investment and trade.<sup>175</sup> Liberal intergovernmentalism thus seems more apt to explain the dynamics of policy-making. The EU decided to safeguard its economic interest in the case of Massachusetts; concurrently, domestic and parliamentary groups intensified calls for a principled policy. These internal pressures subsequently led to further restrictions. The ensuing section shows that a bargaining process among EU member states led the EU to reinforce restrictions, while also charting a track of diplomatic engagement with the SPDC.

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<sup>172</sup> Pederson 2008: 37-38.

<sup>173</sup> Email exchange 5.

<sup>174</sup> Interviews 3 and 6.

<sup>175</sup> EP, 22 January 1998: *Written Question No. 1632/97*; EP, 30 April 1998: *Written Question No. 2743/97*.

### 3. Deepening the Consensus: Diplomatic Engagement in Combination with Tougher Sanctions (1999 – 2002)

#### 3.1. The 1999 Troika

Four years on after ASSK's release on 10 July 1995, the EU indicated it was willing to resume relations by sending a Troika to Yangon on 6 July 1999. The delegation met with ASSK and SPDC Secretary-1 General Khin Nyunt. This mid-level mission comprised a representative of Finland, then holder of the EU Presidency, Portugal (to hold the next Presidency), the European Commission, and the Council secretariat.<sup>176</sup> Discussion topics included: bilateral trade, EU-ASEAN relations, ASSK, and the human rights situation.<sup>177</sup>

The Troika was an outcome of the German Presidency (January-June 1999), which had pressed the Council for engaging with the junta.<sup>178</sup> Berlin had argued that engagement would make EU policy more effective. Principled member states retorted that sanctions should be heightened if engagement did not bear fruit. Germany used its own policy evaluation as well as bargaining tactics to secure a Troika to Yangon. Berlin had extracted this concession from principled member states, in exchange for an increase of targeted sanctions if the Troika mission would not bear fruit.<sup>179</sup> Thus, EU member states still bargained to reach joint decisions. Rather than competitive bargaining, this process of decision-making could be described as 'cooperative bargaining', or 'problem-solving'.<sup>180</sup>

As the first point of contact since 1996, the EU Troika did not yield substantial result. To begin with, this could be accounted for by the reclusion of the top-SPDC leadership. The EU met with only one decision-maker (i.e. SPDC Secretary-1 General Khin Nyunt), and not with the two others (i.e. SPDC Chairman Senior General Than Shwe, and SPDC Vice-Chairman General

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<sup>176</sup> Reuters, 6 July 1999.

<sup>177</sup> Hristov 2009: 128-9.

<sup>178</sup> *Ibid*: 129; 135. IDEA 2001: 41.

<sup>179</sup> Interview 13.

<sup>180</sup> Thomas 2011: 18ff.

Maung Aye). Important decisions could hardly be taken without the involvement of these more senior generals. Therefore, the EU Troika could not adequately address the SPDC's system of decision-making that involved a group of generals rather than one-man rule.<sup>181</sup>

Second, the member states represented (i.e. Finland and Portugal) never displayed a vested interest in the issue of Myanmar. For liberal intergovernmentalism, they were 'smaller' members, unable to influence the positions of the three big member states. The intergovernmental dynamics of EU policy-making stifled the Troika's capacity to negotiate with the SPDC.

## **3.2. Tightening Sanctions in 2000**

### **3.2.1. EU Policy**

Since no tangible progress was recorded after the 1999 Troika, sanctions were tightened on 26 April 2000. The EU extended its visa ban on new high-ranking Myanmar military figures and tourism authorities, and banned the export of 'equipment that might be used for internal repression or terrorism'.<sup>182</sup> This reinforcement of the 1990 arms embargo forbade the shipment of military equipment to Myanmar, which had been possible hitherto. This measure had already been proposed by the Netherlands in 1993.<sup>183</sup> The EU also imposed a freeze on assets held abroad by the officials targeted by the visa ban.

An additional type of economic sanctions consisted in forbidding loans to enterprises owned or associated with the Myanmar government.<sup>184</sup> This measure, initiated by the UK, was partially a response to pressure from the public. Also the European Parliament had again and again called for the imposition of blanket sanctions on Myanmar, such as a ban on trade or

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<sup>181</sup> Saw Myat 2008: 60.

<sup>182</sup> Council of the EU: *Common Position of 26 April 2000*; *ibid.*: *Regulation (EC) of 22 May 2000*.

<sup>183</sup> Hristov 2009: 113.

<sup>184</sup> Council of the EU: *Common Position of 26 April 2000*; *ibid.*: *Regulation (EC) No. 1081/2000 of 22 May 2000*.

investment.<sup>185</sup> It was the UK that proposed the imposition of these measures in 2000.<sup>186</sup> In contradiction with the compliance hypothesis, no adverse domestic developments had occurred in Myanmar, which would have warranted scaling up penalties. This increase of restrictions in 1998 and 2000 was triggered by a dynamic purely endogenous to the EU. It reflected the will of principled member states to escalate the instruments enforced.

Member states with a vested interest in securing their investments in Myanmar did not really suffer from the ban on loans. No loan of this type has been reported since Germany cancelled all development assistance in the late eighties. Moreover, significant new investments were already deterred by the bad publicity related to Myanmar. Representatives of Total confessed that the Yadana investment had substantially harmed the company's image.<sup>187</sup> The group's impressive corporate and social responsibility programme, with an (in 2011) annual budget of USD 2.7 million and more than 100 staff members dedicated to CSR, aimed at re-establishing their good reputation towards shareholders.<sup>188</sup>

Paris defended its economic interests less aggressively than in 1996 or 1997 – although punitive measures may have eroded the reputation of French companies as reliable business partners for Myanmar. It would be erroneous to depict France as a member state that is solely driven by its national economic interests – as campaigners have done.<sup>189</sup> Paris was increasingly convinced by the moral necessity to adopt a normative position vis-à-vis the Myanmar issue, albeit putatively offsetting French business interests. France was reluctant to appear as the member state 'dragging its heels' in the Council.

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<sup>185</sup> EP, 16 June 1998: *Written Question No. 3679/97*; EP, 25 May 1998: *Written Question No. 3674/97*; EP, 30 April 1998: *Written Question No. 2743/97*; EP, 14 May 1999: *Written Question No. 2526/98*; EP, 8 April 1999: *Written Question No. 2527/98*; EP, 8 April 1999: *Written Question No. 2119/98*; EP, 21 May 1999: *Written Question No. 3501/98*; EP, 15 January 2004: *Written Question E-3190/02*.

<sup>186</sup> Assemblée Nationale, 27 June 2001: *Commission*.

<sup>187</sup> Interview 1.

<sup>188</sup> Interview 14.

<sup>189</sup> Burma Campaign UK website 2010.

EU member states insisted (with the USA) that international organisations put political conditions on loans they would grant to Myanmar. As a consequence, the World Bank offered a \$1 billion loan in 2000, but only on condition that the regime begun talks with the opposition. Due to the lack of progress, the World Bank did not award the proposed credit.<sup>190</sup>

### 3.2.2. Impact of EU Measures

The ban on loans to state-owned enterprises had practically no impact on the target's behaviour. EU member states had made no loans to Myanmar in the last decade. The measure was merely symbolic.

The asset freeze was an equally symbolic measure. It has never been proven that the entities targeted by the asset freeze since 2000 ever held any significant funds in EU territories.<sup>191</sup> The measure had even been announced by some EU officials before its adoption, so that the necessary surprise effect was limited.

It is officially unknown how much has been seized in total in the EU. This measure is implemented solely by the member states without European Commission oversight.<sup>192</sup> Had there been any Myanmar funds in EU banks, the asset freeze could be made more effective if it was centrally monitored, as some member states are better at implementing common measures than others.

It has nonetheless been assessed that no more than €200,000 have been frozen throughout the entire EU between 2000 and 2009.<sup>193</sup> Funds frozen in the UK amounted to £49,500 between 2000 and 2007.<sup>194</sup> BC UK advanced that, in 2001, funds seized by all member states solely amounted £89.<sup>195</sup> For comparison, the US asset freeze led to \$320,000 seized between 2003 and 2007

<sup>190</sup> *Economist*, 12 February 2000: 14; quoted in: Youngs 2001: 139.

<sup>191</sup> Tonkin October 2009: 2, point c.

<sup>192</sup> Interview 6.

<sup>193</sup> Interview 46.

<sup>194</sup> House of Commons, 27 November 2007: *Written Answer*.

<sup>195</sup> Burma Campaign UK website; interview 46.

in US territory.<sup>196</sup> This limited impact contrasts with the EU asset freeze on Zimbabwe, where £160,000 of Zimbabwean assets were frozen only in UK banks by late 2006.<sup>197</sup> (This seizure represents, however, one isolated case of success). The inability to seize substantial funds confirms that the asset freeze was a symbolic measure unlikely to tilt the power struggle in favour of Myanmar's democratic forces. It could be asked why the members of the government should have renounced to their economic rent when the EU was unable to freeze their financial assets.

### 3.3. Consensus on Resuming Cooperation with ASEAN

In exchange for scaling up targeted economic sanctions, principled EU member states agreed to introduce a waiver on the visa ban. This decision was motivated by the desire not to hold the ASEAN-EU meetings hostage to the Myanmar issue.<sup>198</sup> Between 25 October 1996 and the ASEAN-EU JCC meeting held in Bangkok on 25-26 May 1999, EU member states had strictly cancelled all multilateral meetings where Myanmar was a party.<sup>199</sup> After a delay of more than a year and a half, the EU and ASEAN finally worked out a formula allowing Myanmar to attend meetings between ASEAN-EU JCC representatives in Bangkok in May 1999.<sup>200</sup> The conditions were that human rights would be included on the agenda and that Myanmar would only attend as silent observer.

This decision fomented a row among principled member states, notably the UK, the Netherlands, and Denmark. Myanmar's treatment of human rights and obstruction of the democratic transition were condemned during the meeting.

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<sup>196</sup> Interview 46.

<sup>197</sup> Lunn and Thompson 2010.

<sup>198</sup> Hristov 2009: 129-30.

<sup>199</sup> Council of the EU: *Common Position 96/635/CFSP of 28 October 1996*; European Commission: *Answer of 2 June 1998*.

<sup>200</sup> Hristov 2009: 128.

Denmark even refused to take part in meetings where Myanmar was party to the discussions.<sup>201</sup>

To dissipate these disagreements, member states agreed to introduce an explicit waiver clause in the Common Position of 26 April 2000. It was proposed by the Commission under Germany's impetus. It stipulated:

[...] the ban on the issue of an entry visa for the Foreign Minister may be waived where it is in the interests of the European Union.<sup>202</sup>

Belgium granted a first exception to the visa ban in December 2000, allowing Myanma foreign minister Win Aung to attend the ASEAN-EU ministerial meeting in Brussels. The decision sparked discontent in Belgian public opinion, which tended to invoke a boycott policy against Myanmar.<sup>203</sup> Indeed, ASSK had been temporarily put under house arrest on 23 September 2000. The EU had condemned the 'obstacles to the free movement' of ASSK and NLD members.<sup>204</sup> But it resisted domestic pressures to once again scale up punitive measures.

The ASEM4 foreign ministers meeting held in Madrid on 6-7 June 2002 agreed to take up ASEAN enlargement.<sup>205</sup> Myanmar was also not barred from attending the ASEM4 summit arranged in Copenhagen from 23 to 24 September 2002, despite Denmark's principled stance on this issue.<sup>206</sup> Denmark's concession could partly be related to the calculation that ASEM is relatively immune to public scrutiny. ASEM4 did not fall into the international limelight: only five out of fifteen Europeans participated in the meeting at the heads of state or

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<sup>201</sup> Khaliq 2008: 202.

<sup>202</sup> Council of the EU: *Common Position of 26 April 2000*: Art. 1. Some analysts trace back this exception to the Common Position of 26 April 2004 (Japan Center for International Exchange and University of Helsinki Network of European Studies 2006: 44). This is a misnomer as the 2004 Common Position only reiterated the exception already agreed upon in 2000. Art. 6 par. 5 of Common Position 2004/423/CFSP states explicitly in which cases the exceptions shall apply.

<sup>203</sup> Total's petrol-stations were vocally boycotted in Belgium by pro-democracy activists, where Total was also sued under the auspices of the Belgian universal law for alleged complicity in the use of forced labour. The Louvain Catholic University bestowed an honorary degree upon ASSK in December 1998.

<sup>204</sup> Council of the EU: *Declaration of 28 September 2000*.

<sup>205</sup> ASEM, 6-7 June 2002: *Chair Statement*.

<sup>206</sup> Keva 2008: 79.



government level, whereas ten EU states were represented at a lower political level.<sup>207</sup>

Belgium reiterated this exception under the auspices of the 14<sup>th</sup> ASEAN-EU ministerial meeting held in Brussels in December 2003.<sup>208</sup> Demonstrations by pro-democracy activists were organised by human rights groups and the Myanmar diaspora (e.g. Euro Burma Office, Actions Birmanie, Action Birmanie Cohérence, Action Pétrole ou Birmanie, or Parliamentarians for Burma in Belgium) in front of the Council's buildings. Belgian domestic constituencies did not exert much influence on their government's position on these occasions in 2000 and 2003.

A new European consensus had thus emerged on the application of the waiver of the visa ban, which was enshrined in the common position. Nonetheless, waiving the visa ban did not hinder EU member states from continuing to censure Myanmar or shun multilateral meetings where it was a party. While this analysis supports the consensus hypothesis, it is noteworthy that the new agreement had been promoted by Germany, a large member state. The role of smaller member states and European institutions in forging EU decisions was less significant.

#### **4. The Path to Aung San Suu Kyi's Release**

Myanmar ushered in a period of relative conciliation between 2001 and 2003, during which the EU sent three Troika missions to Myanmar. ASSK was eventually released on 6 April 2002.

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<sup>207</sup> Japan Center for International Exchange and University of Helsinki Network of European Studies 2006: 135; 142.

<sup>208</sup> Tamen 2003: 29, title 3.3.

#### 4.1. The Troika of 2001

On 29-31 January 2001, the EU sent a Troika to Yangon.<sup>209</sup> The SPDC had delayed the visit, initially scheduled for October 2000, until Myanmar was allowed to participate in the 13<sup>th</sup> Asia Europe Ministerial Meeting on 11-12 December 2000 held in Vientiane.<sup>210</sup> The Troika (headed by Swedish diplomat Borje Ljunggren) met with Secretary-1 Khin Nyunt, foreign minister Win Aung, NLD leaders including ASSK, representatives of ethnic groups, NGOs, and the UN.<sup>211</sup> The Troika pointed out the need for Myanmar to invite the new Special Rapporteur for Human Rights, Paulo Pinheiro; to re-enter in dialogue with the ILO over forced labour practices; and allow the ILO to be represented in the country.<sup>212</sup> It also attempted to find a compromise on the issue of Myanmar's participation in multilateral meetings with ASEAN.<sup>213</sup> The Troika was able to confirm that ASSK had met with senior officials since October 2000, a month after her second arrest. Both sides had however agreed to withhold the contents of these talks.<sup>214</sup> The atmosphere was described as positive.<sup>215</sup>

Youngs contended that EU engagement was the result of a compromise between principled and flexible member states. The Council had tightened the screws in 2000, provided the European Community would increase aid and the EU would attempt to engage diplomatically with Myanmar.<sup>216</sup> The European Community thus awarded €2 million in humanitarian aid.<sup>217</sup>

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<sup>209</sup> Assemblée Nationale, 6 May 2002: *Answer*, see also: Council of the EU: *Conclusions of 9 April 2001*.

<sup>210</sup> Hristov 2009: 130.

<sup>211</sup> *Ibid.*: 131.

<sup>212</sup> *Ibid.*: 132.

<sup>213</sup> Soe Myint Aung 2003: 90.

<sup>214</sup> IDEA 2001: 141.

<sup>215</sup> Hristov 2009: 131-2; Soe Myint Aung 2003: 97.

<sup>216</sup> Youngs 2001.

<sup>217</sup> Tamen 2003: 33, title 3.3.2.

The Council welcomed the results of the Troika. It declared its willingness to send another mission.<sup>218</sup> The EU recognised propitious developments in Myanmar, such as the release of 219 prisoners of conscience.<sup>219</sup> This enticed the Council to identify:

[...] a number of positive measures designed to recognise the process that has been set in motion in Burma/Myanmar in expectation of further positive developments.<sup>220</sup>

As additional incentives, the Council signalled its support to the following initiatives: (1) the Commission launching an HIV/AIDS programme (€5 million), and its contribution to the UN operations in Myanmar; (2) allowing Myanmar's foreign minister at the next ASEAN-EU ministerial meeting in 2002; (3) supporting Myanmar's application to join the International Hydrographic Organisation; (4) advising Myanmar how to qualify for bilateral debt relief under the Heavily Indebted Poor Countries Initiative (HIPC); (5) and the Council's willingness to send another Troika mission before the end of 2001.<sup>221</sup> This comparatively more flexible position is noteworthy. For twenty years, these steps have been the only incentives officially presented by the Council as a trade-off for political reforms introduced by the SPDC.

The question should be raised as to what extent the SPDC was likely to respond favourably to the proposed incentives. None of the offers made were attractive enough to seriously entice the SPDC to compromise with EU demands. Participation in multilateral meetings was not a priority for Myanmar. Funds would be channelled only via the UN or international NGOs, and benefit HIV/AIDS patients (whereas HIV/AIDS at that time was still a taboo issue in the country, due to an ingrained tradition of narcotraffic in the Golden Triangle). No guarantee was given that Myanmar could actually qualify for debt relief. The explicit link between aid to HIV/AIDS patients and political reforms contradicted the very

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<sup>218</sup> Council of the EU: *Conclusions of 9 April 2001*.

<sup>219</sup> Egretreau 2010: 93.

<sup>220</sup> Council of the EU: *Conclusions of 9 April 2001*.

<sup>221</sup> *Ibid.*

principle that humanitarian aid be untied of political strings. It seemed to ignore Myanmar's entrenched policy to refuse conditionalities. Fearful of domestic reprobation, the EU was cautious not to make any substantial concession to a pariah state.

Around the same time, the EU attempted to coax Australia (on 6 March 2001) and South Korea (on 12 March 2001) into co-sponsoring ILO initiatives condemning Myanmar for its use of forced labour. This motion led to an ILO fact-finding mission sent from 17 September until 13 October 2001.<sup>222</sup> Myanmar responded dismissively by postponing the visit of another Troika scheduled later in 2001.<sup>223</sup>

#### **4.2. The Troika of March 2002**

The EU sent another Troika on 13-15 March 2002, headed by a representative of the Spanish Presidency.<sup>224</sup> As tactical move, the SPDC released twenty-five women prisoners before the Troika's arrival. The Troika was received only at the level of senior officials and made a courtesy call to the foreign minister. However, the arrest of General Ne Win's family (accused of plotting a coup) in the same month overshadowed the visit.<sup>225</sup> The EU reiterated its concerns on the human rights situation, and on the lack of reform of the state apparatus. It expected that Myanmar would strengthen its positive developments, notably by releasing more prisoners of conscience.

Important demands of the 2001 and March 2002 Troikas were subsequently heeded by the SPDC, although it is difficult to establish a causal link. On 21 March 2002, the ILO posted an Interim Liaison Officer to Yangon. At the June 2002 meeting of the ILO, the Spanish delegate welcomed this appointment on

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<sup>222</sup> Hristov 2009: 132-3.

<sup>223</sup> *Ibid.*

<sup>224</sup> Rafel Conde, Asia Pacific Director of the Spanish ministry of foreign affairs (Soe Myint Aung 2003: 100; EP: *Resolution of 12 April 2002*, point H).

<sup>225</sup> Soe Myint Aung 2003: 100.

behalf of the EU and associate members.<sup>226</sup> On 21 November 2002, the military government claimed to have released a hundred and fifteen prisoners of conscience (numbers which were disputed by the political opposition).<sup>227</sup> Finally, Human Rights Special Rapporteur Paulo Pinheiro was allowed to visit Myanmar from 10 to 19 February and from 17 to 28 October 2002, after the authorities had suspended his visits since his second trip ending on 17 October 2001.<sup>228</sup> At the end of his fourth visit, the Human Rights Envoy openly questioned the soundness of Western demands on Myanmar:

I don't understand the expectation that Burma would be different, that you would have a brand new state apparatus, brand new people, brand new minds that will be able to deal with human rights issues....Don't expect instant regime change in Burma.<sup>229</sup>

### 4.3. Aung San Suu Kyi's Second Release (2002)

The SPDC released ASSK from detention on 6 April 2002 – allegedly owing to efforts by UN Secretary General Envoy Razali Ismail, bolstered by behind-the-scene support from Malaysian Prime Minister Mahathir Mohamad.<sup>230</sup> Her second release took place after she had held talks with the military government while under house arrest.<sup>231</sup> In the months following her release, the regime hosted a series of meetings with the NLD leadership, which was also allowed to liaise with Western embassies. The EU greeted her release solemnly.<sup>232</sup>

<sup>226</sup> European Commission: *Answer of 3 October 2002*.

<sup>227</sup> Irrawaddy website 2004.

<sup>228</sup> Global Justice Center website 2011: *Chronology*.

<sup>229</sup> Irrawaddy website 2004.

<sup>230</sup> Clark 2003: 127.

<sup>231</sup> This dialogue had started in October 2000 according to the regime, the EU-Troika report, and a declaration by Razali Ismail (Haacke 2006: 76-81; Hristov 2009: 131; Soe Myint Aung 2003: 94). Scholars attributed this dialogue to the appointment of UN Envoy Ismail Razali early 2000 (Clark 2003: 127; Haacke 2006: 91-92; Hristov 2009: 131). Talks between ASSK and the SPDC differ from talks in South Africa between President de Clerk and Nelson Mandela, who only agreed to negotiate after being released from prison.

<sup>232</sup> Council of the EU: *Statement of 8 May 2002; ibid.: Conclusions of 14 April 2003*.

Drawing upon the compliance hypothesis, it was to be expected that the EU would relax its sanctions regime in order to entice Myanmar to undertake further reform. Indeed, ASSK's release took place in the context of a relatively more conciliatory policy carried out by Myanmar vis-à-vis Western demands. Between June 2002 and March 2003, ASSK, Tin Oo and other members of the NLD were allowed to travel to the regions of Mandalay, Bago, and to the Mon, Karen and Arakan states.<sup>233</sup> With the benefit of hindsight, analysts contended that SPDC Secretary-1 General Khin Nyunt had chartered a policy of relative liberalisation, which the international community failed to recognise.<sup>234</sup>

From the mid-nineties, the central government concluded a series of seventeen ceasefire agreements with ethnic minorities – a historical juncture in the country's history of intractable civil wars. The authorities designed policies against drug trafficking, which were supported by the United Nations, particularly by UNODC.<sup>235</sup> The period also saw non-state actors, for example, the International Committee of the Red Cross (ICRC),<sup>236</sup> finally granted permission to visit detainees and to investigate the situation of civilians affected by conflict along the Thai border. Amnesty International was entrusted to visit Myanmar for the first time in early 2003.<sup>237</sup> In addition to the EU Troikas, General Khin Nyunt welcomed delegations by European MPs (e.g. two delegations by German MP Dietrich Marlo in 1994 and in 1998, as well as a delegation by German MP Köster-Loßback in 2002).<sup>238</sup> He looked after relations with European ambassadors, and took part in international summits. Various independent

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<sup>233</sup> Egreteau 2010: 93.

<sup>234</sup> Zarni and Oo 2004; Haacke 2006; Egreteau and Jagan 2009.

<sup>235</sup> Callahan 2007: 26.

<sup>236</sup> The regime has forbidden the ICRC to visit prisons since October 2005, and asked the ICRC to close their field offices in October 2006 (European Commission 2007a: *Report*).

<sup>237</sup> Haacke 2006: 10.

<sup>238</sup> Revel 2008: 29.

sources advanced that Khin Nyunt had been more conciliatory towards ASSK.<sup>239</sup> According to UN Human Rights Envoy Pinheiro,

[Khin Nyunt] recognised the necessity and value of the political opposition and its potentially constructive role in the transition to democracy.<sup>240</sup>

(Such claims should however be qualified because Khin Nyunt's Machiavellian openness was related to his functions as MI-chief and head of the infamous secret police). Finally, an ILO representative noted that a decrease in the use of forced labour had been witnessed between the beginning of mid-nineties and the mid-2000 decade.<sup>241</sup> Such positive developments could have justified the temporary suspension of specific measures.

#### **4.4. The Troika of September 2002**

As a reaction to ASSK's release, the EU sent a mid-level Troika from 8 to 10 September 2002. The Troika was headed by Carsten Pederson, regional director at the Danish foreign ministry, and accompanied by two EU officials – Franz Eichinger and James Moran – as well as the first secretary at the Greek embassy in Bangkok, Sotiris Apostopolous.<sup>242</sup> The delegation met with, amongst others, the deputy foreign minister, Khin Maung Win (a lower level compared to previously Khin Nyunt on 6 July 1999 and 29-31 January 2001), ASSK, representatives of ethnic minorities, the international community residing in Yangon, and NGOs.

The purpose of the visit was to gather information at source concerning the political and human rights situation and to convey the EU's expectations. The Troika called on the government to step up the reconciliation process and release all prisoners of conscience. It gave voice to the EU's continued concern about human rights, particularly in ethnic minority areas, and the practice of

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<sup>239</sup> Interview 27.

<sup>240</sup> UN Commission on Human Rights 2006: 7.

<sup>241</sup> Interview 19.

<sup>242</sup> *Myanmar Times*, 9 February 2002.

forced labour.<sup>243</sup> The conclusions of the Troika visit were that the SPDC should strengthen its reform process.<sup>244</sup>

The EU's absence of reaction to Myanmar's partial compliance with its demands contradicts the compliance hypothesis. The EU did not fulfil the incentives it had given to the SPDC after the Troika of 2001.<sup>245</sup> This decision not to promptly react underscores the symbolic function of EU foreign policy. Lobby groups in Europe were organising campaigns for tougher sanctions: in 2002, a broad alliance of British domestic groups launched the 'Burma Sanctions Coalition' to press the UK and the EU to impose investment sanctions.<sup>246</sup> Finally, the reform process grounded to a halt after ASSK was put under house arrest for a third time in May 2003.

#### **4.5. The Depayin Incident (2003)**

ASSK had begun touring the country to visit NLD offices outside Yangon. On 30 May 2003, her convoy was met by a mob, putatively affiliated with the government-controlled Union Solidarity and Development Association (USDA). It attacked the motorcade of the opposition leader next to the small city of Depayin. ASSK managed to escape the aggression but was immediately placed under house arrest. The junta announced the death of four persons but opposition sources claimed that there had been between 50 and 80 casualties.<sup>247</sup> The SPDC allowed an international investigation to take place under the aegis of UN Human Rights Envoy Paulo Pinheiro, whose mandate stemmed from the UNHCHR, but never heeded his recommendations. Newly-nominated Prime Minister General Khin Nyunt announced the introduction on 30 August 2003 of a

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<sup>243</sup> European Commission: *Bull. 9*, 2002: 1.6.77.

<sup>244</sup> Hristov 2009: 132; Haacke 2006: 76-81.

<sup>245</sup> Council of the EU: *Conclusions of 9 April 2001*.

<sup>246</sup> Pederson 2008: 51-52.

<sup>247</sup> Egreteau 2010: 94.



'roadmap to democracy', which formalised the transition from SPDC rule to so-called 'discipline-flourishing democracy'.

#### 4.5.1. The EU's Reaction to Depayin

As an almost mechanical consequence, the EU further entrenched its sanctions regime. It condemned the 'Depayin incident'.<sup>248</sup> It widened the visa ban and asset freeze on more members of the military regime and its clients on 16 June 2003.<sup>249</sup> Member states agreed on these restrictions as a direct response to the regime's behaviour, without waiting for the annual rollover of the common position normally decided in April every year.<sup>250</sup> This fairly swift reaction owed to the enhanced institutionalisation of EU foreign policy. EU member states' interests converged to support democracy icon ASSK.

The Council additionally introduced a prohibition on the making of financial loans or credits to state-owned companies.<sup>251</sup> These measures corroborate the compliance hypothesis, since these sanctions were officially deemed to punish the junta's behaviour.<sup>252</sup> However, the compliance hypothesis worked only in a punitive sense. The EU did not revise its policy when the SPDC made propitiatory gestures, however limited.

The EU policy was also supported by a context of international uproar created by the alleged assassination attempt. As a reaction to the Depayin incident, President George W. Bush signed into law the Burmese Freedom and Democracy Act on 29 July 2003. Figure 8 illustrates the quasi-immediate impact of the US import ban on Myanmar's terms of trade with the US.

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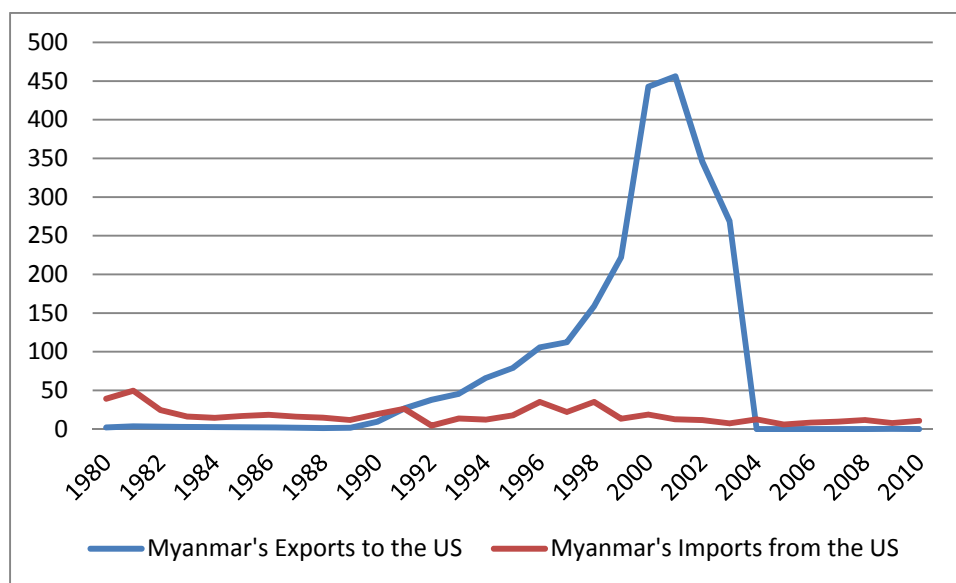
<sup>248</sup> Since it is unknown whether the raid was a deliberate attempt to assassinate the democracy icon, the international community referred to the events as: the 'Depayin incident'. Despite the diplomatic language, which avoided explicitly calling the ambush an assassination attempt, the EU strengthened sanctions as a direct consequence of the skirmish.

<sup>249</sup> Council of the EU: *Meeting of 16 June 2003*.

<sup>250</sup> Interview 6.

<sup>251</sup> Council of the EU: *Common Position 2004/730/CFSP of 25 October 2004*; Khaliq 2008: 210.

<sup>252</sup> Council of the EU: *Common Position 2004/730/CFSP of 25 October 2004*.

**Figure 8: Myanmar's trade with the US, 1980-2010 in million \$ (annual values)**

Source: IMF (March 2012): *Direction of Trade*.

The Bush administration escalated its rhetoric on Myanmar, as well as the pressure on third states to further sever relations with the SPDC.<sup>253</sup> Donald Seekins mentioned that Japan 'halted new aid' owing to US pressure.<sup>254</sup> Nevertheless, there is no indication that the US applied direct pressure on the EU to escalate its restrictive measures on Myanmar. While the US stance may have contributed to induce the EU to reinforce sanctions, there is ample evidence from interviews that the EU acted under its own impetus, and not because of US pressure.<sup>255</sup>

#### 4.5.2. Stalled Dialogue Process after 2003

##### i. End to EU Troikas

As a consequence of the Depayin incident (and in the recognition of their limited usefulness), the EU abandoned the dispatch of Troikas to Yangon as a

<sup>253</sup> Powell, 12 June 2003.

<sup>254</sup> Seekins 2005: 447.

<sup>255</sup> Interview 5.

means to seek meaningful dialogue with Myanmar.<sup>256</sup> In the aftermath of the Depayin incident, Myanmar became more unwilling to cooperate with the international community. The Depayin incident, too, hardened the EU's position on Myanmar.

Troikas have been waived aside as a 'pointless exercise' by various officials.<sup>257</sup> These delegations – received at a level irrelevant for Myanmar's military policy-making system – did not build mutual trust. Official visits were monitored closely on the Myanmar side, notably via an intricate network of informers. Representatives of the authorities had to ostentatiously show they did not compromise on the country's national interest, not the least by fear of losing their position in a volatile political system. In this context, and also due to limited state capacity, high-level meetings could not take place frequently.<sup>258</sup> EU Troikas could never meet with the top generals, except at selected occasions with the important but less senior General Khin Nyunt.

As far as the EU was concerned, the level of preparation of the different diplomats could vary tremendously. Troikas were fact-finding missions, so that little political preparation was required from EU representatives. The latter were not mandated by the Council to 'sit down' and directly negotiate with their interlocutors. This lack of material commitment disappointed expectations on the Myanmar side. The Lisbon Treaty subsequently abolished the Troika system in December 2009.

## ii. Political Stasis in Myanmar

After ASSK's third arrest, the reconciliation process between the SPDC and NLD completely stalled. From the junta's perspective, ASSK's release had stirred domestic unrest – whether intended or not – and failed to assuage international

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<sup>256</sup> T. Wilson 2007: 93.

<sup>257</sup> Interview 6.

<sup>258</sup> Interview 3.

demands. Removing her from public view was therefore the government's preferred option.

There was a rumour of conspiracy, namely that Senior General Than Shwe had secretly ordered ASSK's assassination attempt at Depayin.<sup>259</sup> This conspiracy could uncover why the dialogue process between the NLD and SPDC never substantially resumed after 2003. Haacke concluded:

For the present military leadership the lesson, now learned twice, is that the release of Aung San Suu Kyi may not only compromise domestic stability, but is also unlikely to bring respite from external demands for political change and no substantial material benefits or recognition.<sup>260</sup>

Razali asserted that the international community might not have put enough efforts into securing tangible rewards for the military government in return for the relaxation of the political climate between 2002 and 2003.<sup>261</sup> FCO minister of state Mike O'Brien told parliament in 2004:

If I may be critical of the UK, I should say that in the early part of last year we could have been more encouraging of the process of reform undertaken before 30 May.<sup>262</sup>

To sum up, EU foreign policy stalled after the Depayin incident. Scaling up sanctions was the result of the protracted political stalemate in Myanmar.

## 5. Conclusions

### 5.1. Summary

In 1996, the EU took the crucial decision to formalise its sanctions policy in a common position. Common Position 1996/635/CFSP later served as a reference point for scaling up restrictive measures. It represented the initial European

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<sup>259</sup> Interview 23. Senior General Than Shwe was a patron of the USDA, which he created in 1993. His wife Kyaing Kyaing was involved with its operations. The USDA has a membership of over 20 million people.

<sup>260</sup> Haacke 2006: 99.

<sup>261</sup> Haacke 2006: 93; Selth 2004: 34.

<sup>262</sup> Tonkin 2006a: 6.

consensus. In the following years, no EU member state directly challenged the rationale that led to the adoption of this common position.

This consensus consisted in treating Myanmar as a ‘pariah’ state. Sanctions were deemed a suitable instrument to promote human rights and democracy. Calls by ASSK and the NLD for international sanctions were relayed by domestic groups within several member states and by epistemic communities at the EU level. These calls strongly orientated the path-defining choice to reinforce sanctions in 1996 and in the ensuing years.<sup>263</sup> Drawing upon Doxey’s taxonomy of sanctions objectives,<sup>264</sup> the common position aimed at demonstrating European solidarity towards Denmark (whose consul died in *In Sein* prison), as well as towards Myanmar’s political opposition. This symbolic function explains why the EU later reinforced sanctions, even though Myanmar had already joined ASEAN in 1997.

This foreign policy orientation owed to the norm entrepreneurial role played by the UK. London pursued a principled policy due to its historical relation with Myanmar, links between British elites and NLD representatives, and domestic pressures stemming from national human rights campaign groups. In 1997, the election of a new British government proved decisive for the forthcoming EU policy. Having vowed to carry out an ‘ethical foreign policy’, New Labour was eager to distinguish its stance from previous Conservative governments. British leaders – like Robin Cook but also Tony Blair – were personally involved in the design of a principled policy.

The European consensus was reached via a bargaining process between the largest member states. France acceded to UK proposals on the condition that EU policy would not entail restrictions on trade or investment. Germany demanded in April 2000 that the common position be revised to allow for a waiver on the visa ban. In sum, ideational factors constituted the ‘push factors’ in EU foreign policy, while the logic of diversity formed the ‘brakes’ in decision-making.

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<sup>263</sup> Interview 4.

<sup>264</sup> Doxey 1996: 55.

The consensus, therefore, evolved differently according to various issue areas. It was most resilient in the field of assistance policy. EU member states and the European Commission unanimously kept their assistance at formidably low levels. The consensus was fairly sturdy in the field of diplomacy. Initially, all EU member states barred meetings with Myanmar officials. After the introduction of a waiver on the visa ban, even principled member states applied this exception, like Denmark which hosted the ASEM4 summit in 2002. The consensus in the field of economic cooperation was fraught with challenges. France, supported by other flexible member states, was reluctant to enforce economic sanctions. This logic of diversity has been overcome by dint of negotiations. Flexible member states steadily agreed to targeted economic sanctions, while principled member states forwent sanctions on trade and investment.

As a consequence, policy feedbacks exerted little influence at the EU level. EU policy was more shaped by bargains between large member states than by policy evaluations of EU member states or European institutions. The European Commission had not formally been asked to assess the impact of possible measures decided by the EU. Illustratively, intergovernmental bargains led the Commission to propose the exclusion of Myanmar from the GSP, although it could not conduct a proper enquiry into the use of forced labour. Thus, the adopted measure did not even hit military entities benefiting from this practice that infringed labour rights.

This finding sheds new light on the sanctions paradox in the EU. Bargains struck among member states can lead the EU to impose sanctions that are unlikely to succeed. Agreeing on a common policy can prove so challenging, that policy effectiveness becomes less important than reaching a consensus.

## 5.2. Assessment of Hypotheses

### 5.2.1. Bandwagoning Hypothesis

The bandwagoning hypothesis is challenged in this chapter by the dearth of empirical evidence concerning US pressure on the EU. There is no record of high-level or coordinated attempts by the US administration to influence EU policy. Some individual policy-makers (e.g. Congresswoman Nancy Pelosi, Congressman Dennis Kucinich, ambassador Barshefsky) may have hoped that Europeans would follow suit to US policy; nominal pressures, however, do not embody official US foreign policy.<sup>265</sup> The UK did play a prominent role in crafting an EU foreign policy in line with US interests. However, the UK's norm entrepreneurship could also be attributed to considerable pressure from domestic constituencies to punish human rights abuses in Myanmar.

This lack of tangible empirical evidence does not necessarily falsify the bandwagoning hypothesis. It is noteworthy that several measures initiated by the UK, like the GSP withdrawal, the asset freeze or the visa ban, merely emulated those sanctions already enforced by the US.<sup>266</sup> In an interview of 28 April 2003 with the *Financial Times*, British PM Tony Blair explicitly stated that, in his vision, Europe shared a common agenda with the USA:

[...] a strategic partnership between Europe and America and other countries too – Russia, China – where we are trying to ensure that we develop as I say a common global agenda.

[...] I want a stronger Europe, more capable of speaking with a unified voice, but I don't want that Europe setting itself up in opposition to America, because I think that won't work, I think it will be dangerous and destabilising.<sup>267</sup>

From this standpoint, the US did not even need to apply direct pressures on the EU; New Labour adopted, by and for itself, a posture in-line with US policy. Other EU member states followed suit, notably owing to the common perception

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<sup>265</sup> Email exchange 2.

<sup>266</sup> Annex 1 shows the multiple parallelisms between EU and US policies by presenting a chronology of the penalties taken by both the US and EU towards Myanmar.

<sup>267</sup> Posen 2006.

that Myanmar lacked strategic relevance. The EU's behaviour epitomised what Morgenthau dubbed 'ideological solidarity'.<sup>268</sup> The bandwagoning hypothesis is therefore confirmed despite a lack of evidence of US pressure on the UK; it is relevant that the EU did bandwagon with the US - whether deliberately or not is a less meaningful question.

Finally, the EC's WTO complaint against the state of Massachusetts does not challenge the bandwagoning hypothesis. The Massachusetts Burma Act remained in the realm of domestic politics since the Supreme Court of the United States eventually overturned it on 20 June 2000. The EU complaint did not effectively challenge US foreign policy, while it safeguarded European economic interests to trade both with Myanmar and with the state of Massachusetts. Consequently, this case does not contradict neo-realist predictions.

### **5.2.2. Compliance Hypothesis**

The compliance hypothesis is falsified by the EU's inaction following the relative liberalisation attempts introduced by the military government, which were crowned with ASSK's second release in 2002. The EU did not reward Myanmar's partial compliance with its demands, although securing ASSK's release was one of its main policy objectives. Hence, the compliance hypothesis did not apply when it came to scaling down sanctions.

Endogenous dynamics also led to ratcheting up sanctions now and then. Without explicitly reacting to specific adverse events in Myanmar, the EU withdrew GSP benefits in 1997; discouraged tourism in 1998; extended the number of individuals targeted by the visa ban and asset freeze; and adopted a ban on loans to state-owned companies in 2000. This policy sharply contrasts with the period prior to 1996, when the EU did not toughen sanctions despite Myanmar's repeated clampdowns on the democratic opposition and ethnic insurgencies.

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<sup>268</sup> Walt 1985: 18ff.; Morgenthau 2006.



On the other hand, the compliance hypothesis was generally corroborated when Myanmar flouted EU demands. The EU directly ratcheted up restrictions on 16 June 2003 as a response to ASSK's third arrest. It decided the Common Position 1996/635/CFSP to condemn James Nichol's death in prison.

In summary, the escalation of negative measures did not only serve the primary objective of altering Myanmar's behaviour. It also fulfilled the objective of bolstering the EU's identity as an actor in international relations that promotes liberal values globally. Sanctions symbolically demonstrated solidarity with ASSK, an icon of democracy. Scaling up sanctions and strengthening the European consensus were mutually reinforcing processes.

### **5.2.3. Large Member States Hypothesis**

The Common Position 96/635/CFSP reflected just a little more than the lowest common denominator preferences among the biggest member states. France initially rejected the Danish proposal to restrict trade and investment. It agreed to the common position after the UK, a large member state, submitted a proposal that mainly formalised the *status quo*. The opposition to a ban on trade and investment confirms the rationalist premises of the large member states hypothesis.

Smaller member states, European institutions, and transnational lobby groups did not determine EU policy. The three largest states decided EU policy. The UK issued policy proposals, which were partly redefined after Germany and France raised objections. Large member states were eager to find a common stance and implement common measures. Therefore, decision-making did not reflect competitive bargaining, but a cooperative bargaining process among the largest EU states.

EU member states did not substantially alter their initial domestic preferences. Although accommodating the interests of principled states, France did not alter its fundamental interest to eschew blanket economic sanctions. Germany

remained sceptical of economic sanctions throughout the period. The UK changed its preferences following the election of New Labour in 1997, but not as a result of social interaction with other EU policy-makers.

The UK's change of national preferences in 1997 should not only be attributed to ideological motivations, but also to a calculus of domestic costs and benefits by the new government. New Labour shifted preferences in the context of renewed pressures by campaign groups and Westminster to impose tougher sanctions. Schwebach and Morgan emphasised that maintaining sanctions usually results from a utilitarian calculus at the domestic level:

[...] Sanctions can be imposed and maintained only when a sufficiently powerful coalition of domestic political actors within the sending state hopes to gain more on the issue under dispute than will be lost due to the sanctions.<sup>269</sup>

Particularly in an EU context, foreign policy is made at home, and implemented abroad:

Foreign policy needs to be "sold" to a variety of audiences in a variety of institutional contexts – to such an extent that the effectiveness of the "selling" is almost more important than the substance of the policy actions taken.<sup>270</sup>

The only member state that compromised to some extent on its national preference was Denmark, when it accepted that a representative of Myanmar could passively attend the ASEM4 summit in Copenhagen. This event, however, does not substantially challenge the large member states hypothesis. The ASEM4 summit was poorly attended. From an intergovernmental perspective, moreover, the relatively weaker bargaining power of smaller member states normally leads them to compromise more substantially on their national preferences than larger member states. Despite this concession, Denmark could hope to benefit more from 'politics of scale' in an EU framework, than if it had imposed unilateral sanctions on Myanmar.

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<sup>269</sup> Schwebach and Morgan 1995: 253.

<sup>270</sup> Weber *et al.* 2002: 101.

The rationalist underpinnings of the large member states hypothesis need to be qualified, however. Material interests did not equally drive the three big member states. France's position was an isolated one due to its more salient economic interests. German unwillingness to adopt economic sanctions sprang in part from ideational motivations. This stance was based on cognitive scepticism regarding the effectiveness of sanctions. Berlin no longer possessed material interests in Myanmar, rather it was not convinced that economic sanctions would work and it intended to avoid a precedent in EU law. As former colonial power having pledged to conduct an ethical foreign policy, the UK faced consequent domestic pressures to act on human rights. Pushes by the UK were also induced by the ideological commitment to demonstrate solidarity vis-à-vis the NLD, as the consensus hypothesis demonstrates.

#### **5.2.4. Consensus Hypothesis**

The consensus hypothesis was partly falsified: all policy initiatives were introduced by a large member state, and material interests considerably constrained EU policy-making. Despite these flaws, the consensus hypothesis possesses strong explanatory power.

The policy evolved from a relatively low common denominator in 1996 to a policy that reflected a vivid consensus among EU member states. Referring to the concept of path dependency, the implementation of Common Position 96/635/CFSP constitutes a 'point of departure'.<sup>271</sup> It irreversibly engaged the EU in the path of restrictive measures, which were never relaxed until the end of this period in 2003. In the following years, the EU steadily escalated sanctions in response to the 'further deterioration in the political situation [...] and the continuing serious violations of human rights'.<sup>272</sup> Because it provided EU policy with a strong normative framework, Common Position 96/635/CFSP could be

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<sup>271</sup> Svetlozar 2003: 10-11.

<sup>272</sup> Council of the EU: *Common Position 2003/297/CFSP of 28 April 2003*, Art. 2.

defined as a new structural condition, which constituted part of the *acquis politique* on Myanmar.

Member states could reach a consensus and decide on concrete measures, despite diverging preferences and material interests. Principled member states privileged targeted restrictions within a European framework to blanket sanctions imposed unilaterally. Flexible member states like France became increasingly receptive to the normative prescriptions enunciated by principled stakeholders. In contrast with staunch opposition to trade and investment penalties in 1996, Paris steadily agreed to targeted measures with an economic component. This finding echoes the claim of social constructivist Ben Tonra: the interests of EU member states increasingly converged over time, as they were collectively making EU foreign policy.<sup>273</sup>

While big EU member states clearly determined EU foreign policy, other actors were able to put ideas on the Council's agenda. This argument is best illustrated by the GSP case. Proposals by Brussels-based non-state actors like the ICFTU and the ETUC were ultimately adopted by the EU. Complex dynamics of EU policy-making reveal multiple levels of governance, where different actors can influence EU foreign policy. The liberal intergovernmental understanding of EU policy-making as a two-level game remains a pertinent tool of analysis because EU states constantly promote their domestic interests vis-à-vis other EU governments. However, a more comprehensive analysis of EU policy-making gains at adding a three-level game (or a meso-level of analysis), which includes member states' interactions with European institutions and transnational actors.<sup>274</sup>

To conclude, the complementariness between scaling up sanctions and strengthening a European consensus corroborates the general claim that democracy promotion forms a 'backbone of a concerted EU foreign policy'.<sup>275</sup>

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<sup>273</sup> Tonra 2003: 7-8.

<sup>274</sup> Camroux 2010: 71; Peterson 1995: 69-93.

<sup>275</sup> Balfour 2008: 240.

Value promotion seeks to maintain a consensus among European states and institutions on the EU's liberal identity. This link between sanctions and the identity of the sender is explained by the quasi exclusive focus of EU policy on democracy icon ASSK. The caricatural distinction between 'savages, victims, and saviors'<sup>276</sup> reflected positively on the EU's identity.

The next chapter now analyses the new evolution of the European consensus from 2004 until 2010.

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<sup>276</sup> Mutua 2001.

## Chapter VI

### The EU and Myanmar between 2004 and 2010:

#### Strengthening the Consensus in an Intergovernmental Framework

Chapters Four and Five showed how EU foreign policy developed from a nearly complete lack of a common policy to unanimous support of Myanmar's pro-democracy opposition. The European consensus centred on treating Myanmar as a 'pariah' state, so that sanctions were barely scaled down, even when it appeared the military government might be making concessions. The present chapter lays out how the European consensus evolved between 2004 and 2010. EU foreign policy entered a new phase in 2004, after which it can be characterised as a 'double track approach'. The EU combined an increase in humanitarian aid delivery with more stringent sanctions.

This dual strategy seems difficult to explain with the hypotheses tested so far, because any independent variable was supposed to produce one of two possible outcomes: different policy inputs would prompt the EU to either reinforce or relax sanctions. The explanations offered so far have not yet been considered in a situation where the EU tightened penalties in one policy area, while softening them in another. This chapter starts in 2004, when the EU decided on a new common position that defined its 'double track approach'. The investigation ends in 2011, after Myanmar held general elections and freed Aung San Suu Kyi for the third time.

This chapter is structured in six sections. The first demonstrates how the EU fostered a dual track approach in 2004. The second examines how, in the following years, the European consensus on a common policy was challenged as well as deepened in the diplomatic field. The third analyses the EU's reaction to the 2007 mass protests. The ensuing section examines the EU's decisions to scale up its aid in 2006 and 2008, and draws some conclusions with regards to

the bandwagoning hypothesis. The compliance hypothesis is finally tested, in section five, against the backdrop of the 2010 general elections and ASSK's subsequent release from house arrest. The concluding section summarises the overall argument and assesses the suggested hypotheses for the period extending between 2004 and 2010.

## 1. The 'Dual Approach' (2004)

### 1.1. Tightening Sanctions

#### 1.1.1. EU Policy

Following ASSK's third arrest on 30 May 2003, EU foreign ministers identified, at the Gymnich meeting of Tullamore in April 2004, three conditions to be met before the EU would consider to gradually repealing sanctions:<sup>1</sup>

[...] the release of Daw Aung San Suu Kyi, the participation of the National League for Democracy and other political and ethnic groups in the National Convention and a genuine and open National Convention, free from harassment.<sup>2</sup>

The Council set the deadline of the ASEM 5 summit, scheduled on 7-9 October 2004, for Myanmar to fulfil these three conditions. The EU again raised the issue of Myanmar's participation in ASEM during the sixth ASEM foreign ministers meeting hosted in Kildare by Ireland on 17-18 April 2004. The chairman's statement 'looked forward to the early lifting of restrictions' on ASSK and the NLD.<sup>3</sup>

Due to the ensuing lack of progress, the General Affairs and External Relations Council (GAERC) agreed on 13 September that it would tighten restrictive measures at its subsequent session on 11 October 2004.<sup>4</sup> If Myanmar failed to comply with the demands enunciated at the April 2004 Gymnich meeting

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<sup>1</sup> 'Gymnich' stands for informal meetings of the EU foreign ministers.

<sup>2</sup> House of Commons, 13 October 2004: *Report*.

<sup>3</sup> ASEM: *Chairman Statement of 17-18 April 2004*; EP: *Resolution of 12 May 2005*.

<sup>4</sup> Council of the EU: *Meeting of 13 September 2004*.

in Tullamore, the EU would expand the visa ban list, proscribe EU registered companies from making available financing such as loans and equities available to named state-owned Myanmar enterprises, and vote against extending loans to Myanmar from IFIs.<sup>5</sup> These deadlines were essentially symbolic posturing, since the SPDC was unlikely to heed such substantial demands in barely a month. Moreover, the EU communicated this ultimatum as a late reaction to ASSK's third arrest following the Depayin incident, which had happened more than a year earlier in May 2003. These measures were finally enforced on 25 October 2004.<sup>6</sup>

### 1.1.2. Impact of EU Measures

The absence of technical assistance from IFIs yielded unintended deleterious effects on Myanmar. Arguably, the government's macroeconomic managerial incompetence was primarily responsible for the parlous state of the economy.<sup>7</sup> The Bretton-Woods institutions had suspended their cooperation with Myanmar in 1987 owing to a lack of economic transparency, not human rights issues. Myanmar owed arrears to the tune of \$300 million to the WB, which the SPDC had not settled since 1987.

The absence of IFIs made the economic predicament worse. Following the military coup of 1988, Western states prevented the WB, IMF and Asian Development Bank (ADB) from providing the consultancy expertise needed to restructure the economy. Areas in need of substantial reform were, among others: the tax system (inadequate since its inception after independence), the system of multiple exchange rates (a source of corruption), public finance management, the introduction of rational fiscal and economic policies, and land reform (addressing landlessness and state ownership of agricultural land). The annual 'Article IV Consultations' by the IMF do not fulfil this role, as they are far

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<sup>5</sup> *Ibid.*

<sup>6</sup> Council of the EU: *Common Position 2004/730/CFSP of 25 October 2004; Ibid.: Regulation (EC) No. 1853/2004 of 25 October 2004*, par. 2.

<sup>7</sup> Steinberg 2001a: Chapter V.



from inclusive and do not actually engage the government in a dialogue during these brief encounters.

The impact of the 2004 prohibition on the making of loans, on offering credit, and acquiring or extending participation to state-owned companies was negligible. On the one hand, no European loans are known to have been made available to Myanmar since the beginning of the nineties. On the other hand, Myanmar had recourse to regional banks, notably in Singapore, Hong Kong and Dubai. Besides, the absence of interface with European financial institutions had counterproductive effects. It accentuated the lack of competition in the domestic financial market. It arguably helped to hamper the creation of welfare, job opportunities, and the transfer of European know-how in a financial services market where an autocratic state retains tight control.<sup>8</sup>

Beyond these individual measures, European investment in Myanmar has generally dwindled over the past decade due the reputational stigma involved. Western companies represent only a small fraction of total investments, the majority of which are coming from East Asia and India. Companies from China, Hong Kong, Korea, Malaysia, Singapore, and Thailand are the top investors, mostly in extractive industries, infrastructure, and manufacturing. (Some of these companies are registered in UK overseas territories).<sup>9</sup> Statements from Western leaders on the moral dubiousness of trading with (or investing in) Myanmar have effectively dissuaded EU companies from doing business.<sup>10</sup> The lack of Western investment opened the Myanmar market for trade with the region: China, Korea, Malaysia, Singapore, and Thailand make up approximately 80 percent of Myanmar's foreign trade. The EU, traditionally the biggest foreign investor in all Southeast Asian economies, was reduced to a meagre 2.66 percent share in Myanmar's export destinations in 2011.<sup>11</sup> In 2010, Myanmar received around \$8.273 billion in FDI stock, mostly from China and Thailand. By contrast, official

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<sup>8</sup> Interview 5.

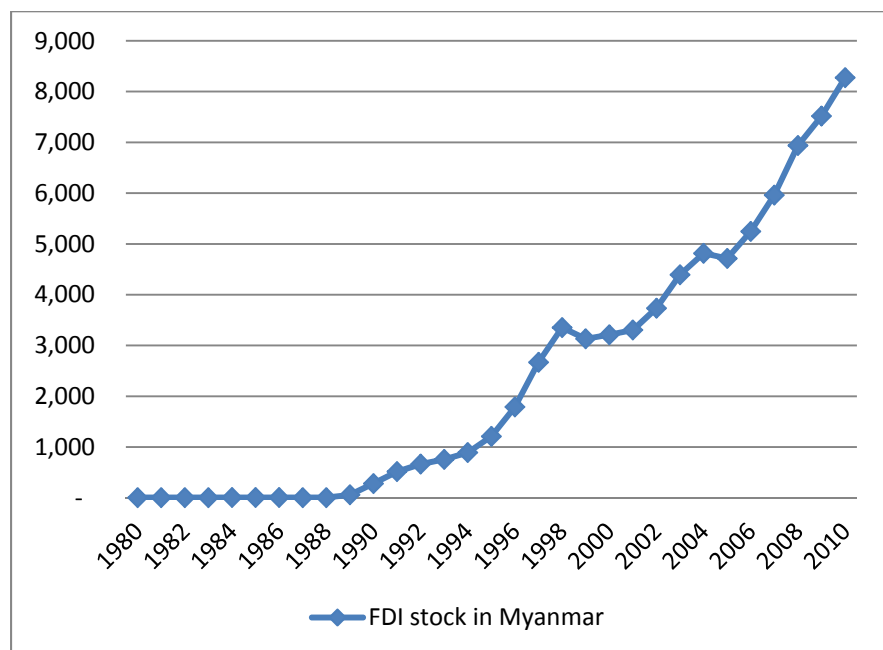
<sup>9</sup> Bowman 2006: *British ambassador address*.

<sup>10</sup> Interview 39.

<sup>11</sup> IMF 2010: *Trade Statistics*.

FDI stock represented only \$4 million in 1988 (figure 9).<sup>12</sup> FDI stock has skyrocketed since the mid-nineties, while many big European companies were divesting.

**Figure 9: Inward and outward foreign direct investment stock, annual, 1980-2010, in million \$ at current prices and exchange rates**



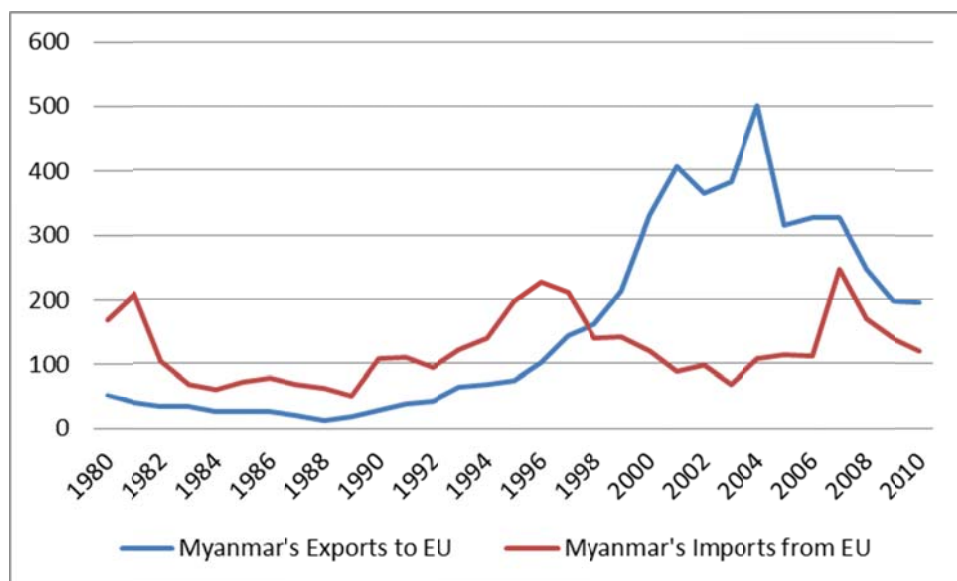
Source: UNCTAD (July 2011).

Trade between the EU and Myanmar followed a similar pattern. Figure 10 indicates that Myanmar's trade with the EU has remained marginal despite a relative increase in exports between 1990 and 2004. The MFA's expiry led Myanmar's exports to the EU to fall after 2005. Total bilateral trade barely reached \$313.62 million in 2010, which represented 1.91 percent of Myanmar's total trade. By contrast, figure 11 shows that Myanmar's trade with the Asia-Pacific Economic Cooperation forum (APEC) has boomed between 1988 and 2010, although the US (a member of APEC) has enforced a ban on all imports from Myanmar since 2003. Myanmar's total trade with APEC's twenty-one

<sup>12</sup> UNCTAD 2011: *FDI Stock*. US Dollars are measured at current prices and current exchange rates (2011).

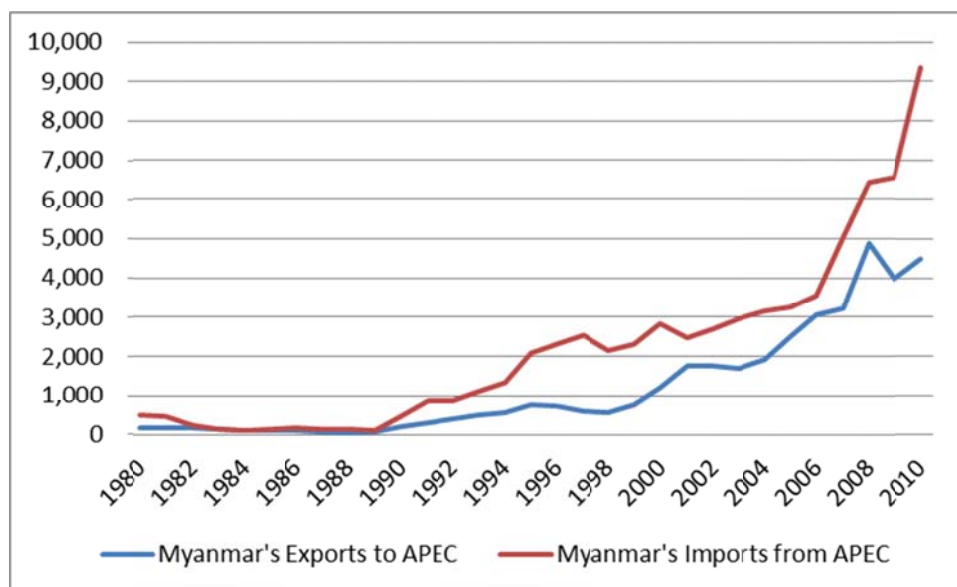
member economies culminated at \$13.84 billion in 2010, which was 44 times greater than Myanmar's trade with the EU in the same year.

**Figure 10: Myanmar's Trade with EU, 1980-2010** in million \$, annual values



Source: IMF (March 2012): *Direction of Trade*.

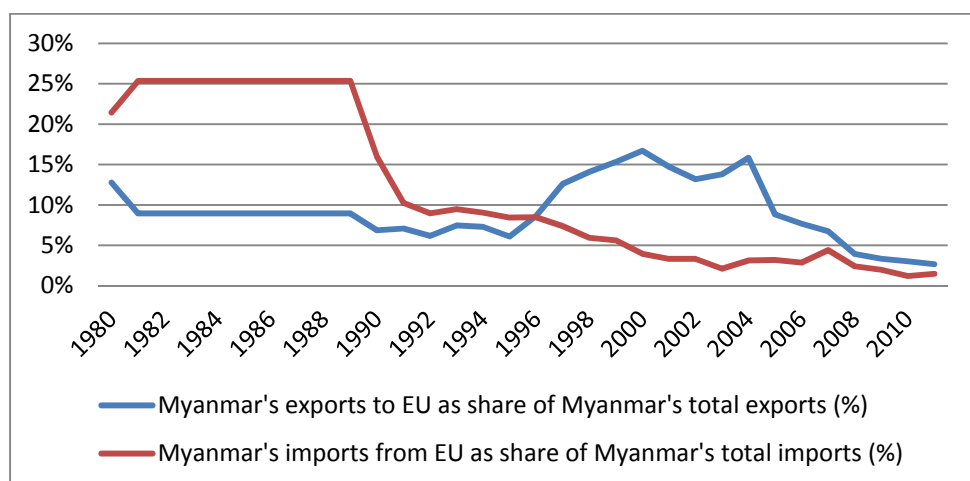
**Figure 11: Myanmar's Trade with APEC, 1980-2010** in million \$, annual values



Source: IMF (March 2012): *Direction of Trade*.

In the financial year 2009/2010, 78 percent of Myanmar's exports were orientated towards China, Singapore, Thailand, South Korea, and India; and 85 percent of its imports came from Thailand, India, Hong Kong, Singapore, and China.<sup>13</sup> Figure 12 indicates that Myanmar has dramatically shifted its trade orientation away from the EU. Its imports and exports from and to the EU had culminated at respectively 25 and 13 percent of the total before sanctions were introduced, but they collapsed to respectively 1 and 3 percent in 2010. This declining economic influence is even more pronounced when put in the perspective of Myanmar's growing trade volume. The pie became approximately 55 times bigger over the period. Myanmar's total exports grew from \$147.433 million in 1988 to \$8.029 billion in 2011 and its total imports grew from \$244 million in 1988 to \$13.5 billion in 2011.<sup>14</sup>

**Figure 12: Myanmar-EU trade as share of Myanmar's total trade, 1980-2011**



Source: IMF (June 2012): *Direction of Trade*.

Thus, Myanmar has largely avoided the direct impact of the penalties on trade imposed by the EU (and other Western countries including the US), while the EU progressively lost its relative economic leverage. Other sanctions were therefore

<sup>13</sup> Central Statistics Office data as quoted in: Network Myanmar website (2012).

<sup>14</sup> IMF (June 2012): *Direction of Trade*.

less likely to bear fruit, as restrictions on trade and investment are generally considered more harmful than non-economic sanctions.<sup>15</sup> Myanmar's deeper integration in the regional economy will be hallmarked by the future ASEAN Free Trade Agreement (FTA) planned in 2013, 2015 and 2017 for Vietnam, Laos, Myanmar, and Cambodia.<sup>16</sup> More restrictions seemed to only increase the distance between Myanmar and the EU, with little prospect for effective influence.

The economic context had changed significantly since the EU imposed economic sanctions in the nineties. By the time of writing, Myanmar finds itself in a strategic geopolitical location, embedded in a region with some of the consistently highest rates of economic growth. Table 6 indicates the years when Myanmar ranked among the world's top 10 performers in terms of GNI growth per annum, and compares its performance with China. It shows that Myanmar outpaced China almost every single year in 1999 and between 2001 and 2010. This stupendous rate of growth was favoured by Myanmar's relatively low base when it opened its economy in the nineties. It remains nonetheless remarkable that Myanmar could achieve one of the world's constantly highest rates of economic growth despite Western sanctions. Western sanctions proved completely unable to asphyxiate the regime by economic means.

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<sup>15</sup> Eland 1995: 29-42.

<sup>16</sup> Interview 22; Morsbach, 26 May 2011.

**Table 6: Myanmar and China among the World's Top Ten Performers in Annual GNI Growth (1999; 2001-2010)**

Year	Myanmar's growth	Myanmar's rank	China's growth	China's rank
1999	11.0%	9	7.6%	Not a top 10 performer
2001	11.3%	5	8.5%	
2002	12.0%	4	8.6%	
2003	13.8%	9	9.4%	
2004	13.6%	5	9.8%	
2005	13.5%	6	11.9%	8
2006	13.1%	5	12.1%	10
2007	12.0%	6	13.7%	4
2008	10.3%	5	9.4%	10
2009	10.6%	2	9.4%	3
2010	10.4%	7	10.0%	10

Source: WB (2012): *WDI*.

Myanmar's income growth performance remains stupendous even if weighted per capita. Between 1990 and 2011, Myanmar ranked as the world's second best performer behind China in terms of constant income growth as measured by annual GNI per capita. Between 1990 and 2000, Myanmar registered the third biggest GNI per capita growth (annual percentage) behind China and Guyana, and the third biggest GNI per capita growth behind Afghanistan and China between 2000 and 2011.<sup>17</sup> Aggregate and per capita GDP data shows similar rates of growth, which varied between 10 and 13.6 percent between 1999 and 2006.<sup>18</sup> This astounding income growth shows that Western sanctions on trade and investment had a limited impact on Myanmar's aggregate economic performance.

This growth has been supported by massive exports of natural resources. In 2010, primary commodities and precious stones represented 78 percent (or \$7.535 billion) of Myanmar's total exports; whereby fuels alone made already 33

<sup>17</sup> WB 2012: *WDI*.

<sup>18</sup> *Ibid.* GDP data is not available after 2006. See: Chapter IV, figure 6.

percent (or \$3.090 billion) of total exports.<sup>19</sup> Foreign investments, concentrated in the domains of extractive industries and infrastructure, tend to benefit the investors much more than the people in the receiving country. Profits stemming from natural resources extraction are not significantly reinvested in sectors that would generate a more equitable distribution of national wealth. Revenues from natural resources extractions are managed as a niche sector, autonomous from the rest of Myanmar's economy and with a limited multiplier effect on sustainable development.<sup>20</sup> Indeed, Myanmar's prodigious income growth contrasts sharply with its more modest performance as measured by the Human Development Index (HDI, evaluated at 0.483 in 2011), since it does not figure among the countries that rapidly improved their standards of human development.<sup>21</sup> Mean Years of Schooling (MYS) of adults over 25 years were 4.0 years in 2011, the life expectancy at birth was 65.2 years, and 31.8 percent of Myanmar's population was considered as poor in more than one dimension by the UNDP's Headcount of Multidimensional Poverty Index (MPI).<sup>22</sup> The stark contrasts between income growth on the one hand and education performance on the other hand indicate that the benefits of unprecedented income growth did not substantially trickle down to Myanmar's population. To compare Myanmar with the better-known growth champion, China's headcount of MPI poor was 12.5 percent of its population and MYS were 7.5 years in 2011.<sup>23</sup>

The marginal economic interaction with the EU may not have hindered Myanmar's annual economic growth, but it has resulted in a general denial of Western skills and technology and a limitation of labour-intensive employment opportunities. According to Richard Jones, a director of Premier Oil Plc., Asian companies are unlikely to match ethical employment practices provided by

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<sup>19</sup> UNCTAD November 2011.

<sup>20</sup> Interview 27.

<sup>21</sup> UNDP 2010.

<sup>22</sup> UNDP 2011. More accurate statistics on inequality, such as Myanmar's Gini index, are not available.

<sup>23</sup> *Ibid.*

Western employers, such as 'fair wages, company housing and health insurance, as well as a pension scheme'.<sup>24</sup> The four principles for 'good' investment, as published by the NLD on 4 January 2011, or as requested by ASSK in her video address to the World Economic Forum, could be met by Western companies if they were to invest.<sup>25</sup> The creation of economic zones (e.g. in Tavoy) has started to attract light manufacturing from the region. Nevertheless, EU businesses and investment have been generally unwilling to compete, not least because of the constraint of Western sanctions and reputational stigma associated with Myanmar.

## **1.2. Providing Wider Room for Aid Delivery**

While tightening sanctions, the Common Position 2004/730/CFSP scaled up aid levels. This decision characterises the dual approach which has a combination of negative and positive measures.

### **1.2.1. Summary of Previous Policies**

During the nineties, the EU had suspended development assistance to Myanmar. This suspension bore the perverse effect that even humanitarian aid was substantially reduced. From 2000 onwards, the Commission started to steadily scale up humanitarian assistance. In 2001, the bulk of EU aid came from ECHO, which pledged a still marginal €6.5 million for a LDC of about 49 million inhabitants.<sup>26</sup> ECHO was the primary agency increasing humanitarian aid from 2000 until the common position was changed in October 2004, a policy illustrated below.

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<sup>24</sup> Wintle 2007: 427.

<sup>25</sup> Htet Aung, 5 January 2011; World Economic Forum 2011. The NLD's four principles for foreign investment are: 'consideration of environmental and social impacts on the people, respect for labour rights, the creation of job opportunities and technically advanced investments'.

<sup>26</sup> European Commission, November 2006: *Myanmar Leaflet*.



**Table 7: Funds Pledged by ECHO, 2001-2004**, in million €

Year	Amounts
2001	6.5
2002	8.9
2003	11.5
2004	19.4

Source: European Commission (November 2006): *Myanmar Leaflet*.

In addition, the non-humanitarian budget lines of the Commission began to kick up, starting with the use of the Aid-to-Uprooted-People programme in 2001 (€2 million) and the Development Cooperation Instrument, or DCI-Programme, (€5 million) to fund a UN-sponsored HIV/Aids project. The UK's DFID pursued a similar trend over the same period:

**Table 8: DFID Assistance to Myanmar, 2000/2001-2004/2005**, in million £

Year	Amounts
2000/2001	1.4
2001/2002	2.3
2002/2003	7.0
2003/2004	3.7
2004/2005	6.0

Source: UK Governmental Statistical Service (2010).

Both the UK and the Commission were thus inclined to increase aid to Myanmar, while sanctions were scaled up on the financial, trade, and diplomatic fronts. This development is significant because it demonstrates that both a big member state and the Commission played the role of 'policy entrepreneur'. A change in the common position was necessary in order to widen the legal space for aid delivery.

### 1.2.2. Policy Change (2004)

The EU revised its position on aid on 25 October 2004 with the adoption of Article 5, Common Position 2004/730/CFSP. This revision allowed the allocation of assistance for three specific purposes: promotion of democracy, health and education, and environmental protection. This decision was taken after having consulted representatives of Myanmar civil society and the NLD, in-line with Common Positions 96/635/CFSP and 2003/297/CFSP.

This policy change in one isolated issue-area corresponds to a second-level 'programme change'.<sup>27</sup> Programme change consists in a change of instruments, not in a review of policy objectives, which was still focused on modifying the SPDC's behaviour. Restrictions in other policy sectors were not repealed. This partial policy change reflects a questioning of the effects of the ban on assistance.<sup>28</sup> But this partial change did not discount the sanctions policy. It was limited to certain areas of assistance, owing to the refusal of principled member states to review the sanctions regime altogether.<sup>29</sup> Repealing penalties could have deprived the political opposition of the symbolic support provided by sanctions.<sup>30</sup>

The 2004 policy change was part of an incremental diversification of objectives, whereby the EU stood behind additional goals complementary to democracy promotion, such as the defence of human rights. Discourse analysis shows that the EU shifted its policy formulation by supporting, in addition to the NLD, the 'national reconciliation process' and the 'tripartite talks'.<sup>31</sup> The EU tended to complement its support for ASSK and the NLD with support for the

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<sup>27</sup> C. Hermann 1990: 5.

<sup>28</sup> Interview 5.

<sup>29</sup> Interview 6.

<sup>30</sup> Cooper, October 2008: *Address*.

<sup>31</sup> Council of the EU: *Presidency Declaration of 30 May 2006*; EP: *Resolution of 11 April 2002*: point 1.2.6.

'people of Burma/Myanmar'.<sup>32</sup> This commitment implied an increase in development aid to 'the most vulnerable populations of Myanmar' instead of restricting the policy to sanctions as a sign of support to the NLD.<sup>33</sup>

This incremental change took place in the context of emerging reservations about the NLD's capacity to secure political change in Myanmar after ASSK's third confinement to house arrest. Some analysts disparaged the NLD's 'maximalist' and 'confrontational' approach to the regime.<sup>34</sup> Under SPDC-rule, the NLD had never rejuvenated its aging leadership. It was unable to make efficient use of its immense political capital.<sup>35</sup> Early sanctions activists, like the US-based Free Burma Coalition (FBC), argued that responsibility for the political stalemate was shared between the government and the opposition.<sup>36</sup>

### 1.2.3. Dynamics of Policy-Making

The actors behind this revision of instruments are epistemic communities. The institutional actors are the European Commission, Germany, the UK, and the Netherlands. They worked together with epistemic communities formed by: academics (such as Taylor and Pederson), diplomats from other countries involved in the Myanmar issue (e.g. Australia, Norway), representatives of international organisations (e.g. the UNDP, UNODC), and NGOs (e.g. the International Crisis Group, Save the Children UK, Malteser). These expert communities were invited to policy conferences. The European Commission hosted 'Burma/Myanmar Days' in 2003, 2004, and 2008 to discuss areas for policy improvement. The Friedrich-Ebert-Foundation held a conference on national reconciliation in December 2005. The EIAS organised a Burma/Myanmar Forum in 2006, which discussed how the international

<sup>32</sup> European Commission 2008: *Bull. 5: 1.35.36*; Council of the EU: *Declaration of 25 September 2007*.

<sup>33</sup> European Commission 2007c: *Bull. 10: 1.34.34*.

<sup>34</sup> Interviews 23 and 27.

<sup>35</sup> R. Taylor and Pedersen 2005.

<sup>36</sup> Zarni *et al.* 2004: 33-41.

community could promote change in the areas of human rights, democracy, and economic development.<sup>37</sup> DFID co-organised a Wilton Park Conference in 2006, which focused on humanitarian assistance.

The UK and the Netherlands incrementally changed their positions between 2000 and 2004. The UK, along with the European Commission, became a primary European donor. As the 2006 Wilton Park conference concluded, an increased allocation of aid served the purpose of promoting human rights and democracy. The simultaneous escalation of sanctions encapsulated in the Common Position 2004/730/CFSP were deemed to make the exception on humanitarian aid more acceptable to domestic lobbies in the UK. This increase in humanitarian aid to Myanmar was also related to the influence of the Commission, which played a role as a 'policy entrepreneur'.<sup>38</sup> In July 2000, then Commissioner Chris Patten had signalled the EU's intention to increase aid in parallel with sanctions.<sup>39</sup> According to ECHO's Global Needs Assessment (GNA), Myanmar was one of the world's 'forgotten humanitarian crises'.<sup>40</sup> Senior Commission officials commended the Council's 2004 policy change – notably Hervé Jouanjean,<sup>41</sup> Eneko Landaburu,<sup>42</sup> and the Commissioner for External Relations Benita Ferrero Waldner.<sup>43</sup> This recalls Bicchi's assertion that the Commission cannot change EU foreign policy without the support of an important member state.<sup>44</sup>

The Commission quietly attempted to persuade principled member states that aid complemented sanctions. The idea of regular Burma Day conferences was floated at the Ottawa conference on Myanmar in 2002 to enable an exchange of

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<sup>37</sup> Minsat 2006a.

<sup>38</sup> Nuttal 1993; Caporaso and Keeler 1995; Krause 2002; Bicchi 2007.

<sup>39</sup> BBC News, 26 July 2000.

<sup>40</sup> European Commission, December 2003: *ECHO Aid Strategy*.

<sup>41</sup> Jouanjean, 5 April 2005.

<sup>42</sup> Landaburu, 29 March 2006.

<sup>43</sup> Interview 6.

<sup>44</sup> Bicchi 2008.

views among policy-makers.<sup>45</sup> Interacting with member states during (at times daily) meetings on policy formulation and implementation, the Commission presented the funding of projects inside the country as a *sine qua non* to democracy promotion.<sup>46</sup> Promoting democracy meant not only censuring a dictatorship, but bolstering the growth of a ‘vibrant civil society’.<sup>47</sup> Converging feedbacks by the Commission, the DFID, the FCO, and the Auswärtige Amt, had underlined the need to adapt the policy in order to enhance its effectiveness.<sup>48</sup>

This evaluation encountered domestic opposition in some member states. Therefore, the Commission chose informal ‘case-work and complaint’<sup>49</sup> as a channel to convey its recommendations. ‘Bureaucratic experience’ and ‘systematic monitoring’ had not persuaded all member states. In 2005, the Commission charged two academics to produce an independent report on EU policy towards Myanmar. Nevertheless, the resulting Taylor-Pederson report was marred by criticism from ‘pro-democracy campaigners’ who had not been invited to the Burma Day Conference in 2005.<sup>50</sup>

The Taylor-Pederson report underscored problems also raised by humanitarian organisations. UN representatives had stressed that, with around \$3 per capita, Myanmar received a fraction of international aid provided to other countries in the region such as Vietnam (\$33), Cambodia (\$38), and Laos (\$49),<sup>51</sup> or compared with £33 for pariah state Sudan.<sup>52</sup> Humanitarian organisations emphasised that the allocated funds fell completely short of the country’s acute needs. They emphasised the unimpeachable essence of the humanitarian mission, summarised by the principles of neutrality, impartiality and

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<sup>45</sup> Hristov 2009: 162.

<sup>46</sup> Interview 5.

<sup>47</sup> R. Taylor and Pedersen 2005.

<sup>48</sup> *Ibid.* On the importance of policy feedback in EU policy-making, see: Ginsberg 2001: 277.

<sup>49</sup> As defined by: Kingdon 2003: 102.

<sup>50</sup> Kent, April 2005; Yawngghwe, April 2005.

<sup>51</sup> Petrie 2008: 12 (Charles J. Petrie was UN resident coordinator in Myanmar from 2003 until 2007); UNDP 2008: 307; IRIN 2009; Weiss 2009.

<sup>52</sup> Bell, 12 August 2009.

independence.<sup>53</sup> Humanitarian aid should not be dependent on any party's endorsement – not even the NLD. The disconnection between the allocation of aid and compliance by the SPC with EU demands does not challenge the compliance hypothesis, since humanitarian aid is in principle neutral and unconditional.

The European Commission typically distinguishes between two concepts:

- Humanitarian aid: based on objective needs, delivered in an impartial and neutral way regardless of the political or conflictual context, hence not a foreign policy tool; and
- Development aid/assistance: ideally based on a sectoral dialogue with the authorities (hence the term 'development cooperation', where funding decisions are policy decisions). Such assistance is considered part of the foreign policy toolbox.

Lobbyists (like the Euro-Burma-Office or Burma Campaign UK), which in the nineties called for a complete aid boycott, could not overlook the validity of the EU's doctrine. They agreed that aid should be augmented if delivered transparently.<sup>54</sup> The European Parliament supported this policy change retrospectively.<sup>55</sup>

#### **1.2.4. Unlocking Assistance after 2004**

With the change of the common position introduced in 2004, EU aid levels were substantially amplified. The EU (the Commission and member states combined) became the main donor to Myanmar, ahead of Australia and Japan. On the strictly humanitarian side, in 2005, the Commission set up an ECHO antenna office in Yangon, in order to better coordinate the increasing number of humanitarian projects designed for, and funds allocated to Myanmar. As regards development aid, the multi-annual indicative programme for 2007-2010 allocates

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<sup>53</sup> Petrie April 2006a: *Address*; Petrie November 2006b: *Address*.

<sup>54</sup> Burma Campaign UK, July 2006.

<sup>55</sup> EP: *Resolution of 24 April 2008*.

€32 million to the health and education sectors.<sup>56</sup> Its legal basis and main budget line is the Development Cooperation Instrument (DCI), which is geared to education and health.<sup>57</sup> While the distinction between humanitarian and development aid was conceptually upheld, the EU was quietly easing the ban placed on development aid.<sup>58</sup> Table 9 shows that the UK boosted its funding to Myanmar subsequently after 2004.<sup>59</sup> It is the only EU member state with a team in the field (intervening mostly in the sectors of health and education with €9.5 million in 2006).<sup>60</sup>

**Table 9: DFID Assistance to Myanmar, 2005/2006-2009/2010** in million £

Year	Amounts
2005/2006	6.483
2006/2007	7.610
2007/2008	8.915
2008/2009	57.601
2009/2010	29.019

Source: UK Governmental Statistical Service (January 2010).

To conclude, the compliance hypothesis is not falsified by the exception made to the delivery of humanitarian aid, which happened despite lack of compliance by the SPDC. Delivery of humanitarian assistance was not conditional on the SPDC's behaviour. It was a needs-based response, focusing on vulnerable populations.

<sup>56</sup> European Commission 2007: *Country Strategic Paper*. 1.

<sup>57</sup> Kramer 2009: 55-6.

<sup>58</sup> Tonkin, 26 February 2010.

<sup>59</sup> The UK pledged to allocate £57 million to Myanmar in 2008/2009, which included £45 million for emergency relief following Cyclone Nargis, and £12 million of development and humanitarian assistance for non-Nargis support (FCO 2009: *Country Profile*; DFID 2009: *Country Profile*).

<sup>60</sup> European Commission 2007a: *Report*.

### **1.3. Reshuffle within the Military Government and EU Inaction (2004)**

#### **1.3.1. Events in Myanmar**

The policy change at the end of October 2004 occurred when the junta had become even more reclusive after PM Khin Nyunt's ouster. On 18 October 2004, Prime Minister and concurrently head of Military Intelligence (MI), General Khin Nyunt, was 'permitted to retire' by SPDC chairman Senior General Than Shwe. He was sentenced to forty-four years imprisonment on corruption charges in July 2005. A wholesale purge of 1,000 to 2,000 MI officers immediately followed Khin Nyunt's ouster.<sup>61</sup> This purge established Senior General Than Shwe as the junta's unrivalled chief, seconded by the SPDC vice-chairman General Maung Aye. Myanmar thus shifted from a 'collective military dictatorship' to a 'sultanic regime' with Than Shwe at its helm.<sup>62</sup>

General Khin Nyunt's arrest signalled the regime's increased isolation, symbolised by the move of ministries from Yangon to Naypyidaw in October 2005.<sup>63</sup> European diplomats confessed that, after the 2004 purge, they had lost all direct communication channels to the new government.<sup>64</sup> In 2005, the authorities promulgated guidelines impeding the work of INGOs. The ICRC office was ordered to reduce its expatriate staff from around forty to less than ten, and to suspend visits to prisoners. Dialogue with the political opposition was halted.

#### **1.3.2. The EU's Reaction**

The EU did not specifically react to the dismantlement of the MI. The MI's purge nonetheless widened the political space to some extent. Its disbandment allowed civil society organisations to later flourish in Myanmar, due to the

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<sup>61</sup> Petrie 2008: 2.

<sup>62</sup> Saw Myat 2008: 37 and 144ff. See also: Stephan and Linz 1996: 66-83.

<sup>63</sup> Egreteau and Jagan 2008; Hauswedell 2006.

<sup>64</sup> Interview 11.



diminution of military spying on civilians. It ultimately enabled street protests to take place in October 2007.<sup>65</sup>

On the contrary, the EU extended the travel ban to lower ranking militaries, and banned financial loans and new investments on state-owned enterprises on 25 October 2004.<sup>66</sup> The EU's decision was disconnected from domestic realities in Myanmar. This measure was decided because it figured on the Council's agenda at that particular moment, as a consequence of the Council's conclusions of 13 September 2004.<sup>67</sup> Sanctions were thus motivated by the:

[...] the failure of the military authorities to release Daw Aung San Suu Kyi and other members of the National League for Democracy (NLD) as well as other political detainees, and the failure to allow a genuine and open National Convention, and in view of the continued harassment of the NLD and other organised political movements [...].<sup>68</sup>

In a benevolent interpretation, this statement could only be regarded as naïve. The military government could certainly not enter into 'substantive discussions with the democratic movement' at a time when it was going through one of its most significant reshuffles since 1988. The lack of connection between the EU's declarations and the domestic changes that occurred in Myanmar show that the compliance hypothesis did not hold up in this instance.

## **2. Strained Consensus on Myanmar's Diplomatic Isolation**

### **2.1. Myanmar's Silent Participation in International Fora**

The principled position of shunning EU-ASEAN meetings if Myanmar was party to the discussion became all the more awkward after the EU welcomed ten new member states on 1 May 2004. ASEAN felt that the EU's official position on Myanmar was inconsistent with enlarging ASEAN-EU processes without prior

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<sup>65</sup> Interview 24.

<sup>66</sup> Council of the EU: *Regulation (EC) No. 1853/2004 of 25 October 2004*: par. 2.

<sup>67</sup> Council of the EU: *Common Position 2004/730/CFSP of 25 October 2004*: par. 2.

<sup>68</sup> *Ibid.*

consultation.<sup>69</sup> Myanmar owed its participation in ASEM to a Vietnamese proposal that led to its joining the ASEM 5 summit in Hanoi on 7-9 October 2004. The EU almost cancelled the meeting over the question of Myanmar's attendance.<sup>70</sup> The Dutch Presidency's Special Envoy, former European Commissioner Hans van den Broek, brokered a compromise with ASEAN+3.<sup>71</sup> Hence, the '[...] ten European accession states joined ASEM and the three post-1996 members of ASEAN were also admitted as well as India, Mongolia and the ASEAN secretariat' but on the condition that the Myanmar representative would be from a level lower than that of a head of government.<sup>72</sup> The twenty-five EU foreign ministers then reached an internal agreement on Myanmar's participation at the informal meeting at St Gerlach Castle on 3 September 2004.<sup>73</sup> The Hanoi meeting has been considered a transition summit after the EU had cancelled two meetings of finance and economy ministers in July and September 2004.<sup>74</sup>

The European Parliament adopted a resolution condemning the Council's decision to allow Myanmar to participate in the fifth ASEM summit, claiming it should have been conditional on the regime recognising that the NLD had won the 1990 election.<sup>75</sup> The European Parliament's Development Committee also objected to Myanmar's participation in the ASEM process.<sup>76</sup> Some MEPs subscribed to the view that diplomatic relations with Myanmar should be completely suspended, owing to the deteriorating human rights situation.<sup>77</sup> The Asia-Europe Inter-parliamentary Partnership and the European Parliament have

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<sup>69</sup> Interview 5.

<sup>70</sup> Camroux 2006a: 14.

<sup>71</sup> Council of the EU, 13 September 2004: *Meeting*; Japan Center for International Exchange and University of Helsinki Network of European Studies 2006: 41.

<sup>72</sup> Camroux 2004: 28. See also: Haacke 2006: 45.

<sup>73</sup> EP, 15 September 2004: *Joint Motion*.

<sup>74</sup> Japan Center for International Exchange and University of Helsinki Network of European Studies 2006: 149.

<sup>75</sup> Khaliq 2008: 197.

<sup>76</sup> Council of the EU, 13 September 2004: *GAERC Meeting*; Japan Center for International Exchange and University of Helsinki Network of European Studies 2006: 126.

<sup>77</sup> Interview 34.

had limited impact on the official ASEM process.<sup>78</sup> The fact that the European Parliament's resolutions of July 1999, 2000, 2002, March 2003, and March 2004 remained unheeded corroborates the large member states hypothesis, which posits that only large member states decide EU foreign policy.

## 2.2. European Consensus Challenged by a Smaller Member State

In contradiction with the growing trend to include Myanmar as passive participant, the Netherlands prevented the Myanmar minister for national planning, Soe Tha, from attending an ASEM economic ministers meeting held in the Netherlands in February 2005.<sup>79</sup> Dissensions reached their climax in September of that year, when the Netherlands again refused to waive the visa ban on the Myanmar minister attending the high-level Asia-Europe economic ministers' meeting in Rotterdam.<sup>80</sup> The Netherlands' decision was in part motivated by domestic pressures from parliament and campaign groups, such as Burma Center Netherlands.

ASEAN member states cancelled the ASEM economic ministers meeting because of the visa ban on the Myanmar delegation.<sup>81</sup> They argued that the restrictions placed on Myanmar's participation breached ASEM's rule of mutual equality.<sup>82</sup> They felt this ban contravened the earlier compromise brokered by the Dutch presidency in preparation to the Hanoi meeting. Moreover, Europeans had

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<sup>78</sup> Japan Center for International Exchange and University of Helsinki Network of European Studies 2006: 135 and 142.

<sup>79</sup> T. Wilson 2007: 104, footnote 18. It remains unclear to date, however, whether and how the negative stance of the Netherlands as hosts to the meeting had been communicated to, and cleared with the other EU partners; the German embassy in Yangon had refused the visa to the minister upon a direct request from The Hague, without prior checking the matter with the Auswärtige Amt in Berlin.

<sup>80</sup> Kivimäcki 2007.

<sup>81</sup> Camroux 2006a: 14.

<sup>82</sup> In the first ASEM meeting held in Bangkok in 1996, the EU and Asian states concluded that dialogue ought to be conducted on the basis of mutual respect, equality, promotion of fundamental rights and, in accordance with the rules of international law and obligations and non-intervention, whether direct or indirect, in each other's internal affairs (European Commission 1996: *Bull.* 3: 2.3.1, par. 5, quoted in: Khalid 2008: 196).

not asked ASEAN if the ten new EU member states could join ASEM and the EU did not take into account the cultural differences with ASEAN (the 'ASEAN way').<sup>83</sup>

Following pressures from other member states (e.g. Germany), the Dutch authorities accepted that the meeting could take place (on 16 and 17 September 2005), but only on the condition that the Myanmar representative was not higher than the level of ambassador accredited to the EU. It was Myanmar who ultimately backed down by sending the first secretary of the Myanmar embassy in France, Than Oo, whose name was not on the visa ban list.<sup>84</sup>

An examination of this event invalidates the consensus hypothesis, which posits that EU member states would not retract their position on a consensus that had already been agreed upon in a common position. The Netherlands did not act out of a logic of appropriateness, but a logic of consequences. It did not internalise the consensus agreed upon in 2000. This finding corroborates the intergovernmental view that (even smaller) EU member states maintain their sovereignty and independence in matters of foreign policy.

On 26 July 2005, foreign minister Nyan Win announced Myanmar's decision to forgo its ASEAN chairmanship scheduled in 2006-2007. Since the Hanoi meeting, the EU had reiterated threats to boycott meetings with ASEAN if Myanmar was to chair the presidency.<sup>85</sup> Myanmar's decision was therefore hailed as a political victory for partisans of a punitive approach, particularly in the EU. According to the FTUB general secretary Maung Maung, the moratorium on high-level contacts ultimately led Myanmar to renounce its ASEAN chair.<sup>86</sup> Myanmar's poor human rights records had put such a constant strain on EU-ASEAN

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<sup>83</sup> For a comprehensive study of the 'ASEAN way', see: Haacke 2003.

<sup>84</sup> Interview 32.

<sup>85</sup> Camroux 2008: 21.

<sup>86</sup> Maung Maung: *Address of 29 April 2006*.

relations that even some ASEAN states pressured Myanmar to decline its ASEAN chairmanship.<sup>87</sup>

Unlike the Netherlands, however, other EU member states enforced the waiver on the visa ban. During the 2007 ASEM 6 summit in Helsinki, the Finnish Presidency eschewed a row with ASEAN by allowing the Myanmar representative to participate in the meeting. This decision stirred up controversy among human rights activists, some member states, and the European Parliament.<sup>88</sup> EU practice has moved towards accepting Myanmar's passive participation, for instance in the 2009 Vilnius ASEM meeting and the ASEM Energy Ministers meeting in 2009 in Brussels.

To conclude, the imposition of the visa ban has been fraught with inconsistencies. For principled stakeholders, the EU caved in to pressures from Asian counterparts.<sup>89</sup> For flexible actors, the visa ban was inconsistent insofar as principled member states like the Netherlands refused to apply the waiver, even when in the interest of the EU as a whole. This lack of coherence corroborates the liberal intergovernmental prediction that divergences among member states may undermine the consistency of EU foreign policy, despite regular social interaction among EU policy-makers. However, a pristine interpretation of liberal intergovernmentalism is limited because the lowest common denominator did not prevail in the long term.

An equivalent problem was posed when the Commission was mandated in 2007 to negotiate a Free Trade Agreement (FTA) between the European Community and the ASEAN states.<sup>90</sup> As ASEAN did not have a legal personality at that time (the ASEAN Charter entered into force only on 15 December 2008), such an agreement could only take the form of a 'multi-bilateral' treaty, where the European side as a block would negotiate parallel agreements with individual

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<sup>87</sup> Camroux 2006a: 28.

<sup>88</sup> Khaliq 2008: 197.

<sup>89</sup> Interview 41.

<sup>90</sup> Khaliq 2008: 189-190.

ASEAN countries. Nonetheless, the ASEAN countries staunchly opposed the exclusion of Myanmar.

A solution was found in a ‘staggered approach’: the EU would negotiate with all ASEAN members, but conclude agreements only with original members. Finalising the talks with Laos, Cambodia and Myanmar would be put on hold. The LDC-status already gave Laos and Cambodia unhindered access to the EU market.<sup>91</sup>

### 2.3. Germany’s Plea for Diplomatic Engagement

Representatives of the Auswärtige Amt criticised the visa ban, seeing that it constrained Berlin’s room for diplomatic manoeuvre when engaging with Myanmar. The ban prohibited high-level meetings with Myanmar officials, which Troika meetings could not substitute for.<sup>92</sup> Germany, however, did not formally propose a change of diplomacy to the Council.

Interviewees mentioned that suspending sanctions against Uzbekistan was a possible side-payment with the UK foreign office on Myanmar.<sup>93</sup> (In 2007, Germany persuaded other member states to lift sanctions on relatively compliant Tashkent. This served the purpose of maintaining German contingents in the Termez base, located in Southern Uzbekistan, to operate more safely in Western Afghanistan). Germany therefore remained critical of the EU’s approach towards Myanmar, but was disinclined to propose a concrete change of policy. This behaviour is a typical example of ‘log-rolling’, where German and British policy-makers agreed to support each other’s projects.

In addition to the bargain over Uzbekistan, German diplomats mentioned that the secondary objective of strengthening the EU’s identity also induced Berlin to

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<sup>91</sup> Interview 5.

<sup>92</sup> Interview 10; Hauswedell 2008; Pasch 2008; on the concept of room for manoeuvre in German foreign policy (*Handlungsspielraum*), see: Haftendorn 1989: 32-49; 2001.

<sup>93</sup> Interview 10.

compromise with the principled stance of other member states.<sup>94</sup> Germany's position is a case where a big member state 'upgraded' its national interest, so as not to paralyse EU foreign policy. This policy undermines liberal intergovernmentalism and recalls Katzenstein's characterisation of Germany as Europe's 'tamed power'.<sup>95</sup>

Another reason why Germany did not propose a change of foreign policy was that their interests were not accurately identified at the domestic level. The Auswärtige Amt's plea for engagement with Myanmar did not convince all German policy-makers. The Bundesministerium für Technische Zusammenarbeit (BMZ) tended to disagree, notably because of the Development Minister's (Heidemarie Wieczorek-Zeul, 1998-2009) attachment to ASSK. Bureaucrats also worried that political instability in Myanmar would lead to freezing a budget line otherwise earmarked for more stable Asian countries.<sup>96</sup> Despite the Auswärtige Amt's case for engagement, aid pledged by Germany has been inconsequently low, as exhibited in table 10. Table 11 shows that non-development aid increased between 2005 and 2011, but this was mainly a consequence of natural disasters that later hit Myanmar. Until 2012, the GIZ (formerly GTZ, the German agency for development) had no mandate to work in Myanmar.

**Table 10: German Assistance to Myanmar, 2002-2005 in €**

Year	Amounts
2002	1,000,000
2003	700,000
2004	1,825,000
2005	1,500,000 <sup>97</sup>

Source: Revel (2008: 57).

<sup>94</sup> Interviews 10 and 11.

<sup>95</sup> Katzenstein 1997.

<sup>96</sup> Interview 38.

<sup>97</sup> Funds pledged in 2004, not disbursed.

**Table 11: German Assistance to Myanmar, 2005-2011 in €**

<b>Total for 2005-2011</b>	<b>Average per year</b>
€21,687,228.94	€3,098,175.56

Source: Email Exchange 7.<sup>98</sup>

The Auswärtige Amt attempted to persuade other European countries to engage with Myanmar. The French ministry of foreign affairs was not convinced.<sup>99</sup> This unwillingness to open a dialogue with the SPDC is allegedly linked to the Quai d'Orsay's reluctance to be perceived as too complacent towards Myanmar. French policy was beset by an inherent contradiction between the safeguarding of Total's commercial interests on the one hand, and democracy promotion in an EU framework on the other. Diplomatic engagement suited neither objective.<sup>100</sup> Berlin did not even persuade its European partners to re-institute military attachés in the European embassies located in Yangon.<sup>101</sup> Nevertheless, trust building with the junta was more likely to initially take place via European army officers, rather than civilian diplomats.<sup>102</sup>

From 2005 onwards, German NGOs initiated second-track diplomacy independent from the government. Low profile confidence-building missions organised by German foundations (e.g. Friedrich-Ebert-Stiftung, Heinrich Böll Stiftung, and Konrad-Adenauer Stiftung) were explicitly endorsed by the Auswärtige Amt because these groups had a wider room for manoeuvre without affecting German diplomacy in the Council.<sup>103</sup> An FES delegation led representatives of Myanmar's foreign ministry, who toured the European

<sup>98</sup> Data per annum was unavailable. This amount covers: urgent and transitory assistance, private contractors, churches, and political foundations ('Entwicklungsorientierte Not- und Übergangshilfe (ENÜH), Private Träger, Kirchen und Politische Stiftungen').

<sup>99</sup> Interview 13.

<sup>100</sup> Interview 30.

<sup>101</sup> *Ibid.*

<sup>102</sup> EgretEAU 2009: 11ff.

<sup>103</sup> Interview 10.



institutions in 2006. According to Paul Pasch, who pioneered the FES confidence-building missions:

Another advantage of Track Two meetings is that, given their status as private citizens, participants can interact in a manner that is unconstrained by national interests or a need to communicate official positions.<sup>104</sup>

By comparison, an FCO representative conceded that the British civil society did not undertake Track Two missions, owing to a recalcitrant domestic climate.<sup>105</sup>

Myanmar eventually opened an embassy in Brussels in 2006, which was accredited to the Benelux countries. However, the embassy's activities remained largely limited to contacts with the Commission and the EEAS, and to consular issues. The embassy had no mandate to serve the purpose of brokering a formal dialogue with the EU. This reflects the impotence of the ministry of foreign affairs in the SPDC's 'sultanic' political regime.

### **3. The 2007 Uprising**

#### **3.1. Events in Myanmar**

After seventeen years of political deadlock since the 1990 elections, the 2007 uprising was the only significant mass protest since 8.8.88. As in 1988, flawed economic policies acted as a catalyst for the political protests.<sup>106</sup> In August 2007, the SPDC removed fuel subsidies. This measure triggered a dramatic hike in fuel prices and stymied the supply chain in the country. Activists from the 88-generation, who had been recently amnestied and freed from prison, started protests on 15 August 2007. The protests reached their climax when thousands of monks joined the demonstrators in the country's main cities on 18 September,

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<sup>104</sup> Pasch 2009: 3ff., In: Kramer 2009.

<sup>105</sup> Interview 3.

<sup>106</sup> Egreteau 2007: 19. Renaud Egreteau contended that the expression 'Saffron Revolution' coined by Western media did not reflect the original aspirations of the protests, which were not religious and initially focused on economic empowerment. See also: Zöllner 2008.

and demonstrated *en masse* against the government's decision. The EU explicitly warned the SPDC that it would:

[...] not hesitate to reinforce and strengthen the existing sanctions, should they [the authorities in Naypyidaw] resort to using violence against the unarmed and peaceful demonstrators.<sup>107</sup>

Despite the international community's requests for restraint in handling the peaceful demonstrations, military forces started cracking down on the protests on 26 September 2007. Credible sources reported about 31 casualties and 74 disappearances.<sup>108</sup> Demonstrators were imprisoned, monasteries raided, and an unknown number of monks who took part in the protests defrocked.<sup>109</sup>

### 3.2. The EU's Reaction

The EU and the USA issued an official joint declaration condemning the SPDC on 26 September 2007. The two sides expressed 'their solidarity with the people of Burma/Myanmar' against the junta's clampdown on 'peaceful demonstrators' in a 'joint EU-US Statement on Burma/Myanmar'.<sup>110</sup> In October 2007, the EU and US stepped up sanctions against the regime in reaction to the clampdown on the people's mass demonstrations.

#### 3.2.1. Ban on Timber-Metals-Semi/Precious Stones (2007)

The compliance hypothesis seems corroborated by a direct cause-and-effect relationship between the target's reprehensible behaviour and sanctions. The EU

<sup>107</sup> Council of the EU, 25 September 2007: *Declaration*.

<sup>108</sup> Pinheiro 2007.

<sup>109</sup> A conservative interpretation of *Theravada Buddhism* forbids monks to engage in political life. The government accused monks who took part in the protest of being 'bogus monks'. It is also in this spirit that the junta barred the clergy (approximately 500,000 persons) from voting on the constitutional referendum held in May 2008 (1947 Constitution, Art. 76(4); 1974 Constitution, Art. 178(1); 2008 Constitutional Referendum Act).

<sup>110</sup> Council of the EU: *Statement of 26 September 2007*.

High Representative had underlined on 3 October 2007 that sanctions had compliance as their objective:

[...] [The EU's] decision to increase the sanctions that are already on Myanmar to see if that way we can help to bring about a change in the position of Myanmar.<sup>111</sup>

During its meeting on 15-16 October, the Council of the EU officially stated that the junta's 'brutal crackdown on demonstrators' would ignite tougher sanctions.<sup>112</sup> It is noteworthy that, for the first time ever, penalties were not explicitly supporting the NLD, whose leadership was not involved in the 2007 demonstrations.<sup>113</sup> The Council announced it would extend the list of persons subject to the visa ban and asset freeze, impose a (non-retroactive) ban on investment in state-owned enterprises, and proscribe EU investment in Myanmar enterprises engaged 'in the industries of logging, timber and mining of metals and minerals, precious or semi-precious stones', as well as trade with these industries.<sup>114</sup> While announcing its decision to step up sanctions, the EU re-affirmed its commitment for dialogue with the regime:

The EU again expresses its readiness to assist Burma/Myanmar in its process of transition. The EU regrets that the Burmese government has made this impossible so far. Should this situation improve, the EU stands ready to review the restrictive measures, to engage with Burma/Myanmar in its development and to find new areas of cooperation.<sup>115</sup>

These sanctions were imposed on 19 November 2007 with the adoption of Common Position 2007/750/CFSP. Therefore, they fulfil the functions of 'punishment' (i.e. punishing the junta's behaviour), as well as 'compliance' (i.e. changing the SPDC's domestic policy) outlined by Doxey.<sup>116</sup> The imposition of

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<sup>111</sup> Solana 2007: 8.

<sup>112</sup> Council of the EU: *Conclusions of 15-16 October 2007*: point 1.

<sup>113</sup> Council of the EU: *Common Position 2007/750/CFSP of 19 November 2007*.

<sup>114</sup> Council of the EU: *Conclusions of 15-16 October 2007*: point 6.

<sup>115</sup> *Ibid.*, point 10.

<sup>116</sup> Margaret Doxey 1996: 55.

economic penalties undermines hypotheses based on a rationalist explanation of EU foreign policy-making like liberal intergovernmentalism.

The UK had initiated the imposition of this ban by the EU, so that the large member states hypothesis is not completely disconfirmed. PM Gordon Brown officially stated his commitment to the following course of action: 'Securing tougher EU sanctions'; 'supporting Secretary General Ban [...]'; 'maintaining the UN Security Council's active vigilance and engagement [...]'; and 'continuing to use my contacts with leaders in the region to encourage them to play their part with the Burmese leadership'.<sup>117</sup> Domestic groups, like the Burma Campaign UK, welcomed the PM's statement.<sup>118</sup> In fact, the PM had personally phoned the FCO to ratchet up penalties. The FCO had to represent the PM's decision in the Council of Ministers, although diplomats had conveyed some scepticism with regards to the effectiveness of yet tougher sanctions.<sup>119</sup>

In conformity with the large member states hypothesis, France's change of position also allowed the hardening of economic sanctions in reaction to the 2007 mass protests proposed by the UK. France's tone towards Myanmar hardened following Nicolas Sarkozy's election as President in May 2007, and the nomination of Bernard Kouchner as foreign minister on 17 May 2007. The new foreign minister took the Myanmar issue on as a personal cause. In 2003, Total had employed the co-founder of Médecins Sans Frontières (MSF) and then member of the Socialist Party as a consultant; in the post, Kouchner conducted an enquiry into Total's implementation of the company's Corporate and Social Responsibilities (CSR) in its Yadana operations.<sup>120</sup> He then dismissed allegations of London-based NGO Earth Rights International regarding Total's complicity in the use of forced labour by the Myanmar regiments who ensured security for the

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<sup>117</sup> Brown 2007: *PM Statement on Burma*.

<sup>118</sup> BC UK, 15 October 2007.

<sup>119</sup> Interviews 3 and 46; House of Commons, 10 October 2007: *Examination*, question 403.

<sup>120</sup> Black 2009.

construction of the Yadana pipeline.<sup>121</sup> The French government vocally condemned the clampdown on the peaceful protests. On 10 October 2007, Sarkozy and Kouchner welcomed Dr. Sein Win – the NCGUB Prime Minister – in the Elysée. This date marked the first official encounter between a French head of state and the Myanmar opposition, signalling a national policy change. Sarkozy showed receptiveness to the issue of economic sanctions, including investment bans.<sup>122</sup>

Beyond Sarkozy and Kouchner's sympathy for the pro-democracy movement, this change of position was to some extent related to domestic politics. The new President laid more emphasis on promoting popular human rights causes than his more traditionally Gaullist predecessor Jacques Chirac. Civil society representatives met with Kouchner in October 2007 to request tougher sanctions. Info Birmanie organised demonstrations with other civil society groups to put pressure on the government to react to the repression of 2007. Classic intergovernmentalism thus justifies this change of French policy, as the policy change was instituted by a new government that shifted preferences.<sup>123</sup>

Germany compromised with other member states so as not to paralyse EU foreign policy. At first glance, this adaptation does not match the expectations of liberal intergovernmentalism. Berlin first refused to increase economic sanctions, but then agreed after having formally requested that the measures would not have harmful repercussions on the population of Myanmar. This change of position owed to the interaction with other member states, in particular the UK. Blocking restrictive measures would have negatively impacted on Germany's image in the backdrop of the SPDC's despicable behaviour.<sup>124</sup> Liberal intergovernmentalism, however, is not necessarily falsified. A possible bargain

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<sup>121</sup> Kouchner, 29 September 2003. For an academic assessment of Total's CSR programme, see: Black's PhD thesis (2009).

<sup>122</sup> Interview 43. It seems the French President was at the time unaware that the investment boycott suggested by Dr. Sein Win could have entailed repercussions on Total's Yadana operations (*Ibid.*).

<sup>123</sup> Hoffmann 1966: 905.

<sup>124</sup> Interview 28.

with the UK over Uzbekistan could explain why Germany did not veto the UK's initiative.<sup>125</sup> Further, Germany compromised on its initial stance as it did not have material interests in Myanmar.

Although insignificant from a macro-economic perspective, the economic costs of the penalties contradict the rationalist claim that EU member states focus on economic gains. This policy change crippled small European businesses active in the targeted sectors. Some had to withdraw or reduce their activities after the 2007 sanctions were enforced.<sup>126</sup> Policy-makers accepted to inflict economic damage on some European Small and Medium Enterprises (SMEs), in order to gain the symbolic prestige of condemning the SPDC's violent repression.<sup>127</sup>

### 3.2.2. Impact of EU Measures

The ban on companies involved in specific industries has been criticised for being hastily put together.<sup>128</sup> Of the 1,207 businesses targeted in Annex V of the February 2008 measures, most are family businesses with no proven affiliation to the state or the military junta.<sup>129</sup> The common position neither justifies why these companies have been targeted, nor did it initially inform them of their placement on the list of targeted entities. This lack of communication deprived the targeted companies of legal recourse to contest the sanctions that affected them. This denial has been interpreted as a human rights violation.<sup>130</sup> It was only in April

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<sup>125</sup> *Ibid.*

<sup>126</sup> Interview 6.

<sup>127</sup> Dorussen and Mo 2001.

<sup>128</sup> Tonkin, 29 November 2007: 1; Tonkin, 2 February 2010; Interviews 2 and 6.

<sup>129</sup> Frittin and Swanström 2010a: 3; European Commission: *Regulation No.385/2008 of 28 April 2008*.

<sup>130</sup> Tonkin 29 November 2007: 1. This case is reminiscent of the case of the *Organisation des Modjahedines du Peuple d'Iran*, whereby the Court of First Instance eventually annulled, on 12 December 2006, the Council's Decision ordering the freezing of the funds belonging to this organisation (Court of First Instance of the European Communities, Press Release No° 97/06 of 12 December 2006). In Myanmar's case, however, targeted companies did not appeal against the Council's Decision. In a different case, Pye Phow Tay Za (the son of Tay Za, a billionaire actively supporting the Myanmar junta), appealed against the visa ban and asset freeze levied against him by the EU in 2008 - and won the case in March 2012, when the European Court of justice

2008 that the EU informed them, thus giving them the opportunity to appeal against the EU's decisions.<sup>131</sup>

One of the political secretaries in the UK embassy in Yangon had identified the companies targeted from an edition of the Myanmar business directory (*Myanmar Yellow Pages*). This list from the *Yellow Pages* was forwarded to the Council in Brussels as a basis for political decision, which published the same list in the common position without substantial change.<sup>132</sup> The blunder was recognised after publication of the common position. Approximately 100 duplicate companies have been subsequently removed from the ban in 2011.<sup>133</sup> This *faux-pas* shows that member states' bureaucracies were unprepared for tougher sanctions when instructions suddenly came from London and Brussels.

The ban's lack of impact supports the argument that the policy was cobbled together. The 2007 import, export, and investment ban on timber, metals, and semi-precious and precious stones hardly affected Myanmar's market, which has mainly local and regional coverage. Stones and timber from Myanmar are generally exported as raw products to Thailand, India, China, and Hong Kong, where they are processed. The added value in the processing legally changes the origin of the final product.<sup>134</sup> As a consequence, the ban did not really affect Myanmar's trade with the EU. The ban on metals, in particular, could be considered an ill-conceived measure. Prior to 2007, Eurostat did not record any trade in metals between the EU and Myanmar. In short, a non-existing sector had been banned.<sup>135</sup>

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annulled the 2008 Decision. The European Court of Justice argued: 'Sanctions adopted by the Council in relation to a third country cannot be applied to natural persons solely on the ground of their family connection with persons associated with the leaders of that country' (Democratic Voice of Burma, March 2010). Sanctions thus face an intractable dilemma between achieving political objectives (hurting the target) and respecting the human rights of targeted persons.

<sup>131</sup> Council of the EU, 30 April 2008: *Notice*.

<sup>132</sup> Tonkin, 29 November 2007: 1; Tonkin, 2 February 2010; interviews 2 and 46.

<sup>133</sup> Interview 6.

<sup>134</sup> Tonkin, 29 November 2007; Tonkin, 2 February 2010; United States Government Accountability Office 2009.

<sup>135</sup> Interview 6.

Under the current system, the central government and some bodies in ethnic areas receive income from issuing timber harvesting permits. These exclusively local financial circuits are beyond the reach of international sanctions. Timber harvested from areas under direct or indirect control of central government is brought to Yangon and traded solely from there; buyers are exclusively from the region. Timber harvested elsewhere in the country finds its uncontrolled way into neighbouring countries.<sup>136</sup>

The ban on companies engaged in logging contradicted the spirit of Common Position 2004/730/CFSP. This common position provided the EU with a mandate to engage Myanmar on the problem of 'non-sustainable, excessive logging resulting in deforestation'.<sup>137</sup> During the 2008 Cyclone Nargis crisis, the ban on purchasing products from local timber businesses impeded the delivery of assistance (i.e. wooden windows and door frames for resettlement sites), until the common position was amended.<sup>138</sup>

The timber ban contradicted the goal of helping a Myanmar middle class emerge. There is evidence of unemployment resulting from timber processing businesses closed down due to lack of export opportunities in Europe. The Commission received complaints from EU timber merchants and manufacturers who were forced to close their businesses in Myanmar.<sup>139</sup> Confirmed job losses in these cases exceed several hundred and may well go into the thousands. There are credible reports of skilled workers seeking employment in Thailand where they have been exploited.<sup>140</sup>

By the same token, Thai companies benefit from timber imported into Thailand for processing and re-exporting. WTO-compatible rules of origin legally transform Myanmar logs into 'Thai' garden furniture, which then reaches Europe under the

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<sup>136</sup> Interview 22.

<sup>137</sup> Frittin and Swanström 2010a: 2.

<sup>138</sup> House of Lords, 25 March 2010: *Press Notice*; House of Commons: *Explanatory Memorandum of 11 March 2010*.

<sup>139</sup> Interview 6.

<sup>140</sup> *Ibid.*



GSP for Thailand. In short, EU timber sanctions punish small and medium size companies in Myanmar, and indirectly benefit the neighbouring country.

The EU's Forestry Law Enforcement, Governance and Trade (FLEGT) programme helps timber exporting countries in certifying the legality of their timber harvests. It prevents deforestation and helps secure local income from sustainable (and thus legally) harvested timber. Myanmar, although having expressed interest in the system, could not become a beneficiary as long as there were timber sanctions in place. Although the livelihoods of thousands of farmers depend on forests, EU timber sanctions prevented the EU from working to redress this situation, despite a programme available for that purpose.

### 3.2.3. The EU Special Envoy (2007)

Following the 2007 uprising, Javier Solana appointed Italian MP Piero Fassino as 'EU Special Envoy for Burma/Myanmar' on 6 November 2007. This appointment stressed 'the importance that the EU attaches to the improvement of the situation in Burma/Myanmar'.<sup>141</sup> Sweden had initially suggested the idea of a high-level EU representative for Myanmar in 2005. It was raised by the Taylor-Pedersen Report and independent political activists.<sup>142</sup> The European Parliament supported it.<sup>143</sup>

The category of an EU Special Envoy was entirely new. The Amsterdam Treaty foresaw the nomination of two types of representatives. A 'Special Representative' was nominated by the Council, funded by the Commission under the CFSP budget. A 'Personal Representative' was nominated by the EU High Representative (Solana), and funded by the Council Secretariat's budget.<sup>144</sup> The category of 'Special Envoy', by contrast, is not mentioned in the Treaty. The

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<sup>141</sup> Council of the EU, 14 December 2007: *Presidency Conclusions*.

<sup>142</sup> R. Taylor and Pedersen 2005.

<sup>143</sup> See: Hristov 2009: 183.

<sup>144</sup> Interview 6; Amsterdam Treaty 2007, Art. J.8; Grevi 2007: 10-11.

Special Envoy had therefore to be funded by Italy, with a small complementary budget line from the Council to finance his travels.<sup>145</sup>

Other member states had not been consulted on this initiative taken by HR Javier Solana. Likewise, the Commission was taken by surprise.<sup>146</sup> FCO representatives and MPs complained that the Foreign Office was not even informed prior to his appointment, a decision which primarily involved the Council Secretariat and the Italian government.<sup>147</sup>

Piero Fassino's appointment was closely linked to Italian domestic politics, as the position was given in order to 'reward' him with a prestigious assignment in Brussels. Fassino was national secretary of the Democrats of the Left party (DS), which he agreed to dismantle and merge into the Democratic Party on 14 October 2007. In conformity with intergovernmental bargaining theories, it has been speculated that this nomination induced Italy not to oppose the parallel imposition of economic sanctions in October 2007.<sup>148</sup>

The Envoy had a limited mandate: his main remit was to strengthen the role of the United Nations Secretary General (UNSG) Special Advisor Ibrahim Gambari, by articulating the EU's common policy towards Myanmar. Since his appointment, Fassino has been touring European and Asian capitals, Washington and New York in order to coordinate the various international approaches towards Myanmar (the UN, the USA, China, India, Australia and the ASEAN member states).

At the time of appointment, HR Solana did not notify the Myanmar side of the nomination. This negligence has beset the Envoy's mission.<sup>149</sup> The Myanmar authorities repeatedly denied Fassino an entry visa, because they had not been informed that the EU had appointed a Special Envoy. Furthermore, his mandate

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<sup>145</sup> Interview 6.

<sup>146</sup> *Ibid.*

<sup>147</sup> Interview 16; House of Lords, 8 January 2008: *Examination of Witness*, Question 623.

<sup>148</sup> Interview 46.

<sup>149</sup> Interview 6.

was obfuscated by overlaps with the mission of the Special Representative of the UNSG, Ibrahim Gambari.<sup>150</sup>

The Envoy could later take part in meetings held multilaterally (Hanoi) and bilaterally (Copenhagen and Phnom Penh), thanks to the mediation of then External Relations Commissioner Benita Ferrero-Waldner. At the ASEM summit in Brussels (October 2010) and at FAO meetings in Rome (2010), Piero Fassino could meet Myanmar's foreign minister and the agriculture minister. Fassino has been able to enter Myanmar only in June 2011, a few weeks before his mandate expired.

Journalists have criticised Fassino for adding limited value to the democratic transition process, for undermining Gambari's mission, and for lacking an adequate public relations strategy towards the SPDC.<sup>151</sup> However, a fair evaluation of his efforts needs to look at the contextual shortcomings: the Council Secretariat's negligence of notifying his appointment to the authorities gave the latter an easy motive to keep Fassino at bay. More strategically, his appointment may be seen against the absence of a diplomatic EU presence in Myanmar, which undoubtedly would be of more sustained value than a Special Envoy, even if such a European national politician were to travel to the country from time to time.

#### **4. EU Assistance in Contradiction with US Policy**

##### **4.1. The Three Diseases Fund (2005-2007)**

As part of its double track approach, the EU scaled up aid levels to Myanmar while reinforcing sanctions on the regime. The Commission and some member states launched a Three Diseases Fund (3DF) nearly two years after the decision to allow for increased aid had been taken. Although initiated by the European Commission with the support of some EU member states, the 3DF was not

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<sup>150</sup> *Ibid.*

<sup>151</sup> Jagan, 4 February 2008.

specifically an 'EU programme'. With financial contributions from Australia and Norway, it was managed by UNOPS, which acted as a neutral administrator. It pulled together funds from donors who were willing to increase aid given in Myanmar.

A UN initiative, the Global Fund for HIV/Aids, Tuberculosis and Malaria, had dedicated \$98.4 million over a period of five years (2003-2008) to address these three pandemics in Myanmar.<sup>152</sup> Due to political pressure from the US Congress and the Bush administration, but quoting shaky cooperation with the SPDC as a reason, the Global Fund terminated all of its grants to Myanmar by the end of 2005, and cancelled further aid.<sup>153</sup> The boycotting of aid has been constantly upheld by the US.

The Commission and some EU member states, all of which had been pushing for the Global Fund to enter Myanmar, strongly opposed US pressure on the Fund and the ensuing decision to terminate assistance to suffering people. As an answer to the decision they viewed as irresponsible, the Commission initiated the 3DF with additional contributions from the UK, the Netherlands, Sweden, Norway and Australia, in order to fill in the vacuum left by the Global Fund's withdrawal.<sup>154</sup> Its objective was the same as the Global Fund, but its structure enabled the 3DF to rely solely on voluntary donations. Hence, it could operate independently from contributors reluctant to work in Myanmar. By the end of 2006, the 3DF had gathered a total budget of \$100 million for a period of five years (2007-2012). The UK alone contributed £20 million to the 3DF.<sup>155</sup> On 15 November 2009, the Global Fund announced its decision to return to Myanmar with \$110 million.<sup>156</sup>

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<sup>152</sup> Global Fund 2005.

<sup>153</sup> Interview 16; Petrie 2008: 16; Tonkin, 24 October 2009.

<sup>154</sup> Interview 7.

<sup>155</sup> *Myanmar Times*, 15 - 21 December 2008.

<sup>156</sup> Deutsche Presse Agentur, 15 November 2009.

Thus, the EU did not bandwagon with the US in this instance. But from a neo-realist perspective, this position, contradicting US action (under the initiative of US legislators, such as Senator John Mac Connick, Dana Rohrabacher, or Ileana Ros-Lehtinen), was possible because the 'humanitarian' sector did not carry strategic weight for transatlantic relations. Otherwise, traditional European allies of the US – like the UK and the Netherlands – would have been unlikely to take part in this initiative without raising objections from their national parliaments. Thus confirming intergovernmental<sup>157</sup> and neo-realist<sup>158</sup> predictions, this case does not support the view that the EU necessarily acts as a unitary actor in international relations. Only the UK, the Netherlands, and the Commission first participated in the 3DF.<sup>159</sup> Most EU member states decided to opt out, whereas non-EU states (i.e. Norway and Australia) were allowed to participate in the scheme.

Rationalist approaches, however, cannot explain why the 3DF was founded in the absence of economic interests or domestic pressures. Domestic groups in the UK and Netherlands were actually revising their stance. European pressure groups effectively supported an increased delivery of humanitarian aid, but only if it respected the rules of transparency. Nevertheless, these lobby groups did not initiate the establishment of the fund. Rationalist approaches are also limited in accounting for the entrepreneurial role of the Commission.

The constructivist model of policy-making as learning process can be confirmed here.<sup>160</sup> The 3DF was created in order to enhance the policy's effectiveness and in contradiction with exogenous dynamics and previous practices of aid suspension. This would also show that policy feedbacks are more likely to be taken into account in sectors which are less affected by domestic and exogenous pressures. Adoption of the 3DF could be perceived as demonstrating the role of ideas (such as promoting basic human rights on the

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<sup>157</sup> Moravcsik 1993a; 1998; Bicchi 2007.

<sup>158</sup> Pijpers 1991; Grieco 1995; Fulvio 2003; Gegout 2003; Hyde-Price 2006.

<sup>159</sup> Kramer 2009.

<sup>160</sup> Hecló 1974: 305-306; Hall 1993: 275-281; Checkel 2001: 53-59; Christiansen *et al.* 2005: 3ff.

ground) ‘as sources of perceived interests’.<sup>161</sup> Paul Sacks underscored that the ‘politics as learning approach’ implies that elements within the policy-making system ‘act in pursuit of the national interest’, and thus overcome an eventual opposition from exogenous actors (e.g. in the present case the US Congress).<sup>162</sup> This perspective derived from constructivism can be coupled with insights from neo-functionalism in order to place emphasis on the role of the Commission in promoting policy change.<sup>163</sup> The change was induced by the role of ideas (rather than material interests), and the combined entrepreneurship of the Commission, UK, and Netherlands. Unlike the technical decision to implement the 3DF, EU policy in the aftermath of Cyclone Nargis was characterised by a dissonance of voices.

## **4.2. Cyclone Nargis and Incoherent EU Policy (2008)**

### **4.2.1. The Natural Disaster**

On 2 and 3 May 2008, Cyclone Nargis struck the Myanmar coast and moved inland into the Ayeyawady delta to the Southern Yangon division. The death toll from the hurricane was officially 84,537 with 53,836 people missing and 19,359 injured.<sup>164</sup> International agencies estimated the number of persons displaced by the destructions to be 2 million.<sup>165</sup> The government first refused to grant visas to most international aid workers. Following an isolationist foreign policy inherited from the Cold War, Myanmar authorities sought to prevent an uncontrolled intrusion of foreign aid workers into the country.<sup>166</sup>

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<sup>161</sup> E. Haas 2001: 29.

<sup>162</sup> Sacks 1980: 358.

<sup>163</sup> Cram 1997; E. Haas 2001; Bicchi 2002; 2007.

<sup>164</sup> Tripartite Core Group 2008: 1. Opposition sources almost doubled the official numbers of casualties, claiming that Nargis took the lives of at least 140,000 people (*Irrawaddy*, December 2008).

<sup>165</sup> BBC News, 6 June 2008.

<sup>166</sup> Haacke 2009: 162ff.; Selth 2008a. It is alleged that this priority given to national security, which bore dramatic humanitarian consequences, later led to dissensions within the army. This may have strengthened the power base of *Blandos* (or soft-liners) around figures such as

The government did not revise its plans to hold a country-wide referendum on the Constitution, scheduled for 10 May 2008. The vote was postponed to 24 May in the most affected areas of the Ayeyawady Division. Some 27,288,827 voters were eligible to vote in the 2008 Referendum.<sup>167</sup> The referendum recorded a less than credible 92.48 percent vote in favour of the Constitution, in which the military would continue to dominate for the foreseeable future. This vote was condemned by the international media. The EU abstained from expressing very harsh criticisms, as the regime was already reluctant to allow foreign assistance in the aftermath of Cyclone Nargis.

#### 4.2.2. EU Diplomacy

During the Nargis humanitarian crisis, national diplomacy of member states prevailed over a common European diplomacy. The Special Envoy could not obtain a visa to Myanmar. Big member states as well as the Commission did not agree on a common policy. The divergence of interests undermined the role of the Commission.

On 7 May, Bernard Kouchner invoked the conventions of the Responsibility to Protect (RtoP).<sup>168</sup> The US, the UK, and France later dispatched ships to the Bay of Bengal, ready to send helicopters with relief materials.<sup>169</sup> The tone soured when, on 16 May, Myanmar's UN ambassador Kyaw Tint Swe accused France of deploying a 'warship' to the Myanma coast. France's ambassador to the UN, Jean-Maurice Ripert, retorted that Myanmar's refusal to allow aid into the country 'could lead to a true crime against humanity.'<sup>170</sup> In the midst of the crisis, Paris

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General Thura Shwe Mann and General Thein Sein, who were later instrumental in pushing for reforms after the 2010 election (Interview 27).

<sup>167</sup> Tonkin 2 October 2010.

<sup>168</sup> Ripert (French ambassador to the UN): *Déclaration of 7 May 2008*.

<sup>169</sup> These boats were namely: the British HMS Westminster, the French Mistral and four ships of the US seventh Fleet: USS Essex, USS Juneau, USS Harpers Ferry and USS Mustin (*USA Today*, 19 May 2008; Haacke 2009: 163ff.).

<sup>170</sup> BBC News, 6 June 2008.

had acted on its own initiative without consulting its European counterparts. UK Prime Minister Gordon Brown seemed to subscribe to the French position. He accused the ruling junta of allowing the disaster to grow into a 'man-made catastrophe' through its failure to act.<sup>171</sup>

France's UN ambassador argued that RtoP regulations could justify a humanitarian intervention.<sup>172</sup> But the revised draft outcome document of the High-level Plenary Meeting of the General Assembly does not mention cases of non-assistance to populations hit by a natural disaster. It only foresees cases of 'genocide, war crimes, ethnic cleansing and crimes against humanity'.<sup>173</sup> The French initiative to bring Myanmar's situation before the UNSC was therefore vetoed not only by China and Russia, but also by ASEAN's largest member, Indonesia.<sup>174</sup> The European inability to secure ASEAN's support even in the case of an overwhelming humanitarian disaster demonstrates the limitations of the EU-ASEAN dialogue, where divergent views on national sovereignty remain 'a major stumbling block towards interregional cooperation'.<sup>175</sup>

The UK distinguished its position from the one proposed by France, although PM Gordon Brown and Foreign Secretary David Miliband sympathised with the French initiative. Its permanent representative to the UN, John Sawers, had already clarified on 8 May 2008 that the 2005 agreement '[...] relates to acts of genocide, war crimes, crimes against humanity and so forth, rather than government responses to natural disasters'.<sup>176</sup> Further pursuing an incoherent debate, France and the UK were unable to coordinate their policies.<sup>177</sup>

As a consequence, the EU Special Envoy could not represent a common European position internationally, in addition to being unable to enter Myanmar.

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<sup>171</sup> *Ibid.*

<sup>172</sup> Ripert: *Déclaration of 7 May 2008*.

<sup>173</sup> United Nations General Assembly 2005: *World Summit*.

<sup>174</sup> Camroux 2008: 22.

<sup>175</sup> *Ibid.*

<sup>176</sup> International Coalition for the Responsibility to Protect 2008.

<sup>177</sup> Haacke 2009: 165ff.



On 13 May, the Council of the EU rhetorically subscribed to the possibility of humanitarian intervention by vowing to support any UN initiative, which implicitly revealed the EU's inability to offer practical solutions to the political stalemate.<sup>178</sup> In-line with the large member states hypothesis, EU foreign policy maintained the *status quo*.

The EU's reaction could also be interpreted from a realist perspective.<sup>179</sup> A former UN envoy argued that in addition to legal issues, security concerns had dissuaded Western governments from using the RtoP framework.<sup>180</sup> During a private UNSC meeting, Western countries discussed the likelihood of military retaliation by Myanmar security forces on French, British, or American workers operating without permission from the national authorities, or a UNSC mandate for humanitarian intervention. The quandary was that humanitarian intervention could have ignited a confrontation with Myanmar anti-aircraft forces. Escalation at the regional level and conflagration with China could not be excluded. PM Gordon Brown thus revised his position. He stated on 21 May:

[...] food drops or other drops of aid would be counter-productive and [...] military intervention would be counter-productive at this time. Let us hope, and let us push the ASEAN effort forward.<sup>181</sup>

The consequences of a military-led humanitarian intervention were considered too risky, due to the fragile balance of power in a region dominated by China and India.

#### 4.2.3. Increase in Aid after Cyclone Nargis

During a 13 May 2008 Council meeting on Myanmar, ECHO-Commissioner Louis Michel announced his intention to visit the country in order to evaluate the humanitarian situation. No minister objected, so that Michel left for Yangon in the

<sup>178</sup> Council of the EU: *Meeting of 13 May 2008*, par. 1. See also: Haacke 2009: 166.

<sup>179</sup> Stephens, 16 May 2008.

<sup>180</sup> Conference address at the London School of Economics (Chatham House rule).

<sup>181</sup> Lunn *et al.* 2008: 55.

following days.<sup>182</sup> In a quasi-competition with the Commission, the UK felt its representative had to go to Myanmar, too. It announced its intention in the Council of Ministers. The FCO minister for Asia arrived in Yangon on 17-18 May 2008. He met with Myanmar line-ministers in charge of the emergency response.<sup>183</sup> The development ministers of the Netherlands, Sweden and Denmark also followed suit.<sup>184</sup> The EU's inability to project its collective power vis-à-vis Myanmar and ASEAN led EU members to privilege their national diplomacy to a more coherent defence of human rights in an EU framework.

These successive visits demonstrate that the moratorium on high-level visits to Myanmar could be informally waived as long as the Council was informed and did not raise formal objection. This contradicted interpretations from German officials, who initially understood that the moratorium on high-level visits could not be waived.<sup>185</sup> As a matter of fact, it could be asked whether these visits of member states' national representatives were in the interest of the EU as a whole (reflecting an 'upgraded European interest'), or solely of the EU member states who had sent their own Envoy.

As a consequence, the EU contributed 60 percent of Myanmar's post-cyclone Nargis relief.<sup>186</sup>

The Commission funding for the initial emergency phase of Cyclone Nargis amounts to €17 million for 1.4 million beneficiaries in seven sectors: shelter, food, water, sanitation, health, nutrition, protection and logistics.<sup>187</sup>

The UK pledged £45 million on 3 November 2008 – the biggest sum for any single donor.<sup>188</sup> France allocated €2 million in humanitarian aid in the aftermath

<sup>182</sup> Council of the EU: *Extraordinary Meeting of 13 May 2008*.

<sup>183</sup> Black 2008. In contrast with other policy areas where the UK tends to rigorously implement EU legislation (S. George 1992; 1994; Dimitrakopoulos and Richardson 2006: 337ff.), the UK has made exceptions to the visa ban – in contrast to a flexible member state like Germany who has not. For instance, the General Aye Kyaw, a serving SLORC minister, was permitted a visa to the UK for medical treatment in July 1996 (IDEA 2001: 140, footnote 204).

<sup>184</sup> Hristov 2009: 151.

<sup>185</sup> Interviews 20 and 28.

<sup>186</sup> *Bangkok Post*, 22 October 2009.

<sup>187</sup> European Commission April 2009: *Aid in Action*.

of Nargis.<sup>189</sup> Paradoxically, member states generally perceived as more lenient (e.g. France, Germany, Italy or Austria) did not increase assistance as substantially as principled ones. However, on another emergency response track – the Commission-led Monitoring Information Centre (MIC) – flexible states like Austria and Slovakia were the first and main donors to send relief items.<sup>190</sup>

The increase in aid continued even after Cyclone Nargis. The Commission provided an additional €22 million to address complementary needs linked to food security. From 2008 to 2010, ECHO provided an emergency assistance of €39 million (\$52.5 million).<sup>191</sup> In 2008-2009, DFID's total financial commitment exceeded £57 million. The sum was made up of £45 million for emergency relief following Cyclone Nargis in May 2008, and £12.5 million for long-term humanitarian assistance programmes.<sup>192</sup> DFID's total financial allocation for 2009-2010 was £25 million and £28 million for 2010-2011. Other funds were available since 2009, such as the agricultural multi-donor trust fund LIFT (Livelihoods and Food Security Trust Fund). The major contributors are, in decreasing order: the UK, the Commission, Sweden, the Netherlands, Australia, and Germany.<sup>193</sup>

The large member states hypothesis cannot explain why the Commission and several member states scaled up aid levels in the aftermath of Cyclone Nargis. This increase was not motivated by direct material benefits. No bargaining process was needed among member states, which increased aid because of the acute humanitarian needs. Interaction at the EU level has therefore contributed to shaping national foreign policy. The consensus hypothesis accounts for ideational motivation and leadership. Ideational factors have featured a genuine motivation in the EU's humanitarian policy since 2004.

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<sup>188</sup> DFID November 2008; DFID 2010: *UK Aid*.

<sup>189</sup> French Ministry of Foreign and European Affairs: *Communiqué of 25 May 2008*.

<sup>190</sup> Email exchange 5.

<sup>191</sup> IRIN 2010.

<sup>192</sup> DFID July 2010: *Overview*.

<sup>193</sup> *Ibid.*; European Commission, December 2009: *Food Security*; Kramer 2009: 56.

## 5. The 2010 Elections and Aung San Suu Kyi's Release

### 5.1. Renewal of Aung San Suu Kyi's Prison Sentence (2009)

#### 5.1.1. Domestic Events

The direct link between sanctions and ASSK's detainment was borne out again on 13 August 2009.<sup>194</sup> ASSK was convicted on 11 August 2009 for breaking the conditions of her restricted residence by allowing an American citizen, John W. Yettaw, to stay uninvited at her home in May 2009. The reasons that led ASSK to allow an unknown intruder to stay on her premises remain unclear.<sup>195</sup>

ASSK was sentenced to three years' hard labour. At the very moment the verdict was read out, a Directive from SPDC Chairman Than Shwe instantly commuted the prison sentence to eighteen months house arrest.<sup>196</sup> ASSK appealed to Myanmar's Supreme Court against the extension of her house arrest sentence. The appeal was eventually rejected on 1 March 2010. It was alleged that this extension of her house arrest term barred her from contesting the 2010 elections, but this assertion had never been tested by a legal challenge, i.e. by checking her name in the voters' register and eventually seeking judicial remedy.

#### 5.1.2. The EU's Reaction

This rejection sparked yet another outcry from EU member states, the European Parliament, and the High Representative. They made 'a strong plea [to the Myanmar authorities] to heed the appeals of the international community'.<sup>197</sup> The EU widened its visa ban and asset freeze to those responsible for the verdict.<sup>198</sup> This immediate reaction to the 2009 sentence owes to the strong

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<sup>194</sup> Council of the EU: *Common Position 2009/615/CFSP of 13 August 2009b*; *ibid.*: *statement of 13 August 2009a*; BBC News, 11 August 2009.

<sup>195</sup> Tonkin, 17 March 2010.

<sup>196</sup> Tonkin, 11 April 2011.

<sup>197</sup> Council of the EU: *Statement of 1 March 2010*; EP: *Resolution of 20 May 2010*.

<sup>198</sup> Council of the EU: *Common Position 2009/615/CFSP of 13 August 2009b*; *ibid.*: *statement of 13 August 2009a*.

convergence of interests between the member states, presumably induced by the enhanced institutionalisation of EU foreign policy. By contrast, the EU had not directly reacted to ASSK's second confinement on 23 September 2000.

These measures seem to corroborate the compliance hypothesis. The EU reacted immediately to the sentence pronounced by the Myanmar authorities. Nevertheless, these reinforced restrictions remained mainly symbolic. Their impact on the SPDC's behaviour has been limited, since ASSK was not released before her renewed house arrest verdict elapsed on 13 November 2010. Furthermore, the EU wielded penalties on persons who were not decision-makers in the military apparatus. The 'responsibility' of those judges is questionable, given their dependence on the political authorities. Adding their names to the EU ban made them scapegoats for additional punitive measures, with little prospect for effective influence. Here again, it could be asked whether the symbolic function of sanctions prevailed over the goal of compliance.

These penalties were again motivated by the interests of top European leaders in defending ASSK. British PM Brown wrote articles on the situation in Myanmar.<sup>199</sup> He published a book entitled *Courage* where he lauded ASSK as a role model.<sup>200</sup> Upon leaving office, then PM wrote a devoted letter to ASSK:

Dear Aung San Suu Kyi,

This is one of the last letters I write as Prime Minister and I want it to be to you, to champion your cause for democracy in Burma and to say I will do everything I can to support you. You are, for me, what courage is and I will fight for you to be free and your people [to be] free.<sup>201</sup>

Despite the vitriolic debates it may at times spark in both Houses, the Myanmar issue did not give the impression that it determines the outcome of British

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<sup>199</sup> Brown 2007.

<sup>200</sup> Brown 2009.

<sup>201</sup> Brown 2010a.

elections.<sup>202</sup> Neither the Conservatives nor the Liberal Democrats devoted attention to Myanmar during the 2010 election campaign.<sup>203</sup> Only Labour mentioned the Myanmar issue in their 2010 party manifesto, owing to the party's commitment at the highest level to the NLD and ASSK. Despite this lack of significance for electoral politics – and in agreement with rationalist approaches – former British ambassador Tonkin felt that the UK's principled position was unlikely to be changed, for it was seen 'as politically risk free and there would be no domestic political incentive to consider possible new approaches'.<sup>204</sup>

## **5.2. The General Election (2010)**

### **5.2.1. Disbandment of the NLD as a Political Party**

Article 25 of the Bylaws to the Political Parties Registration Act required all existing parties to register for competition in the general elections before the deadline of 6 May 2010, or be disbanded. On 29 March, NLD announced its decision not to participate in the 2010 general elections, following an open vote of its members held the same day.<sup>205</sup> As a consequence, NLD legally ceased to exist as a political party after the 6 May 2010 deadline elapsed. The NLD's dissolution was officially announced on 14 September 2010, when the electoral commission stated which parties were allowed to take part in the elections (37 parties), which ones had been disbanded for failing to register on time (5 parties – including the NLD), and which ones could not compete by reason of an insufficient number of registered candidates (5 parties).<sup>206</sup>

The NLD's decision was one of principle, taken out of respect for the party Secretary General ASSK, and on her recommendation. It denounced the Election

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<sup>202</sup> Among all interviews conducted, British policymakers did not seem to hold the view that Myanmar could influence the outcome of British elections, despite being usually recognised as an 'important issue'.

<sup>203</sup> Labour Party 2010: 71; Conservative Party 2010; Liberal Democrat Party 2010.

<sup>204</sup> Interview 46.

<sup>205</sup> BBC News, 29 March 2010.

<sup>206</sup> Union Elections Commission: *Notification No. 97/2010 of 14 September 2010*.

Laws as a ploy to stifle political dissent. The Laws decreed that anyone serving a prison sentence could neither vote, nor stand for election, nor even be a member of a political party.<sup>207</sup> This restriction excluded prisoners of conscience from the political arena. Speculations that ASSK would therefore be barred from competing in the polls contributed to the NLD's decision to boycott the general elections.<sup>208</sup>

In addition, the party rejected a series of constitutional provisions, such as the preservation of 25 percent of parliamentary seats for the military; a 75 percent approval vote required in both chambers for any constitutional change; and the Union Elections Commission's lack of democratic accountability.<sup>209</sup> It dismissed an election that – in its view – would legitimise the establishment's leadership under the 2008 constitution, and thus seal the aborted victory of 1990. In its Shwegondaing declaration of 29 April 2009, the NLD persisted in calling for a rather unlikely 'Recognition of the result of the Multi Party Democracy General Election (1990)' by the SPDC.<sup>210</sup> Nevertheless, the NLD leadership was broadly split on the issue of participation in the junta-led elections. About 25 percent of the NLD Central Executive Committee split from the NLD to set up the National Democratic Force (NDF) and contest the elections, immediately after the 6 May deadline had passed for the NLD's renewed registration.<sup>211</sup>

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<sup>207</sup> Union of Myanmar, 8 March 2010: *Law No. 2/2010*, Art. 4.2 and Art. 10 E.

<sup>208</sup> Tonkin, 2 October 2010. It turned out later that ASSK did figure on the voters list as her house arrest sentence was not a prison term. Nonetheless, it seems unlikely that ASSK would have been allowed to run as a candidate in the 2010 elections, not because of her house arrest, but owing to other disabilities such as her membership of an illegal organisation, the Committee Representing the People's Parliament. This was never challenged in court and the question will therefore remain unanswered (Email exchange 2).

<sup>209</sup> BBC News, 29 March 2010.

<sup>210</sup> National League for Democracy, 29 April 2009.

<sup>211</sup> Horsey 2010: 2. No deadline was set for the registration of new parties.

### 5.2.2. The EU's Reaction

The EU initially considered the organisation of elections a window of opportunity for engagement, provided that the NLD could meaningfully take part in the process.<sup>212</sup> In other words, the decision by the NLD leaders to boycott the elections shaped the EU's views on the electoral process from its very outset. Had NLD decided to participate, the EU could hardly have been as severe in its judgement.

On 26 April 2010, the Council had reaffirmed that sanctions were tailored to reach the policy's primary objectives: 'to bring about a peaceful transition to a democratic, civilian and inclusive system of government'. It also stressed its willingness to hold high-level talks with the military government.<sup>213</sup> This window of opportunity was apparently widened by the UK's general elections. The British Conservative party had campaigned on the slogan of a 'liberal Conservative foreign policy' that would be 'hard-headed and practical'.<sup>214</sup> Throughout the electoral process, only the European Parliament commended NLD's decision not to participate.<sup>215</sup> Thus, the EU's policy could be characterised by silent pragmatism until the Union Elections Commission announced which parties were (and were not) allowed taking part in the polls.

Principled EU member states brought their silence to an end by lambasting the Union Elections Commission's statement of 15 September. Newly appointed British foreign secretary William Hague made his first declaration on Myanmar on 16 September 2010. He set the Conservative policy in the path of New Labour's liberal cosmopolitan rhetoric:

These actions expose the elections in Burma for what they are – a sham process designed to keep the regime in power and deny the Burmese people their right to freely choose their leaders. The elections should have been a chance for national reconciliation [...]. This opportunity is being squandered. These latest developments

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<sup>212</sup> Interviews 6 and 13.

<sup>213</sup> Council of the EU, 26 April 2010: *Conclusions*.

<sup>214</sup> Conservative Party 2010: 109.

<sup>215</sup> EP, 20 May 2010: *Resolution*.



should be greeted with dismay and condemnation by the international community and a renewed determination to support the people of Burma.<sup>216</sup>

The British Ambassador to Myanmar, Andrew Heyn, stated that his government respected the decisions of those who had decided to boycott the election,<sup>217</sup> a statement later reiterated by Catherine Ashton on behalf of the entire EU.<sup>218</sup> France shared the UK's principled position. Incumbent foreign minister Alliot-Marie continued Bernard Kouchner's focus on human rights in Myanmar. The French foreign ministry spokesman stated on 15 September: 'This profoundly shocking situation is the consequence of the implementation of the unjust electoral laws promulgated in March.'<sup>219</sup>

### 5.2.3. The Elections and their Aftermath

The Myanmar government announced on 13 August 2010 that general elections would be held on 7 November 2010. Competition was thus open for 330 (out of 440) seats in the Lower House (*Pyithu Hluttaw*, or People's Assembly) and 168 (out of 224) seats in the Upper House (*Amyotha Hluttaw*, or Nationalities Assembly). The Constitution reserved 25 percent of the seats in both houses for the military.

The SPDC formed the Union Solidarity and Development Party (USDP), headed by Prime Minister Thein Sein. This party superseded the mass organisation USDA. The former single party BSPP had been revamped since 24 September 1988 into the moderately pro-government National Unity Party (NUP). The elections saw the eclipse of 36 of the 37 parties which had registered for the elections and the overwhelming dominance of the USDP, which won over 75 percent of available seats.<sup>220</sup> Despite earlier hints by the then Prime Minister

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<sup>216</sup> Hague, 16 September 2010: *Statement*.

<sup>217</sup> S. Smith, 5 November 2010.

<sup>218</sup> Council of the EU, 7 November 2010: *Declaration*.

<sup>219</sup> French ministry of foreign affairs, 15 September 2010.

<sup>220</sup> BBC News, 10 January 2011.

Thein Sein, Myanmar turned down the offer of ASEAN to send electoral observers to monitor the elections.<sup>221</sup> Prospects for an EU electoral observation to Myanmar were thus nonexistent.<sup>222</sup>

#### **5.2.4. The EU's Reaction to the Elections**

In the continuity of the principled declarations of September 2010, Western powers denounced the elections as flawed. In addition to the polemic revolving around 'unjust elections law' and the NLD's refusal to take part in the elections, a raft of allegations were expressed concerning vote rigging, notably the use of advance votes, vote-buying, and intimidation.<sup>223</sup> On 7 November 2010, High Representative Catherine Ashton stated that she regretted that the elections fell short of international standards, and that ASSK remained under house arrest 'on entirely spurious grounds'.<sup>224</sup> William Hague slammed the process: 'Holding flawed elections does not represent progress'.<sup>225</sup> President Obama called the elections as 'neither free nor fair'.<sup>226</sup>

### **5.3. Release of Aung San Suu Kyi**

#### **5.3.1. Events in Myanmar**

ASSK's term under house arrest expired on 13 November 2010 – one week after the elections. The authorities did not renew her sentence, putting seven years of house arrest to an end. NLD vice-chairman Tin Oo had already been released from prison on 13 February 2010. ASSK's release revived the sanctions debate, offering the West a chance to revise its restrictive strategy, which had

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<sup>221</sup> Panchali 2011.

<sup>222</sup> Interviews 7 and 28.

<sup>223</sup> Davies and Siddique, 8 November 2010.

<sup>224</sup> Council of the EU, 7 November 2010: *Declaration*.

<sup>225</sup> BBC News, 8 November 2010.

<sup>226</sup> S. Wilson, 7 November 2010.

proven unable to coerce the SPDC.<sup>227</sup> Yet, ASSK initially disagreed with this position:

So far, I have not got the impression that economic sanctions have really hurt the public, but of course there are other voices that are perhaps still waiting to be heard, so we have yet to find out. I have been released just for over a month, and I haven't had time to go into this issue; I am waiting to read the latest report of the IMF, and perhaps the ADB and other economic institutions.<sup>228</sup>

### 5.3.2. The EU's Reaction to Aung San Suu Kyi's Release

In contrast with the organisation of elections, ASSK's release was broadly welcomed by European heads of states as well as top EU officials – HRVP Catherine Ashton,<sup>229</sup> European Council President Herman von Rompuy,<sup>230</sup> and Commission President José Manuel Barroso<sup>231</sup> all issued individual communiqués. This high-level commitment to ASSK highlights her vital importance as a democracy icon for EU policy towards Myanmar. The EU thus strengthened its identity as a promoter of moral values.

On 22 November 2010, however, the Foreign Affairs Council (FAC) stated that ASSK's third release was not enough to revise its policy.<sup>232</sup> Asked during a press conference whether the lifting of sanctions had been discussed, Catherine Ashton answered:

No, we're not anywhere close to discussing the lifting of sanctions, this was a discussion to take note of the situation.<sup>233</sup>

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<sup>227</sup> Aung Nay Oo 2011.

<sup>228</sup> Deutsche Welle, 16 December 2010.

<sup>229</sup> Council of the EU, 13 November 2010a: *Statement*.

<sup>230</sup> Council of the EU, 13 November 2010b: *Statement*.

<sup>231</sup> European Commission, 13 November 2010: *Statement*.

<sup>232</sup> Tonkin, 23 November 2010.

<sup>233</sup> *Ibid.*

Danish foreign minister Lene Espersen separately told the press that the military government should not be rewarded for releasing Suu Kyi, stating: ‘there is no doubt that we in the EU must continue to maintain pressure.’<sup>234</sup>

Having already proven its enhanced capacity to promptly react to exogenous events, the EU’s decision not to scale back sanctions could hardly be attributed to slow institutional dynamics. The EU’s principled stance can be best explained by the eagerness not to erode its support for ASSK, who had convinced the NLD to stay away from the 2010 elections. Maintaining sanctions in place had also the benefit of acceding to demands from domestic constituencies. This consistency could finally be explained by a reluctance to lose face by disavowing twenty years of common foreign policy, arguing that partially ‘lifting sanctions would send out the wrong message’ to the military regime.<sup>235</sup> This inaction falsifies the compliance hypothesis, which would expect the EU to at least partially reward Myanmar for acceding one of its main demands. EU foreign policy remained unchanged until the SPDC was dissolved on 30 March 2011, and Thein Sein was sworn in as Myanmar’s first civilian President since 1988.

## **6. Conclusions**

### **6.1. Summary**

The present chapter showed how EU member states redefined and enhanced their consensus around a principled policy between 2004 and 2010. EU foreign policy-makers agreed on a ‘double track approach’, which implied tougher sanctions while scaling up aid levels. This dual strategy was justified by the impartiality of humanitarian aid. Strengthening this European consensus necessitated a commonality of purpose constitutive of EU identity. Notwithstanding, this consensus was not sturdy enough to dissipate the logic of diversity among the member states, especially in the diplomatic sector.

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<sup>234</sup> *Ibid.*

<sup>235</sup> Rogers, 2 December 2009.

The European consensus consistently focused on unwavering support of Myanmar's democratic opposition. Decisions were largely taken out of a process of persuasion between policy-makers where normative arguments played a large role. Nonetheless, 'normative suasion' did not exclude 'cooperative bargaining'. The German acquiescence in UK policy on Myanmar was partly traded off against the UK's position in the Council on the issues of sanctions on Uzbekistan in 2007.<sup>236</sup> Despite the robust normative foundation of EU foreign policy towards Myanmar, issue linkages did occur.

The 2004 policy change shows that the EU was not path dependent, at least in the domain of aid delivery. This policy change was inspired by endogenous dynamics, namely the assessment that drastic reduction in humanitarian assistance contradicted the primary objective of promoting human rights. It recalls Goldmann's concept of 'negative policy feedback',<sup>237</sup> and David Welch's hypothesis in the context of structural foreign policy change:

[...] foreign policy change will be most likely when policy fails either repeatedly or catastrophically, or when leaders become convinced that it will imminently do so.<sup>238</sup>

This policy change could be understood as an outcome of 'policy learning' by the EU. This model perceives policies not only as the product of a struggle for power, but of social learning by policy-makers.<sup>239</sup> This surge in aid shows that, eleven years after the Maastricht Treaty came into force, the EU was able to incrementally adjust its policy, in order to make it more effective in achieving its ends. An increasing logic of convergence among decision-makers in the EU and the emergence of an 'upgraded interest' underpinned this policy change.

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<sup>236</sup> A similar informal bargain took place between the UK and France, when Paris pushed for a blanket embargo on Côte d'Ivoire in December 2010. France later accommodated UK policy towards Myanmar in April 2011 by proposing to limit the suspension of the visa ban and asset freeze on only one third of the new Myanmar ministers instead of the whole government, as proposed by the EEAS in agreement with flexible member states (interview 6).

<sup>237</sup> Goldmann 1988: 6ff.

<sup>238</sup> Welch 2005: 46.

<sup>239</sup> Hecló 1974: 305-306; see also: Hall 1993: 275-281; Pacheco Pardo 2009.

The policy change of 2004, however, was the only event where feedbacks directly affected policy-making. The rationale for the sanctions policy was political. As such, technical feedbacks (in the form of external assessments by third parties or internal policy reviews) did not count much when reaching decisions. According to interviews, policy feedbacks on sanctions were systematically jettisoned before the ministerial level of decision-making, and usually even before ambassadors of EU member states would meet within the Political and Security Committee.<sup>240</sup>

Finally, this chapter showed that EU sanctions mainly achieved symbolic posturing. The measures decided in the aftermath of the 2007 uprising demonstrated that the EU's punitive strategy had not been proactively thought-out. In many cases, the EU simply missed its target: the SPDC and its direct supporters. Some measures hit wrong targets – like SMEs without apparent connections with the junta. The EU provided little justification for targeting specific companies and not others. Sanctions had been decided under the imperatives of high-level policy-makers without comprehensive technical review.

## **6.2. Assessment of Hypotheses**

### **6.2.1. Bandwagoning hypothesis**

Both the EU and the US pursued the same broad strategy of reinforcing sanctions on Myanmar. Restrictions decided by the EU generally followed suit to the ones decided by the US. EU sanctions, however, did not entail blanket economic sanctions, so EU policy maintained some degree of independence vis-à-vis Washington. The EU's approach diverged from the Bush administration's policy on aid, as the EU scaled up humanitarian assistance. This divergence falsifies the bandwagoning hypothesis, which would expect the EU to bandwagon with its allies including on non-strategic foreign policy issues. Notwithstanding, this instance of falsification of the bandwagoning hypothesis does not imply that neo-realism should be dismissed as an explanation of EU foreign policy towards

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<sup>240</sup> Interview 7.

Myanmar. Discordances between the EU and the US, especially in relatively un-strategic fields, could reflect the EU's agenda to preserve its autonomy in an anarchical system.

The EU coordinated its policy with the US, as proven by the EU-US Statement on Burma/Myanmar of 26 September 2007. The UK Foreign Office also exchanged views with American counterparts quite frequently.<sup>241</sup> Nevertheless, there is no indication that EU policies were adopted as a consequence of pressures exerted on EU member states by the Bush administration. This dearth of empirical evidence regarding exogenous pressure could point towards competing hypothetical explanations.

### **6.2.2. Compliance Hypothesis**

The compliance hypothesis was corroborated whenever Myanmar flouted EU demands. This trigger for sanctions was exogenous, as the restrictions of 2007 and 2009 evidenced. The EU reacted swiftly to punish adverse domestic developments in Myanmar. This responsiveness demonstrates that the bargaining process between large member states was smoother than during earlier periods when the European consensus was less firmly established. The compliance hypothesis needs to be cautiously qualified, however, as some negative measures were chronologically disconnected from developments on the ground. This is exemplified by the decision to ratchet up sanctions in October 2004, as a late reaction to the Depayin incident of May 2003.

The compliance hypothesis was challenged by the events of late 2010. The holding of a general election and ASSK's release represented a degree of compliance with the EU's demands, in place since the aborted 1990 election. These positive steps, however moderate, should have logically led to a partial and temporary removal of some restrictions (e.g. visa ban on certain government officials). Nonetheless, the EU's course of action did not follow this logic:

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<sup>241</sup> Email exchange 5.

sanctions remained in place. The EU was able to reinforce negative measures, but made no use of incentives to entice political and economic reforms.

The NLD's decision to boycott the 2010 election determined the EU's decision not to endorse what it viewed as a flawed reconciliation process. This unconditional support of an opposition political party demonstrates that the symbolic function of EU foreign policy eventually prevailed over the achievement of primary policy objectives, such as influencing the SPDC's behaviour. Apparently, the EU did not officially take note that some members of the opposition split off from the NLD to participate in the election.

For some analysts, the hawkish rhetoric maintained by Western powers dispelled assumptions that the sanctions policy would be revised in the light of favourable developments on the ground.<sup>242</sup> It seemed that only participation of the NLD in an elected government would justify a repeal of EU sanctions – independently from progress in other areas related to human rights (e.g. use of forced labour, economic, social and political reform).<sup>243</sup> It was nonetheless unlikely that the NLD would officially endorse government policies. This prospect appeared remote given the history of twenty years of domestic stalemate, the NLD's adamant focus on the 1990 election, and the unbalanced politics in Myanmar, where an all-powerful junta was challenged by a repressed political opposition.

### **6.2.3. Large Member States Hypothesis**

The large member states hypothesis was corroborated in many instances. The enhanced consensus achieved by the EU was chiefly the result of the systematic efforts of the UK in the Council. This strong stance was in part down to the personal involvement of high-level British policy-makers.

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<sup>242</sup> Interview 23.

<sup>243</sup> Interview 24.



French foreign policy was not changed as a result of the interaction with other policy-makers at the EU level. The change of French policy was caused by the election of a new President and the nomination of a new government in 2007. Sarkozy and Kouchner took into account demands from domestic groups in the context of the 2007 uprising, a finding which supports intergovernmentalism.<sup>244</sup> For classic intergovernmentalism, policy changes tend to occur with a change of government when new elites arrive to power.<sup>245</sup>

The explanation provided by the large member states hypothesis encounters important limitations, however. It marginalises the ideational motivations of EU policy, which prevailed over economic interests. The fact that even French foreign policy was converted to a principled stance shows that the rationalist predicates of the large member states hypothesis did not reveal the real drivers of EU foreign policy towards Myanmar as a pariah state. These motivations were ideological.

#### **6.2.4. Consensus Hypothesis**

The consensus hypothesis was undermined because only big member states determined foreign policy decisions. The European Commission and EEAS contributed to stirring the European debate in the area of humanitarian aid, but their proposals were only implemented when they were backed by the UK, as was demonstrated in 2004, 2007, and 2009. European institutions and smaller member states did not have sufficient clout to shape EU foreign policy without the UK's agreement. During the period, transnational lobby groups did not seem to exert direct influence on EU foreign policy. By contrast, domestic lobby groups within big member states may have exerted more leverage thanks to the bargaining power of their national government.

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<sup>244</sup> Moravcsik 1993a: 481.

<sup>245</sup> Hoffmann 1966: 905.

The consensus hypothesis offers a more comprehensive explanation of the motivations of EU foreign policy than other hypotheses, which miss out ideological drivers of EU foreign policy. The symbolic function of EU policy was in fact more important than material objectives in driving the European agenda. Indeed, a state interested in drawing economic benefits from interaction with Myanmar may have possibly used the propitiatory gestures of 2010 as a justification to repeal restrictions. The EU's approach contrasted with ASEAN, which called upon Western powers to rescind sanctions as a result of the developments that took place end of 2010.<sup>246</sup> Nevertheless, the EU did not revise its policy. Ideational motivations prevailed in EU foreign policy-making.

Forging a consensus was a more strenuous process in some policy areas than others. In the sphere of humanitarian assistance, consensus achievement was quite straightforward. The UK proposed, in 2004, to abolish the boycott on humanitarian assistance. The proposal was backed by the Commission, and accepted by other EU member states. The Commission resorted to several persuasion strategies to strengthen the consensus even after the policy change on aid delivery was enacted. Dialogue, exchange of views and policy feedbacks, notably via the organisation of policy conferences, were used to that end.

By contrast, the diplomatic arena was the thorniest policy field of European cooperation. Although the policy consensus strengthened by dint of interaction among the member states, divergences did sometimes loom in the area of diplomacy. The Netherlands' refusal to apply the waiver on the visa ban, and the subsequent pressure by Germany and the Commission to impel The Hague to review its position, illustrate this argument. Diplomacy lies closer to national sovereignty, so that states were reluctant to give up their competencies in this area and delegate them to a supranational layer of decision-making. In the same vein, EU member states led their own unilateral diplomacy during the Cyclone Nargis crisis. Despite the added value of 'politics of scale', the European voice did not replace the one of individual member states.

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<sup>246</sup> ASEAN Foreign Ministers' Retreat, 16-17 January 2011.

The consensus was more easily achieved in the economic arena. This development debunks important predictions derived from rationalist approaches, which posit that divergent economic interests would pose almost insuperable obstacles to the imposition of economic restrictions. Between the nineties and 2007, the evolution of the European consensus with regards to targeted economic sanctions seems to confirm the social constructivist claim that member states tend to change their positions over a period of ten or fifteen years of common policy-making.<sup>247</sup> During the last decade, France did not necessarily veto all economic sanctions despite Total's investments in Myanmar. It could therefore be argued that the process of social interaction between EU policy-makers led to the production of some kind of 'upgraded European interest', although this 'upgraded interest' remained within the limits of the domestic agenda of national governments. Ideational motivations to promote human rights and democracy prevailed over economic interests.

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<sup>247</sup> Tonra 2003: 7-8.

## ***Part III/ Conclusions***

## Chapter VII

### Conclusions:

#### Explaining the Consensus on Tougher Sanctions

This thesis has provided a detailed explanation of EU foreign policy-making towards military-ruled Myanmar from the military *coup* of 1988 until the SPDC was dissolved in March 2011. The chronological investigation delivered a theoretically-informed analysis of three distinct periods of EU policy-making. This concluding chapter shall now bring these different parts together to present the key findings of this study.

First of all, it is important to know how well the four competing hypotheses have been in explaining the empirical puzzle tackled in this dissertation. As the success of competing hypotheses varied according to the different policy outcomes and periods examined throughout the study, an overall theoretical discussion is needed to clarify the understanding of EU foreign policy-making towards Myanmar supported by this thesis.

The second objective of this chapter is to outline the core empirical findings of the case study. In addition to delivering a theoretically-informed answer to the research question, it is meaningful to bring the threads that characterise EU foreign policy-making towards Myanmar together. Although the cut-off date of the empirical investigation was the dismantlement of the SPDC in March 2011, this conclusion shall also briefly take into account the recent developments that occurred during the post-SPDC period between April 2011 and September 2012, in order to retrospectively assess the effectiveness of European sanctions on Myanmar. These findings inform more general questions encountered by students of EU foreign policy-making towards 'pariah' states, or states targeted by diplomatic as well as economic penalties. Finally, this concluding chapter summarises the contributions of this thesis to the existing body of literature on

EU sanctions and EU foreign policy towards Myanmar. Building upon this overall assessment, we shall point at potential future research that could stem from this study.

This chapter is framed in four sections. The first summarises the main arguments laid out in the previous chapters of the thesis. The second section explores the core findings of the study, which come down to five claims. The third section assesses the explanatory power of each competing hypothesis, and discusses the main strengths and weaknesses of the theoretical approaches from which hypotheses were derived. It deduces that a 'normative' interpretation of liberal intergovernmentalism, which retains basic tenets of liberal intergovernmentalism but also emphasises the role of norms in foreign policy, best unravels the puzzle of EU foreign policy-making towards Myanmar. The final section summarises the main contributions and sketches potential directions for new research.

## **1. Review of Chapters**

The opening chapter laid out the empirical puzzle addressed in this study. It presented the research question: why did the EU scale up sanctions on Myanmar from 1991 until 2010? This question is justified by the potentially diverging interests of EU member states during twenty years of common policy, and the inability of sanctions to quickly achieve their primary objectives (especially after Myanmar had joined ASEAN in 1997). In this respect, key concepts addressed by the research question were defined. The chapter also clarified that characterising military-ruled Myanmar as a 'pariah' state encapsulates the foreign policy challenge encountered by the EU, although the EU does not officially use this concept.

The thesis then tackled possible answers to the research question. Chapter Two first outlined the EU's decision-making system with regards to sanctions policy. Then, four competing hypotheses were developed, which offered explanations for why the EU would reinforce sanctions. Throughout the two introductory chapters, references were made to sanctions regimes systematically

presented in the annexes of this thesis, in order to illustrate how the hypotheses developed could be applied to the making of EU sanctions in general.

The first hypothesis suggested that the EU would bandwagon with the US when a pariah state lacks strategic relevance for the EU. The second hypothesis posited that the targeted state persists in going against EU demands, so that the EU tightens punitive measures as a response. The third hypothesis interpreted the EU's decisions to ratchet up penalties as the outcome of an ongoing bargaining process between the three largest EU member states, which seek to satisfy their main, and domestically-defined, preferences when deciding EU foreign policy. Finally, the consensus hypothesis proposed that reinforcing a punitive strategy reflected the EU's attempt to maintain (or strengthen) a consensus on its identity as a liberal actor in international relations. These competing explanations all focus on different independent variables, levels of analysis, and key actors influencing the sanctions policy.

Chapter Three delivered a contextual analysis of the main structural variables and actors that could influence EU foreign policy towards Myanmar. It demonstrated that, in conformity with the bandwagoning hypothesis, Myanmar is generally perceived in the EU as a state lacking strategic weight. Nonetheless, Myanmar fell into the international limelight, notably as a result of successful calls for international sanctions by Myanmar's domestic and exiled political opposition. By and large, the objectives guiding EU foreign policy between 1991 and 2010 were: securing ASSK's release from house arrest, promoting the NLD's participation in government decision-making, and ensuring national reconciliation by calling for a tripartite dialogue between the government, the NLD, and ethnic minorities. EU policy-makers could be distinguished between upholders of a principled, as opposed to a flexible approach to the SPDC. These differences of approaches stem from diverse material interests and ideological motivations among EU policy-makers.

Chapter Four examined the evolution of EU foreign policy from its Cold War origins until ASSK's first release from house arrest in 1995. During the Cold War era, the common foreign policy was non-existent. Only Germany and the UK had

noteworthy relations with Myanmar. The first measures formally decided by the EU (to condemn Myanmar's decision not to honour the results of the 1990 general election, despite controversy over the precise purpose of the elections) were limited in scope. The EU's arms embargo and the ban on development aid had a marginal impact on the SPDC's relations with the NLD. Germany, the second largest provider of development aid to Myanmar, had cancelled new development programmes since 1988. Furthermore, European measures were not formally adopted until the Council Declaration of 29 July 1991.

Smaller member states, like the Netherlands and Greece, proposed to implement a more robust common foreign policy from both principled and flexible standpoints respectively. Their proposals were not followed by concrete decisions, presumably because they were not backed by large EU member states. As a result, a policy of 'critical engagement' was pursued by several member states without explicit EU involvement. In Chapter Four, therefore, it was argued that EU policy was defined by the lowest common denominator during this early period.

When ASSK was released from house arrest in 1995, the EU's decision not to relax restrictions was justified by a 'wait and see' approach, which expected further reforms before further concessions would be made. At the time, a spate of issues of concern to the EU warranted this policy, such as the high number of prisoners of conscience, repeated interferences with the NLD's activities, the lack of constructive dialogue between the NLD and the SPDC, ASEAN's intention to welcome Myanmar into the regional organisation despite its poor human rights record, and the imprisonment and death in prison, in 1996, of a representative of an EU member state.

Chapter Five showed how a European consensus was forged during the period that followed from 1996 until 2003. The consensus was initially formed in 1996; it was further deepened between 1997 and 1999; and later revised from 1999 until 2003, particularly in the diplomatic arena. In 1996, the James Nichols' case represented a watershed moment in EU foreign policy. The ensuing Common Position 96/635/CFSP constituted a path dependent 'point of



departure',<sup>1</sup> whereby a normative consensus was fostered on charting a principled policy. This consensus was never challenged by any European representative during the next fourteen years of policy-making. From then on, EU policy was chiefly driven by normative interests.

New Labour's election provided fresh impetus for sanctions against Myanmar, which propelled EU foreign policy beyond the lowest common denominator. New Labour took the strategic decision to pursue an ethical foreign policy within a European framework, and from 1997 until 1999, even member states that traditionally championed the flexible approach, like Germany, were persuaded to boycott meetings with ASEAN if Myanmar would attend. The ensuing EU policy built upon the 1996 consensus and wielded further targeted measures but still refrained from blanket economic penalties.

The Common Position 2000/346/CFSP of 26 April 2000 allowed for a visa ban waiver, to enable multilateral meetings with ASEAN to take place in EU territory with Myanmar's participation. The EU sent a first Troika in 1999, and reiterated the initiative in 2001 and again twice in 2002. On 30 May 2003, the Depayin incident and ASSK's third arrest brought this period of relative conciliation to an abrupt end. Consequently, the EU escalated sanctions and abandoned the Troikas as an instrument of dialogue with the regime.

Chapter Six went on to demonstrate that the European consensus added a new dimension when the EU charted a 'dual approach' from 2004 until 2010. While further tightening sanctions in 2004, the Council simultaneously rescinded the restriction on humanitarian aid delivery. This 'double track' approach placated domestic criticism from campaigners and parliamentarians. As a consequence of this exception, aid was augmented when the Global Fund withdrew in 2007 under US pressure, and Cyclone Nargis later struck the Ayeyawady delta in May 2008. This policy change regarding aid delivery reveals some degree of independence of EU policy vis-à-vis the US, which had banned all types of aids. In parallel with scaling up development aid, the EU tightened sanctions to punish unfavourable domestic developments in 2007, in 2009, and strongly criticised the

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<sup>1</sup> Svetlozar 2003: 10-11.

2010 general elections. It did not relax negative measures despite ASSK's third release a few days after the elections. The EU had not changed its policy until a new era was beginning with the dismantlement of the SPDC in March 2011.

Despite this 'double track' approach, the European consensus was strained by several divergences among member states. In 2005 and 2006, the Netherlands refused to apply the waiver on the visa ban. By the same token, EU member states led their own diplomacy during the Nargis crisis. They did not spell out their position cohesively via European institutions or the recently nominated EU Special Representative for Burma/Myanmar. Building upon this review of chapters, the following section can now summarise the main empirical findings of this study.

## **2. Main Empirical Findings**

### **2.1. Role of the Large EU Member States**

The first empirical finding of this thesis is that EU foreign policy was decided by the largest EU member states. As the EU's principal sender of sanctions, the UK acted as a norm entrepreneur having strong notions about the EU's appropriate behaviour towards Myanmar.<sup>2</sup> It convinced other member states to consistently scale up sanctions as a suitable response to Myanmar's human rights violations, which at that time was an atypical strategy for the EU. France and Germany bargained with the UK to defend their most important interests.

The UK benefited from its material weight as one of the largest EU member states when attempting to persuade other policy-makers. Moreover, the historical legacies of the UK as former colonial power in Myanmar enabled the British leadership to plainly identify that support to the NLD was akin to the UK's national interest. The formulation of highly principled preferences also owed to domestic pressures by British human rights campaign groups, which benefited

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<sup>2</sup> See: page 86 for a definition of norms entrepreneurship. See also: Finnemore and Sikkink 1998: 896; Bicchi 2007: 17.

from direct access to Labour as well as to Conservative MPs, and at times to successive Prime Ministers themselves.

The other big member states exhibited lower preference intensity towards Myanmar. France and Germany were therefore more open to the shaping influence of dialogue and interaction with other policy-makers at the EU level. Their attitude could be assimilated to the one of persuadees, whereas the UK played the role of persuader. Germany and France were inclined to follow the UK's leadership. Their national preferences were however defined domestically, so that they only compromised on issues that were deemed less important for their domestic interests. France was keen to protect Total's commercial interests in Myanmar and Germany its diplomatic relations with ASEAN.

As a consequence of the UK's norm entrepreneurship, ideational interests tended to prevail over economic interests of member states. After sanctions had been formally adopted within a common position in 1996, normative motivations consistently drove EU foreign policy. Economic interests may have been safeguarded, particularly by France during the second half of the nineties, but were never actively promoted by European policy-makers. This empirical paradox owes to the UK's predominance as a big member state, Myanmar's lack of strategic weight for European interests, and the emergence of a strong normative consensus to take sides with the democracy icon ASSK against the military government.

## **2.2. Reaching a Consensus via Bargaining and Normative Suasion**

EU policies were therefore decided in two sequences. Policy-making was initially a process of normative suasion, or social influence, between all actors. The second stage was based on cooperative bargaining among the largest member states.

First, the actors involved in EU policy-making argued and exchanged ideas. Stakeholders with the clearest preferences attempted to persuade others to endorse their policy proposals (or at least to abstain from exercising a veto).

They connected their proposals to existing norms, to moral prescriptions, and they tried to build coalitions with other players. This process was not limited to EU member states. It involved European institutions and lobbyists, whose policy proposals have been at times adopted by the Council, as the withdrawal of the GSP illustrated. This process could be characterised as normative suasion, or social influence: policy-makers used ethical arguments, normative prescriptions, and made references to the EU's legal commitments to democracy and human rights, which reinforced its liberal identity. Therefore, a recalcitrant EU member state would risk tarnishing its reputation by rebuffing prescriptions for an ethical EU policy.

Second, after policy proposals were formed following a process of normative suasion, the three largest EU member states had, finally, to take recourse in 'cooperative bargaining' to reach a decision. Cooperative bargaining took three different forms. Flexible and principled member states used *single issue bargaining* when agreeing to scale up sanctions in exchange for relaxing other measures, and *vice-versa*. For instance, new restrictive measures were added in 2000, in exchange for introducing a waiver on the visa ban.

Large member states also bargained amongst themselves by making *side-payments* and supporting each other's projects (or *log rolling*). In 2007, Germany agreed not to obstruct the UK's policy on Myanmar – provided the UK would not refuse to repeal sanctions on Uzbekistan. In 2010, a similar bargain took place between France and the UK over Myanmar on the one hand, and the imposition of blanket sanctions on Côte d'Ivoire on the other. In December 2010, the UK agreed with the French proposal to impose blanket EU sanctions against Laurent Gbagbo's illegitimate government. As an indirect side-payment, France objected to the EEAS proposal of April 2011 to lift the visa ban on Myanmar's government, which was supported by numerous member states including Germany, Italy, Austria and Scandinavian countries. As a consequence, the visa ban was only lifted on one third of Myanmar's new government and despite the increased isolation of the UK's position in the Council.<sup>3</sup>

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<sup>3</sup> Council of the EU: *Decision 2011/239/CFSP of 12 April 2011*. Interviews 2 and 7.

Log rolling was informal; it took the shape of ‘mutual compromises’ that large member states made to each other. Such compromises do not necessarily require explicit bargaining between member states. They are often struck at the political director or ambassador level before European ministers have an opportunity to meet officially in the Foreign Affairs Council (FAC).

Cooperative bargaining took place as well to *placate domestic pressures*. This bargaining was obvious when the UK proposed, in 2004, that the EU reinforce negative measures, as well as create an exception to the ban on delivery of assistance to Myanmar. These negotiations gain at being interpreted as a three-level game, rather than a traditional two-level game played by policy-makers at the national and intergovernmental levels.<sup>4</sup> Transnational organisations exerted additional pressures on EU member states to scale up sanctions or increase aid levels. Thus, the ‘dual track’ approach also served the purpose of appeasing domestic pressures at the national (e.g. national campaigns) as well as at the meso-level of governance (e.g. transnational civil society groups, notably those active in Brussels). Many national and transnational human rights groups coordinated their campaigns on national governments and European institutions.

National preferences, however, were given. They were formed domestically and not substantially altered during negotiations at the EU level. Member states made eventual concessions as an outcome of negotiations, but they rarely changed their initial preferences. On the one hand, principled states were hardly convinced by the arguments of flexible member states. The UK, in particular, was inclined to exert a ‘quasi-monopoly’ on EU policy initiatives towards Myanmar. On the other hand, preference intensities of flexible member states were relatively lower, so that normative arguments proved able to induce them to make compromises. But these compromises did not engage their core interests.

The recurrent bargaining process among large member states thus demonstrates the limits of the UK’s norm entrepreneurship, because other member states did not substantially alter their domestic position as a result of the interaction at the EU level. Indeed, a domestic change of government led three

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<sup>4</sup> Camroux 2010: 71.

member states to change their original position (as the UK in 1997, the Netherlands in 1998, and France in 2007). Social interaction at the EU level may have induced compromises, but no substantial change of preferences.

### **2.3. Differences across Policy Areas**

As a consequence of 'asymmetric interdependence' related to the 'logic of diversity',<sup>5</sup> the European consensus did not display the same level of resilience between 1996 and 2010 and across all policy domains: assistance, diplomacy, and economic policy.

Development cooperation was the most consensual policy area throughout two decades of policy-making. From 1990 onwards, a consensus was fostered among EU member states and institutions to drastically curtail all assistance to Myanmar. In 2004, this consensus was revised as it pertained to humanitarian aid. This revision did not encounter much opposition from other EU member states or even the European Parliament. As a consequence, aid levels were substantially increased by some member states and the European Commission, especially in the wake of the withdrawal of the Global Fund and the natural disaster provoked by Cyclone Nargis.

Economic policy was the second most consensual field. Despite early disagreements between 1996 and 1997 on the question of invoking a ban on trade and investment, EU member states quickly agreed not to impose blanket economic sanctions. The consensus was instead fostered on targeted sanctions with more or less restrained financial and economic incidence. The European Commission's complaint against the Burma Massachusetts Act in 1997 crystallised this consensus not to impose blanket economic sanctions. The European Parliament disagreed and was not included in this consensus. Only the Netherlands changed its position when a newly-elected government stated its support for economic sanctions in October 1998. The EU continued to ratchet up sanctions in targeted economic areas, which directly affected the positions of small European businesses in Myanmar.

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<sup>5</sup> Moravcsik 2005: 12; Hoffmann 1966.

Preferences of EU member states most diverged in the diplomatic field. Initially, a European agreement was quickly established on the policy to adopt: EU member states unanimously boycotted all meetings with ASEAN from 1997 until 1999. In 2000, however, a waiver on the visa ban was introduced following a bargain between Germany and principled member states. This waiver was later applied by Belgium and Denmark when they hosted EU summits. Nonetheless, the Netherlands refused to implement this exception during the 2005-2006 meetings of Rotterdam. Other member states did enforce the waiver when they hosted subsequent meetings with ASEAN.

National diplomacy of member states contradicted EU diplomacy on several occasions. No member state effectively facilitated the mission of the EU Special Envoy after 2007 – with the notable exception of Italy, who funded the largest part of the Special Envoy's budget since Fassino is an Italian national. The succession of diplomatic visits by the Commission and then by the member states in the wake of Cyclone Nargis – as well as the contradicting stances of France and the UK over the Responsibility to Protect – did not do much to enhance a united common foreign policy. Diplomacy thus represents the domain where it was most difficult for EU member states to reach a lasting consensus, despite the EU's Treaty-reforms that aspired to make EU foreign policy more coherent by strengthening its institutions. The spill-over effect was limited in this policy area.

#### **2.4. Relevance of Policy Feedbacks in EU Policy-Making**

During the period covered in the thesis, political dynamics generally prevailed over feedbacks on policy effectiveness. Policy evaluations were hardly taken into account when it came to tightening sanctions. Restrictions were increased, although some ministers and policy-makers decried the common strategy as 'useless' – as foreign minister Bernard Kouchner, among others, forthrightly put

it.<sup>6</sup> The ideological commitment of high-level policy-makers drove UK as well as EU foreign policy.

The eagerness of flexible EU member states to come up with a European consensus on Myanmar, in combination with their unwillingness to be discredited in the Council as advocates of a pariah regime, generally prevailed over considerations for policy effectiveness. Unlike ostracism, engagement with Myanmar entailed political risks in case of backlash. Some European countries experienced these risks during the early nineties, when NGOs condemned their critical engagement policy against the backdrop of heavy offensives launched by the Myanmar army on insurgent groups.

Policy feedbacks were nevertheless taken into account in more technical areas of EU foreign policy. Legal, economic, and humanitarian considerations led the EU to refrain from imposing blanket penalties on trade or investment. This preference for more or less 'targeted sanctions' represented a degree of difference between EU and US policy. Moreover, the decision to allow humanitarian assistance in 2004 was motivated by policy evaluations. These assessments underlined the moral responsibility to deliver humanitarian aid to a population suffering from endemic poverty in addition to gross human rights violations. Humanitarian aid was subsequently scaled up in conformity with this evaluation.

Assessing the time-bound effectiveness of each EU policy measure enabled us to better understand the rationale behind the imposition of tougher sanctions. The main empirical finding of this impact assessment is that the EU adopted a series of measures that were for the most part unlikely to alter the SPDC's behaviour even at the time of decision-making. Before reaching broader conclusions, it is important to review why EU measures were unlikely to change Myanmar's behaviour as long as the SPDC was in power, and also explain why

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<sup>6</sup> Democratic Voice of Burma, 8 October 2009. See also: Hauswedell 2005: *Keynote Speech*; House of Lords, 22 July 1996: *Question*; Federal Government of Germany, 9 March 2004: *Antwort*; Assemblée Nationale, 25 April 2000: *Réponse*.



they appeared more effective in the months that followed the SPDC's dismantlement.

- The 1990 arms embargo was quickly circumvented by Myanmar. The EU was not a big supplier because European defence material is normally too expensive for Myanmar. Before 1988, the Burmese state could afford European equipment because defence cooperation was part of broader development assistance with some European countries, notably the Federal Republic of Germany. But after the arms embargo was imposed and development assistance suspended in the early nineties, Yangon found alternative suppliers of defence material;
- Between 1990 and 2012, the ban on European development assistance amounted to more than €588 million of lost development projects in Myanmar, which is a conservative estimate.<sup>7</sup> Despite considerable economic consequences for public finances and the country as a whole, the military government adamantly rejected the conditionalities attached with Western aid. The EU could have foreseen that aid suspension was unlikely to exert effective influence because the SPDC was continuing the policy of non-interference that Germany, the UK, and other European donors had to respect under the era of General Ne Win. Therefore, as long as the SPDC ruled Myanmar, this restrictive measure did not coerce the military government to include the NLD in a reconciliation process. However, this ban may have influenced important economic policies, such as opening Myanmar's economy to foreign investment in the early nineties. Hence, the ban on development aid has indirectly reduced the leverage exerted by Europeans on Myanmar's economy, since it contributed to trigger the economic liberalisation that led Myanmar to find new business partners.
- The visa ban and asset freeze was reinforced regularly between 1996 and 2009 by targeting new individuals and entities. Nevertheless, these measures targeted officials who had mostly never travelled to Europe. Besides, the visa ban created a rally-around-the-flag effect among ASEAN

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<sup>7</sup> See: Chapter IV: 148.

counterparts because it hampered multilateral meetings between the EU and ASEAN. Neither did boycotts of multilateral meetings persuade ASEAN to take formal restrictions against the SPDC, such as suspending Myanmar's membership of the regional organisation. It is however noteworthy that ASEAN, as well as some of its member states, did express cautious criticism vis-à-vis the SPDC. Some ASEAN states promoted diplomatic initiatives to unlock the political stalemate between the SPDC and NLD. (For instance, the good offices of the UNSG's Special Envoy to Myanmar, Tan Sri Ismail Razali, were actively supported by Malaysia; furthermore, the ASEAN Presidency and certain member states did at times encourage the SPDC to accelerate the process of national reconciliation).<sup>8</sup> Several asianists noted that ASEAN's quiet diplomacy may have exerted more direct influence on the SPDC than the Western strategy of coercion.<sup>9</sup> In the absence of Western opprobrium, however, it is unlikely that ASEAN would have effectively softened its principle of non-interference and applied an equal level of informal pressure on the SPDC. Such indirect effects of intra-regional diplomacy became more tangible in the long run, after the SPDC was dismantled and President Thein Sein's new government changed national priorities by attempting to improve Myanmar's relations with the international community.

- Bilateral diplomatic boycotts and moratorium on high-level visits created symbolic but modest inconveniences for the SPDC;
- Discouraging European trade and investment between 1997 and 2012 deprived Myanmar of substantial revenues and of positive externalities such as human capital development. Myanmar authorities and state media had thus long denounced that sanctions have harmed the national economy.<sup>10</sup> This non-statutory boycott may have hurt the interests of domestic clients of the SPDC. However, it did not bring them down. In fact, European business

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<sup>8</sup> Haacke 2006: 55ff.

<sup>9</sup> Kivimäcki 2007: 1-18; Haacke 2006: 77ff.; Kyaw Yin Hlaing 2004: 73-85; Callaghan 1995: 158ff.

<sup>10</sup> Aung San Suu Kyi 2012.

partners became less and less relevant as Myanmar was increasingly interacting with other countries less concerned with human rights. In 1988, the EEC was an important partner with 19.2 percent of Burma's total trade, whereas the EU's share fell to 1.9 percent in 2010 despite Myanmar's economy growing constantly at double digit rates during the last decade.<sup>11</sup> In 2010, Myanmar's trade with APEC was over 40 times its trade with the EU. Patron-client relationships between the state and certain elements of the society existed long before sanctions were imposed.<sup>12</sup> But economic penalties have not helped to curtail the connections between the ruling militaries and their business clients. On the contrary, the reduction of channels for wealth creation, the lack of European companies that usually uphold international standards of corporate and social responsibility, and the underdeveloped services sector and middle class, may have instead contributed to strengthening the hold of businessmen close to the regime over the national economy. The liberalisation measures implemented by President Thein Sein's post-SPDC government partly aimed at improving economic relations with Western countries.<sup>13</sup> But these reforms were long overdue: they served the complementary purpose to 'civilianise' and entrench the establishment that had been thriving under military rule;

- The 1997 GSP withdrawal was a symbolic measure that targeted the problem of forced labour poorly. Officially aiming at punishing its use, it mainly hit private businesses instead of the army officers responsible for such practices. Myanmar exporters to the EU, who were not necessarily affiliated to the junta, were comparatively disadvantaged with competitors from other LDCs. For instance, Myanmar's garments exports to the EU collapsed after the suspension of the Multifibre Agreements in 2005, which may have unintendedly resulted in thousands of jobs losses;

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<sup>11</sup> IMF April 2012: *Direction of Trade*. See also: Kramer 2009: 16-17.

<sup>12</sup> Kyaw Yin Hlaing 2006.

<sup>13</sup> Thein Sein 2012.

- The 1998 discouragement of tourism mainly hurt private businesses, and did not exert tangible impact on the junta's behaviour. The establishment retained possessions of several bigger hotels and tourism infrastructures remained under the control of the state or by 'clients' of the junta, whereas smaller businesses were hurt the most;
- The bans on loans and equities to state-owned companies, adopted in 2000 and reinforced in 2004, had little impact. No proof could be gathered that such loans or investments had ever been made since the mid-nineties. Nonetheless, some European entrepreneurs formed joint ventures with the Myanmar government by using a company registered locally or in the region;
- The denial of assistance by the IFIs (effectively enforced since 1987 but officially supported by the EU since 2004) and the restriction of the mandate for UN operations in Myanmar triggered a considerable loss of revenue and technical expertise. Nevertheless, this restriction did not coerce Myanmar to include ASSK in an institutionalised process of national reconciliation until the SPDC was dismantled in 2011. The SPDC did not even reimburse Myanmar's arrears to the WB;
- The 2007 ban on companies active in mining, logging, semi-precious and precious stones mainly harmed small- and middle-sized private businesses that are not related to representatives of Myanmar's authorities. The targeted businesses were arbitrarily chosen from Myanmar business directories (yellow pages);
- In combination with sanctions, EU Troika have presumably influenced the military government's decisions to release some prisoners of conscience in the context of diplomatic visits. The EU, however, did not take positive action to welcome these conciliatory measures. Besides, the SPDC did not pursue more substantial steps towards reforms. Since 2003, it has strictly followed its own road-map to 'discipline flourishing democracy' and ASSK's house arrest sentence elapsed only after the 2010 general elections had been held.

This synthesis of the impact of all EU measures demonstrates that most restrictions did not quickly lead to the changes officially sought by the EU, at least during the military period. Penalties failed in their stated purpose to coerce the SPDC. They were nonetheless useful in symbolic terms to condemn the military regime as well as to support ASSK and the NLD. Hence, they were reinforced despite the ineffectiveness. Little attention was actually given on possibly counterproductive and unintended impact of restrictive measures, particularly on Myanmar's urban populations that organised movements of social contestation against the military regimes in 1974, 1988, and 2007. At the behest of certain member states, notably the UK, the Foreign Affairs Council (FAC) failed to release an internal report assessing the effectiveness of sanctions and designed for presentation to the European Parliament.<sup>14</sup> Records of the House of Lords Select Committee on Economic Affairs demonstrate that the UK government prevaricated when confronted with sceptical questions. The Commission's chairman, Lord Wakeham, stated:

I have to say at the outset that I find the [UK] Government's response to our report very disappointing. I find a mass of fudge, evasion, and bald assertion, without either substantiation or even any real attempt to engage with the criticism. Sanctions have been in place against Burma for more than ten years with no discernible impact in terms of progress towards democracy and respect for human rights. Indeed, in some ways, the situation has deteriorated. Meanwhile, little seems to be known about how hard the sanctions are hitting the Burmese people. The Government maintains that the sanctions are targeted against the military regime with little humanitarian impact. Important measures such as the strong discouragement of trade and tourism are said to be not formal sanctions. This entirely misses the point. The effect is the same - to hurt the Burmese people.<sup>15</sup>

Senior interviewees conceded that the EU has never conducted a formal and fact-based evaluation of sanctions *ex ante* or *ex post*. Internal evaluations conveyed to the political director level were so scrutinised that they were generally uncritical towards the existing punitive approach. Making internal

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<sup>14</sup> Tonkin, 9 December 2009.

<sup>15</sup> House of Lords: *Debate of 12 October 2007*.

evaluations available to the broader public was excluded.<sup>16</sup> The reluctance to publicly carry out an impact assessment stems from an unwillingness to disavow the EU's sanctions policy.<sup>17</sup> Policy-makers were keen to collectively address domestic audiences. Such a review would have undermined the validity of UK and EU policy.

## 2.5. The Value of Sanctions

### 2.5.1. A Symbolic Function

By way of consequence, this discussion enables us to identify which of the key functions of sanctions prevailed in EU foreign policy-making: *deterrence*, *compliance*, *subversion*, *international symbolism*, or *domestic symbolism*?<sup>18</sup> *Deterrence* was not the objective of penalties, since Myanmar does not pose a threat to the EU.

Outright *subversion* was not officially sought after. However, the maximalist interpretation of EU policy objectives led restrictions to gradually shift away from the function of formal *compliance* to *subversion*. The NLD's insistence that the government should recognise the results of the 1990 elections was tantamount to subversion of military rule in the eyes of the SPDC. The SPDC was unlikely to comply with demands that called upon the military to relinquish power. In the aftermath of the 1990 election, the NLD did not give signs it would negotiate an amnesty for possible reformers within the junta. The sanctions' lack of effectiveness is partly explained by the fact that they took sides in an intractable domestic stalemate. As long as the SPDC was in power, the EU could hardly change its foreign policy without implicitly recognising its failure to bring about political change. EU policy was fettered by Myanmar's political stasis.

The case study thus showed that punitive measures mainly served the purpose of *domestic* and *international symbolism*. They demonstrated solidarity

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<sup>16</sup> Interview 6.

<sup>17</sup> Tonkin, 9 December 2009.

<sup>18</sup> Lindsay 1986: 155ff.

among Europeans, with the domestic opposition in Myanmar, and with other Western democracies that imposed sanctions on the pariah state. The sanctions policy strengthened an ideological consensus in the EU on its liberal identity. It bolstered the international perception of the EU as a global promoter of human rights. EU policy towards Myanmar is a good example of the ‘something must be done’ syndrome, in which domestic pressures for action lead to ineffective policy, as the measures implemented are clearly inadequate.<sup>19</sup>

In addition to European elites, a second group of domestic audiences were constituencies within the member states. European governments could bolster their domestic support by adopting a punitive policy that was popular at home. Sanctions were highly effective in warding off domestic criticism.

On the one hand, policy-makers responded to domestic pressures to tighten sanctions on Myanmar. On the other hand, they could use Myanmar as a showcase for a principled democracy promotion policy. Adopting a tough stance on a pariah state can mollify calls to intensify pressure on other, more strategic states that do not abide by liberal norms (such as China). Since sanctions draw a neat distinction between allies and enemies, their lack of effectiveness as a policy tool was overshadowed by the normative prescription to take the side of the pro-democracy opposition led by ASSK against an odious military government. This political choice may seem natural, but the official perception of Myanmar’s political stalemate was therefore too Manichean for the EU to consider alternative ‘benchmark’ or ‘engagement’ strategies, which could have been more influential, as upholders of a flexible approach argued. The sanctions policy was to send a forceful message to international and domestic audiences about the EU’s unwavering commitment to defend human rights on the global stage.

This symbolic function made EU policy extremely cost effective domestically. Even if lacking in effectiveness, sanctions on the SPDC were politically risk free, because the democratic movement embodied by the NLD leadership had initially called upon the international community to ostracise the military government.

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<sup>19</sup> Jørgensen 1998: 89ff.

Moreover, modest European economic interests in Myanmar spared European politicians from significant opposition by domestic business groups (with the exception of Total in France).

### **2.5.2. Success of Sanctions**

The symbolic function of sanctions implies that their success or failure cannot only be gauged by their ability to achieve the policy's primary objectives. Paradoxically, and in contrast with Pape's seminal article, it is not because economic sanctions do not immediately work that they should be excluded from the EU's foreign policy toolbox. Drawing upon Baldwin, the success of sanctions hinges upon several aspects: their effectiveness, the cost to the sender, the cost to the target, stakes for the target, and stakes for the user.<sup>20</sup>

First, the effectiveness of EU sanctions on the SPDC was marginal. The military government did not sustainably include the NLD in an effective process of national reconciliation, as called upon by the EU. The junta never openly reacted to Western demands, even when sending conciliatory signals such as releasing ASSK.

Sanctions have been more effective towards Thein Sein's nominally civilian government, who introduced unprecedented reforms complying with important European demands. These reforms culminated with ASSK's election in parliament in April 2012. This success, however, should not be solely attributed to the sanctions regime. Myanmar's new leadership could re-orientate the country's national strategy because the 2010 general elections had secured the absolute majority of pro-establishment parties in parliament. This landslide enabled the successors of the SPDC to move towards a broader development strategy, which required Myanmar's fuller integration into the international community. Subsequent reforms were deemed to symbolically 'civilianise' and thus entrench Myanmar's military establishment. They were designed centrally

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<sup>20</sup> Baldwin 1999/2000: 90-92.



and decided in a top-down fashion. Reconciliation attempts with the political and ethnic opposition did not put at risk the USDP's control of the parliament. It can also be conjectured that Myanmar's reliance on China may have induced the new leadership to make concessions to the West in order to counter-balance Beijing's influence.

Second, direct costs to the sender were fairly low. From a European perspective, the economic interface with Myanmar has never been significant. Non-retroactivity of sanctions has inflicted little direct revenue loss on big European firms. Moreover, political costs of negative measures were minimal. Myanmar generally represents a low priority issue for Western governments.<sup>21</sup> Since sanctions had been called upon by the NLD, it was unlikely that European constituencies would widely criticise their governments for not being able to attain their primary policy objectives.

Indirect costs may have been higher for European non-state actors operating in Myanmar, though. European small-medium enterprises have been more affected than big businesses.<sup>22</sup> According to European and Myanmar entrepreneurs, the quasi-absence of European businesses in Myanmar impeded the EU's economic expansion in the country and (to a lesser extent) in the region at large. This competitive disadvantage has been increasing as Myanmar is further integrated in the regional economy.

Third, the cost of sanctions inflicted on the targeted country was considerable. Twenty-odd years of ostracism deprived Myanmar of hundreds of millions of dollars in development aid (and likely well in excess of a billion dollar), in addition to similar amounts in lost investment and trading opportunities when compared with other Southeast Asian LDCs like Cambodia or Laos, or a lower-middle-income country like Vietnam. Missing these opportunities also implied losing out on the multiplier effect for the whole economy. These missed opportunities, however, are hardly visible when examining aggregate economic growth.

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<sup>21</sup> Steinberg 2001a; 2011.

<sup>22</sup> Interview 6; interview 22.

Developmental costs of sanctions help to explain why the post-military government acceded to Western demands after the pro-establishment USDP had won the 2010 elections.

Fourth, stakes for Myanmar were relatively high too. The pariah government conveyed plainly that it would not bow to external pressure. Openly making concessions would have been condemned by die-hard members of the regime. Moreover, the military government could eventually extract sizeable benefits from the *status quo*. Sanctions have been used as a scapegoat for economic dysfunctions. They have generated a rally-around-the-flag effect, at least among SPDC supporters. These high stakes explain why the SPDC never fully and openly complied with EU demands, despite the obvious costs of sanctions.

Since April 2011, the stakes have been different for a nominally civilian government that seeks to legitimise its new-found authority. Strengthening the government's domestic and international legitimacy was an important component of Senior General Than Shwe's retirement strategy. This objective was mentioned in the last point of the SPDC's roadmap to democracy – 'Building a modern, developed and democratic nation by the state leaders elected by the *Hluttaw* [...]'.<sup>23</sup>

Finally, the stakes for the EU consisted mainly in reaping symbolic benefits at the domestic level. European leaders ostensibly showed their commitment to a norm-orientated democracy promotion policy. This policy simultaneously bolstered a benevolent European identity vis-à-vis an infamous pariah state. The costs of inaction would have, by comparison, been considerably higher.

When policy-makers consider whether to use economic sanctions, the relevant status quo is not that prevailing at the time the decision is being taken, but rather the status quo that would prevail if no action or a different action is taken.<sup>24</sup>

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<sup>23</sup> Interview 27.

<sup>24</sup> Baldwin 1999/2000: 97.

Inaction towards massive human rights abuses would have disavowed the sanctions regime already levied. Failure to act would have also given the impression of abandoning the NLD. Lindsay argued with regards to Rhodesia:

One of the most important uses of sanctions is enabling the sender to avoid creating negative images of itself... Had Britain not placed sanctions on Rhodesia [in 1966], most countries would have seen it as a sign of British approval of the Smith regime.<sup>25</sup>

EU policy was therefore hamstrung. Its domestic stakes were high, plus it carried little domestic cost. As a consequence, changing an ineffective policy would have been costly, while reinforcing it yielded obvious political benefits at both domestic and international levels. EU sanctions policy relied on political developments in Myanmar. The policy could hardly be changed as long as the SPDC was in power.

Generic reports of the British and French parliaments recommended that sanctions regimes be revised after a certain period of time (e.g. five years), so as to avoid the indefinite extension of protracted policies.<sup>26</sup> However, such recommendations do not comprehend the wide array of stakes influencing the making of a sanctions policy, as the case study of EU sanctions on Myanmar demonstrates. An inability to alter the target's behaviour did not provide a sufficient justification for repealing sanctions. Policy-makers did not solely take into account immediate policy effectiveness, but broader factors involved in policy-making. A more comprehensive evaluation of the success of sanctions needs to take into account their relational effects, as well as the overall calculation of costs and benefits by decision-makers.

Should the success of sanctions on the post-SPDC government be attributed to luck rather than design? For most European measures did not directly hurt their intended targets. Twenty-three years of struggle have undeniably weakened Myanmar's political and ethnic oppositions, whereas the junta's political and

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<sup>25</sup> Lindsay 1986: 166.

<sup>26</sup> House of Lords, July 2007: *Report*, Assemblée Nationale, 27 June 2001: *Commission*.

economic protections in the region remained generally solid - despite EU sanctions. Therefore, Myanmar's military leaders could have continued to indefinitely rule in a pariah state disconnected from the global economy. President Thein Sein should not be exaggeratedly depicted as a reformist: as PM, he implemented uncompromising policies that have drawn the opprobrium of the international community, especially during the 2007 uprising and the 2008 constitutional referendum held in the aftermath of Cyclone Nargis. With the benefit of hindsight, however, a more comprehensive analysis of sanctions needs to take into account their intangible effects, such as psychological factors, which have yielded an unexpected impact on the post-SPDC government.

Johan Galtung warned that it would be naïve to evaluate the effectiveness of sanctions solely in terms of their economic costs on the target.<sup>27</sup> Sanctions effectiveness cannot be only assessed in terms of their 'tangible effects' on the target; non-tangible and indirect effects should also be taken into account. Psychological and socio-political factors can play an important role in determining the effectiveness of sanctions on the targeted government.<sup>28</sup> The case of Myanmar before and after SPDC rule illustrates that foreign policy analysts should not undermine relational effects of sanctions in their policy assessments. Although such effects are usually non-tangible, they can be more influential than quantifiable ones like economic cost. Sanctions had limited psychological effects on the 'security-obsessed' SPDC, in contrast with the nominally civilian government eager to legitimise its authority derived from the 2010 elections.

Moreover, it is necessary to examine sanctions in the context of their overall costs for policy-makers, rather than their sole effectiveness in achieving primary objectives. '[...] [A] successful policy choice is one that maximizes the utility of the policy-maker in a given situation.'<sup>29</sup> The symbolic function of sanctions made the EU's restrictive approach highly path dependent. As uncertainty minimisers,

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<sup>27</sup> Galtung 1967: 378-416.

<sup>28</sup> Economides and Wilson 2001: 157.

<sup>29</sup> Baldwin 1999/2000: 85.

statesmen prefer to decide further sanctions that condemn pariah states, even if these measures are unlikely to turn out effectively. Engagement with pariah regimes may easily backfire.

Baldwin deduced that politicians have more interest in setting pusillanimous goals for their sanctions regimes, in order to appear more successful vis-à-vis their domestic constituencies, and thus minimise potential policy risks.<sup>30</sup> Baldwin's conclusion on minimalist goals is disproven in the case of Myanmar. It is precisely the contrary that happened. Policy-makers adopted maximalist objectives because they derived benefits from conducting a policy driven by ideology, and reflecting positively on their identity. Building upon these empirical findings, the following section can now deliver an overall assessment of the validity of the hypotheses, and related theories encountered throughout the empirical investigation.

### **3. Assessment of Hypotheses and Theoretical Reprise**

#### **3.1. Bandwagoning Hypothesis**

The bandwagoning hypothesis suggested that EU policy would align with the US if Myanmar bore little strategic weight for the EU. Chapter Three demonstrated that Myanmar carried little strategic relevance, an assessment which has not been changed throughout the periods covered. The policy change of 2004, which allowed for delivering more humanitarian aid, was not caused by altered perceptions of Myanmar's strategic weight, but by humanitarian concerns.

The bandwagoning hypothesis thus rightly predicted that EU measures would in general follow the same pattern as those adopted by the US. During twenty years, EU penalties tended to follow, rather than precede, those already applied by Washington. An evidence of official coordination between EU and US policies is the expression of EU demands in a joint declaration with the US in 2007.<sup>31</sup> In

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<sup>30</sup> *Ibid.*: 89.

<sup>31</sup> Council of the EU, 26 September 2007: *EU-US Statement*.

several instances, the EU quickly emulated US measures. The symbolic function of EU foreign policy equally aimed at aligning EU with US policy.

While bandwagoning with the US, EU foreign policy kept some degree of independence vis-à-vis its more powerful ally. Although EU restrictions increasingly entailed economic components, it did not officially adopt blanket economic sanctions. Some officials therefore contended that the absence of an indiscriminate ban on investment or trade with Myanmar distinguished the EU approach from that of the US.<sup>32</sup> After 2004, the EU's policy diverged from the US in the field of humanitarian aid when the EU decided to halt the ban on humanitarian aid in contradiction with US policy.

The question of bandwagoning with US policy did not spark divergences between Atlanticist and independently-minded EU states. According to officials involved in Council meetings, bandwagoning with the US was hardly raised in Council discussions, because it was not perceived as an issue in the non-strategic case of Myanmar.<sup>33</sup> Myanmar thus differs from other, more strategic pariah states like Iraq, where the question of bandwagoning with the US paralysed EU foreign policy in 2003.

Focusing on the structure of the international system elucidates the EU's inconsistent reaction to domestic developments in Myanmar in 1988 and 1990. The Cold War balance of power against the Communist block clarifies why the EU did not enforce penalties to condemn the brutal clampdown on the 1988 uprising. Two years later, the end of the Cold War explains why the EU did effectively punish SLORC for failing to honour the 1990 election. However, not honouring the result of elections that lacked clarity of purpose could be deemed a less flagrant human rights abuse than the mass murders committed in 1988. It could therefore be argued that the structure of the international system exerted more determining influence on the nature of the EU's response, than the scale of human rights abuses perpetrated in Myanmar.

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<sup>32</sup> Interview 32; interview 6.

<sup>33</sup> Interview 7.

The bandwagoning hypothesis has been falsified in the area of assistance policy since 2004. The exception introduced by Article 5, Common Position 2004/730/CFSP, allowed the subsequent decisions to found the Three Diseases Fund in 2007, as well as the increase in aid in the aftermath of Cyclone Nargis. Both decisions contradicted US policy of banning all assistance to Myanmar. The neo-realist lens adopted in this thesis predicted that the EU would be less assertive vis-à-vis the US in 'softer' policy areas, like humanitarian aid. This proposition was contradicted.

These instances of falsification, however, do not considerably undermine the explanatory power of neo-realism. Discordances with the US prove that the EU remained an independent actor in international relations. Furthermore, such disagreements were not costly to the EU because they did not bear any consequences for the Transatlantic Alliance. In conclusion, neo-realism certainly proves an insightful and in many cases valid theory. A combination of three variables thus provides convincing explanations of EU foreign policy: Myanmar's lack of strategic weight for the EU, bandwagoning with the principled US policy, and the structure of the international system during and after the Cold War.

Despite these strengths, neo-realism does not propose self-sufficient explanations of twenty-three years of EU foreign policy-making. Neo-realism offers persuasive explanations of the early period of EU foreign policy until 1995, as long as the UK did not actively promote a principled approach. In the subsequent periods from 1996 until 2010, however, neo-realism misses important drivers of EU foreign policy.

A significant limitation of neo-realism resides in its disregard of endogenous dynamics in EU policy-making. The pivotal moment surrounding the EU's reaction to James Nichols' demise was motivated by the UK's policy entrepreneurship and the member states' determination to demonstrate solidarity vis-à-vis Denmark and the NLD. The James Nichols' case was a purely European issue, completely disconnected from the US position on Myanmar. New Labour's election in 1997 represented another significant endogenous input, for the new British government has provided unwavering support to ASSK and

the NLD. Between then and 2010, the UK constantly pushed for further sanctions. The personal commitment of British policy-makers to ASSK, notably PMs Tony Blair and Gordon Brown, is well documented. In contrast with the neo-realist emphasis on the influence of impersonal structural forces on states' actions, domestic pressures and the leadership of British policy-makers did play a determining role in EU foreign policy. Robust empirical data thus points towards competing explanations of EU policy-making for the period between 1996 and 2011.

### **3.2. Compliance Hypothesis**

The compliance hypothesis proposed that EU policy would hinge upon Myanmar's behaviour. This hypothesis was corroborated multiple times, especially when Myanmar refused to heed EU demands by sentencing ASSK to house arrest several times or clamping down on mass demonstrations in 2007. The compliance hypothesis is useful to pinpoint the cause-and-effect relationship between the target's behaviour and the escalation of penalties. Restrictions were certainly tightened in the belief that they would make EU democracy promotion policy more effective, at least by explicitly punishing the SPDC when it encroached on basic human rights. The expectation that punitive measures represent a degree of response to the target's behaviour is thus confirmed.

The sanctions regime, however, displayed a one-way logic. Penalties were not scaled down when the SPDC partially heeded EU demands. They were unexpectedly reinforced when no specific events occurred in Myanmar, as a result of dynamics endogenous to the EU. The EU did not always scale up negative measures when Myanmar transgressed human rights norms and disregarded EU demands. Several penalties did not even hit the regime. Thus, the compliance hypothesis was falsified multiple times throughout the case study and in all three periods of EU foreign policy. In utter contradiction with this hypothesis, sanctions were more often driven by endogenous than by exogenous



inputs into EU foreign policy-making. In sum, sanctions were only partially determined by Myanmar's behaviour.

The empirical investigation demonstrates that the dynamics behind the imposition of EU sanctions were a lot more complex than approaches focused on the target's behaviour would suggest. Penalties were not only increased to punish Myanmar's behaviour, but as symbol of solidarity with Myanmar's political opposition, as a result of domestic pressures in the UK, and of a bargaining process among large member states. Therefore, restrictive measures were ratcheted up and were not substantively scaled down until April 2011 – with the minor exceptions of the increased delivery of humanitarian aid and the visa ban waiver.

This study concludes that sanctions approaches focusing on target behaviour do not offer holistic explanations of EU foreign policy towards Myanmar, and towards pariah states in general. The lack of comprehensiveness of such explanations shows that they cannot be used on their own. This finding echoes Galtung's argument that such an approach is based on a fallacious conception of politics altogether.<sup>34</sup> Sanctions policies do not always follow a mechanistic cause-and-effect relationship between the target and sender's behaviours, notably because it is often more cumbersome and less rewarding to rescind restrictions than to strengthen them. Theories focusing solely on the achievement of primary objectives proffer insightful but sketchy explanations of such policies, whether applied to penalties wielded by sovereign states or by international organisations like the EU.

### **3.3. Consensus Hypothesis**

The consensus hypothesis suggested that EU foreign policy reflects the intention of policy-makers to maintain or strengthen a consensus on the liberal identity of the EU. A consensus does not mean that there are no divergences between policy-makers, but that the diverging minority of member states

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<sup>34</sup> Galtung 1967: 380ff.

eventually compromises with the views of the majority so that a common foreign policy can be ultimately decided. This hypothesis explains crucial events, notably the pivotal moment surrounding the EU's response to the death of Denmark's honorary consul. The definition of a European consensus in 1996 appeared necessary to develop a more cohesive foreign policy.

After 1996, the EU did not take any decisions that would have undermined the European consensus to treat Myanmar as a pariah state. Officially distancing their policy from ASSK, a democracy icon, would have subjected flexible European governments to criticism by European actors, domestic constituencies, and a transnational network of human rights campaigners. Moralistic policy prescriptions generally proved more persuasive in Council discussions than arguments focusing on policy effectiveness. As a supranational actor independent from national governments, the European Commission (and later the EEAS) enjoyed more flexibility to advocate policy options that were less popular among European civil society groups, although it also faced the internal constraints of a multinational bureaucracy.

The adoption of punitive measures was also a consequence of the 'European' commitment to promote democracy and human rights globally, which has been laid down in multifarious official documents, Treaties, Common Positions, Common Actions, and diplomatic declarations. Regular social interaction contributed to shaping a consensus, so that EU member states were reluctant to veto principled initiatives. The EU's repeated decisions to escalate pressure on Myanmar undeniably enhanced its credentials as a global promoter of human rights and democracy.

Based on the agreement to treat Myanmar as a pariah state, the consensus was subject to several attempts at redefinition. Various actors interpreted EU norms differently, as the emergence of unexpected situations opened windows of opportunity for new policy orientations. By all accounts, EU policy-makers had to engage in dialogue and attempt to persuade one another in order to reach decisions. The measure in 2004 to remove the ban on humanitarian aid is

attributable to a process of persuasive dialogue on the nature of European norms.

Smaller member states, European institutions, and Brussels-based lobbyists did play a role in the policy, although not a decisive one when compared to the influence wielded by the largest EU member states. The former stakeholders demonstrated their ability to put ideas on the table. Principled actors, including the European Parliament, presumably enhanced the persuasiveness of British proposals by calling for blanket economic sanctions or for completely severing diplomatic relations with Myanmar. This maximalist stance had the effect that flexible member states essentially aimed at tempering the principled position in a cooperative way, instead of blocking proposals.

The positions of EU member states did evolve quite considerably between 1988 and 2010. This development does not necessarily imply that social interaction changed the member states' initial interests. Other factors played a salient role in policy-making, such as: the changing structure of the international system, the nature of the events occurring in Myanmar, or gains acquired during bargains struck between big member states. However, this increased convergence around a European consensus shows that an 'upgraded interest' did emerge. This upgraded interest related to what was perceived as a European identity, or a peculiar conception of how the EU should behave as an actor in international relations. A strong consensus has grown considerably on how EU member states should collectively react to specific exogenous events.

Nonetheless, while the consensus hypothesis excels at unveiling the 'push factors' in EU policy-making, its emphasis on normative drivers cannot expound the 'brakes' in cooperation. The hypothesis was of little use when no strong consensus prevailed in the early days of EU policy-making. Several decisions to tighten sanctions were underpinned by a bargaining process between large member states that took place in parallel with the process of dialogue between EU policy-makers. The Netherlands' decision in 2005 and 2006 not to respect the consensus established since 2000 on the visa ban waiver demonstrated that the 'logic of appropriateness' did not always prevail in policy-making, even in regards

to smaller member states. These impediments on cooperation mainly stem from the 'logic of diversity' in the EU, which liberal intergovernmentalism better captures.

This thesis discovered that practitioners could interpret the same norm (e.g. democracy promotion) differently. Therefore, social constructivism cannot always predict which norm will eventually produce a specific policy outcome. The emphasis on the process of dialogue among policy-makers obscures fundamental questions raised in Foreign Policy Analysis, namely *who* are the key actors deciding the policy, and *which* main structures constrain decision-making.

The putative prevalence of norms over other policy inputs also poses the question of consistency. If EU foreign policy-making is the result of a normative consensus, then why are authoritarian regimes with an analogously dim human rights record treated differently by the EU? Unlike liberal intergovernmentalism, social constructivism does not provide a ready-made explanation for double standards and hypocrisy in policy-making. The questions raised above can hardly be answered, without incorporating intergovernmental constraints on decision-making into tentative theoretical explanations.

#### **3.4. Large Member States Hypothesis**

The large member states hypothesis proposed that the calculation of material interests by the three big member states determines EU policy. This hypothesis has been validated in most instances of policy initiatives encountered throughout the empirical investigation. All decisions were the results of policy entrepreneurship by large member states (except the first penalty decided in 1991 for which it is unknown which actor initiated the proposal). The UK was at the origin of almost all initiatives from 1996 until 2010 – apart from the first Troika of 1999 and the waiver on the visa ban adopted in 2000, which were both set up by Germany. Hence, only proposals initiated by one of the big member states were ultimately accepted by the two others.

Proposals by smaller member states and European institutions were not adopted unless they were backed by a big member state. The Commission's role

was marginal except in the sector of humanitarian aid, where it benefited from the UK's support to promote new initiatives. The European Parliament did not directly influence EU foreign policy. Proposals by Denmark and the Netherlands were rebuffed until the UK successfully reintroduced them. This confirms the liberal intergovernmentalist perception of European integration as a process of 'bargaining among unequals'.<sup>35</sup> Large member states played a determining role in reaching decisions on common measures.

As a consequence, and despite the relevance of norms highlighted by social constructivist explanations, important decisions were mainly the result of a bargaining process during the entire period covered. Cooperative bargaining implied mutual concessions and log-rolling between policy-makers supporting each other's projects. Setbacks and policies reflecting lowest common denominators occurred at times, although these outcomes became less frequent after a common position had been decided in 1996 and a European consensus to treat Myanmar as a pariah state consequently emerged.

Preferences remained basically unaltered by the interaction at the EU level. Different views could be accommodated thanks to side-payments. Flexible member states conceded to imposing tougher restrictions after having secured that their main domestic interests would be unscathed by EU sanctions. A smaller principled member state could even refuse to apply a waiver on the visa ban enshrined in a common position.

Preferences were domestically defined. During twenty years, big member states changed their preferences only as a result of domestic dynamics. Domestic pressures shifted sometimes, but only owing to a change of government after a national election. New governments in the UK, the Netherlands and France became more supportive of economic sanctions in the aftermath of the general elections of 1997, 1998 and 2007, respectively. By dint of interaction among policy-makers, it became clearer which policy options were viable (e.g. adopting penalties in targeted sectors), and which ones were not

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<sup>35</sup> Moravcsik and Vachudova 2002.

(e.g. imposing broad-brush economic sanctions). Among all theories, liberal intergovernmentalism therefore possesses the strongest explanatory power.

The related claim, however, that policy-making would only reflect a calculus of material costs and benefits was contradicted in several instances after the adoption of Common Position 96/635/CFSP. Large member states with lower preference intensity compromised on their interests, notably in the field of bilateral economic interactions with Myanmar. The expectation that EU member states would behave as utility maximisers is at odds with France's inclination to agree that economic relations with Myanmar be restrained, despite Total's foothold in the country. In EU foreign policy towards Myanmar, ideational inputs have consistently outweighed material interests since 1996.

The liberal intergovernmentalist emphasis on material interests can be misleading in the case of a pariah state like Myanmar. EU foreign policy was not really paralysed by divergences among member states. Overall, it did not reflect the lowest common denominator over a long period of time. *Status quo* outcomes remained possible, but the ideational drivers of EU policy enabled the member states to overcome divergences that had erstwhile appeared insuperable. The case study of EU foreign policy-making towards Myanmar as a pariah state underlines that policy paralysis is exceptional. Once implemented in the framework of a common position, EU decision-makers tended to broadly agree upon the consensus to maintain sanctions, independently from their effectiveness on the SPDC and their nuisance for European economic interests. Recalcitrant EU member states were unwilling to veto a policy based on previously-built consensuses.

### **3.5. A 'Normative' Interpretation of Liberal Intergovernmentalism**

This thesis thus proposes a 'normative' version of liberal intergovernmentalism to deliver a more comprehensive explanation of EU foreign policy-making towards Myanmar between 1996 and 2011. This interpretation builds upon core tenets of liberal intergovernmentalism (e.g. EU decisions are taken following a bargaining process among the largest states, who define their preferences

domestically), but it borrows insights from social constructivism to account for the role of norms as drivers of EU foreign policy-making. While liberal intergovernmentalism offers the most solid basis to analyse EU foreign policy-making, the interpretation proposed here is 'normative' because it considers that the drivers of EU foreign policy are not material, but based on EU policy-makers' moral commitment to promote human rights, which is laid down in EU legal and social norms. Moravcsik had envisaged that ideology could possibly play a more important role in EU foreign policy than in other areas of European policy-making, but he did not deepen this consideration.<sup>36</sup>

The spotlight laid by liberal intergovernmentalism on big EU member states aptly accounts for the repeated decisions to tighten sanctions. While the UK promoted a principled EU foreign policy, France and Germany tended to raise objections and bargain to reach a common stance. Smaller member states, the European Commission, and even lobbyists (via intermediaries having access to the Council), could put proposals on the table, but they did not have the power to shape the outcomes of negotiations. The latter were determined by the largest EU states. This accent on big member states also explains why policy proposals were occasionally rejected in the Council. A consensus among the big EU three is a necessary condition to decide common measures.

As predicted by liberal intergovernmentalism, outcomes of bargains between the largest member states depended on their respective preference intensities. Large member states with stronger preferences in a given issue area tended to determine EU policy decisions. Other big member states with less intensive preferences were more inclined to agree with their policy proposals. This asymmetrical interdependence enabled member states to agree on a common foreign policy. Consequently, issue linkages and bargains between large member states underpinned the decision-making process. Neither Berlin nor Paris considered Myanmar high enough a priority to veto UK initiatives.

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<sup>36</sup> Moravcsik 1998: 478; Moravcsik 1993a: 494.

EU policy-making can be understood as a three-level game.<sup>37</sup> Policy-makers played this game first in the domestic arena, then at the EU level with European institutions and transnational lobbyists based in Brussels, and finally at the intergovernmental level - essentially between the EU big three. The meso-level of governance is less important than the domestic and intergovernmental levels of policy-making, because it is where the European Commission, the European Parliament, and transnational organisations like the Euro-Burma-Office or the ICFTU influenced certain policy proposals. The more influential external groups were national ones because they could pressure big member states, especially the UK. The most strategic level of decision-making was the intergovernmental level as the nature of EU decisions was determined by the ability of the three largest member states to find a common stance. The EU responded to exogenous dynamics only if a large member state promoted a specific EU policy. This also explains why the EU did not necessarily reward partial compliance by the pariah state.

Liberal intergovernmentalism, however, could not unveil the real drivers of EU foreign policy towards Myanmar. Normative motivations of EU member states gave impetus to EU foreign policy, not their material interests. Ideas tended to prevail over economic drivers, so that the interests of human rights groups outweighed those of economic lobbies.

The main effect of EU policy consisted in buttressing the identity of the senders of sanctions domestically. Since restrictions were called for by ASSK and the NLD, the argument for a principled course of action proved highly persuasive within the EU, despite its unlikelihood of success. Flexible member states could hardly contravene proposals to reinforce sanctions without being attacked as apologists for the junta, notably by pro-democracy campaigners. Nevertheless, while ideas acted as the 'push' factors in EU foreign policy towards Myanmar, decisions always took into account the material interests of EU member states, and reflected the vested interests of the largest ones.

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<sup>37</sup> Camroux 2010: 57 and 71.



Reputational issues within the Council were most acute when the SPDC obviously flouted human rights, thus increasing the pressure to 'do something' and punish such violations. For most policy-makers, a flexible policy would have undermined the commitment to promoting human rights and democracy. This European engagement for democracy is enshrined in multiple Treaties and Common Positions. A foreign policy driven by ideological prescriptions yielded externalities such as a liberal identity, from which the various policy-makers reaped domestic benefits. Social constructivism stresses that ideas, such as policy prescriptions or ideologies, forge the identity of the actor in question. Policy feedbacks bore little weight on EU sanctions policy towards Myanmar's military government, because ideological arguments prevailed over utilitarian interest calculation, and decisions also resulted from a bargaining process among the largest member states.

Negotiations thus followed a two-pronged process, which first implied arguing and exchanging ideas. The second stage of negotiation involved bargaining and side-payments, especially among the largest member states. EU foreign policy was the product of the lowest common denominator until a common position was adopted in 1996. An 'upgraded interest' tended to prevail thereafter. However, this process of convergence was not irreversible. The interests of EU member states did not equally converge in all areas of policy-making as the interests of EU member states were identified domestically. Changed preferences were generally the result of new functional demands at the domestic level, for instance following the election of a new government. EU member states could accommodate their diverse preferences by bargaining and making side-payments. These bargains, however, did not imply that their interests were fundamentally changed.

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To conclude, the research question can be answered in three steps. First, the origins of EU policy were exogenous. The foreign policy took its roots in Myanmar. ASSK's calls for European leaders to impose blanket sanctions became a powerful prescription for policy-makers eager to craft an ethical foreign

policy. Myanmar's lack of compliance with EU demands did at times, although not always, entice the EU to scale up restrictions. This normative stance was strengthened by the EU's lack of strategic interest in Myanmar and the US sanctions policy. Important additional triggers of EU policy were endogenous to the EU.

Second, sanctions were imposed – and later reinforced – because their symbolic function reflected on the EU's identity. EU member states felt compelled to react to the SPDC's decision not to honour the 1990 elections, and to the death of Denmark's honorary consul in *Insein* prison. As a European consensus steadily emerged, principled arguments became more influential than those focused on policy effectiveness, at least because the principled approach appealed to the emotions of policy-makers and their audiences. Adopting a tough stance on Myanmar, too, helped to deflect domestic criticism for cooperating with other authoritarian states in the region. However, economic interests of (big) member states clearly limited the scope of a normative policy. The EU did not initially impose economic penalties, despite the NLD's calls to that end since 1988.

Third, the principled EU policy was chiefly advocated by a big member state after New Labour was elected in 1997. Policy entrepreneurship by a large state was the main trigger to escalate restrictions. Unlike smaller member states, the UK could convince other actors to adopt its policy proposals. It used ethical arguments persuasively, built coalitions with a wide range of actors, and bargained and made side-payments to other big member states reluctant to impose penalties. It was in the UK's interest to act within an EU framework to benefit from 'politics of scale'.

The principled stance tended to dismiss arguments in favour of engagement as apologetic for the SPDC. Policy-making towards a pariah state is a politicised exercise. Therefore, flexible states accepted the ratcheting up of penalties despite evaluations that a punitive strategy was unlikely to bear fruit, and after having secured that the policy would not harm their core economic interests. Demonstrating symbolic solidarity was the prevailing rationale of EU policy-

making. The extraordinary attributes of ASSK as an icon of democracy, and the UK's unwavering support to her, help to clarify why Myanmar represents such a peculiar case of EU sanctions. The prominence of Myanmar's pro-democracy movement in EU policy therefore contributes to explaining why Myanmar has been the object of one of the most comprehensive and extended sanctions regimes ever adopted by the EU.

The foreign policy challenge encountered by the EU is captured by the treatment and implicit designation of military-ruled Myanmar as 'pariah' state. A consensus prevailed in the EU to punish the SPDC's reprehensible treatment of human rights; yet sanctions were a 'blunt instrument' that often missed its primary targets.<sup>38</sup> They bore unintended consequences, which may have contributed to impairing the human rights situation they aimed to redress. Making foreign policy towards a pariah state represented a challenge: the pariah apparently refused to quickly bow to outside pressures after sanctions were enforced, but its egregious domestic behaviour could hardly be ignored by the Union. The common policy therefore translated into ineffective symbolic posturing. Ratcheting up sanctions represented a symbolically lesser evil than inaction or engagement.

The next section shall now attempt to summarise the main contributions of this thesis to the scholarship on EU foreign policy-making and on sanctions on Myanmar. It also charts potential research to stem from this study.

## **4. Conclusions**

### **4.1. Contributions of the Thesis**

The first contribution of the dissertation is that it untangles an empirical puzzle. An in-depth study of the evolution of EU foreign policy and the respective policies of its member states over a twenty-three years period was necessary to expound such a complex case. Other studies did not systematically address the

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<sup>38</sup> The expression 'blunt instrument' is borrowed from Boutros Boutros Gali's *Agenda for Peace* (UNSG: *Report*, 17 June 1992).

overarching question: why did the EU scale up sanctions on the SPDC. The UK's influence on EU foreign policy-making was generally overlooked. This research gathered new empirical data thanks to substantive interviews, including on periods of policy-making that were not comprehensively covered by previous studies, like the EU's policy between 2007 and 2010. Finally, using a single case study provided an opportunity to systematically ascertain the explanatory power of mainstream theories of International Relations and European policy-making in the context of EU sanctions.

Second, the emphasis on big member states in EU foreign policy-making fills a gap in the literature on EU sanctions. Portela claimed that the objectives of autonomous EU sanctions differ according to the geographical locations of its targets.<sup>39</sup> This thesis adds to her analysis that norm entrepreneurship by a large EU member state, particularly a former colonial power of the targeted state, and the ensuing bargaining process among the EU big three, are other additional factors that can also determine EU foreign policy-making. Wilde d'Estmael, Hazelzet, or Portela generally omitted endogenous inputs in their respective analyses of EU sanctions.<sup>40</sup> Endogenous inputs into EU policy-making have been mainly incorporated by single case studies.<sup>41</sup> But most single case studies did not offer comprehensive theoretical explanations of the making of EU sanctions.

A third contribution consists in developing a mix of liberal intergovernmentalism and social constructivism to solve the paradox of EU sanctions on Myanmar. Scholars had noted this puzzle – namely, that EU sanctions could harm national interests of EU member states to attain common political objectives.<sup>42</sup> However, they did not propose a theoretically-informed solution to this paradox. Thus, this thesis built upon liberal intergovernmentalism, but went beyond this theory to incorporate insights from social constructivism.

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<sup>39</sup> Portela 2005: 100ff.

<sup>40</sup> Wilde d'Estmael 1998; Hazelzet 2001; Portela 2005; 2010; 2011.

<sup>41</sup> On the EU's arms embargo on China, see: Decerton 2009; Remond 2008; Casarini 2006: 221-231. On EU restrictions towards the countries that broke out from the former Yugoslavia, see: Buchet 2003; De Vries 2002; Wilde d'Estmael 2004.

<sup>42</sup> M. Smith 2004b; Wilde d'Estmael 1998.

Liberal intergovernmentalism accounts for important shortcomings of EU foreign policy, notably owing to intra-state bargaining. Social constructivism explains why the policy was consistently principled due to a shared perception of a European identity.

In-line with the mainstream literature on multilateral sanctions, this thesis generally supports the claim that, to gain cooperation from other member states, the leading sender of sanctions uses tactical issue-linkage particularly in the form of side-payments.<sup>43</sup> However, this explanation is insufficient when it comes to analysing policy-making in a highly integrated organisation like the EU. Normative prescriptions, based on a common understanding of European identity, played a crucial role to convince all EU member states that ratcheting up sanctions represented a lesser evil than other policy options like inaction. Side-payments can be regarded as a necessary, but not as a sufficient condition of EU policy-making.

This dissertation retained liberal intergovernmentalism as the best explanation of EU foreign policy-making. Nevertheless, it highlighted important caveats of this theory. These lacunae cannot be remedied without incorporating ideational inputs into EU foreign policy-making. This thesis joins the growing body of studies, which blend rationalist with ideational approaches to explain EU foreign policy-making, such as Federica Bicchì's ideational intergovernmentalism, or Daniel Thomas' normative institutionalism.<sup>44</sup>

Fourth, the thesis delivered new insights on the relevance of policy feedbacks when making EU sanctions. The case of Myanmar contradicts Ginsberg's claims on the relevance of feedbacks in EU policy-making, who suggested that ignoring feedbacks on policy impact could risk 'destroying over time the [EU] foreign policy decision-making system'.<sup>45</sup> On the contrary, the European consensus to treat Myanmar as a pariah state strengthened perceptions of the EU's identity, although evaluations had already pinpointed that further penalties were unlikely

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<sup>43</sup> Martin 1993: 406ff; *ibid.* 1992a.

<sup>44</sup> Bicchì 2002 and 2007; Thomas 2011.

<sup>45</sup> Ginsberg 2001: 277.

to immediately bear fruit on the military government. Policy evaluations were rarely heeded by EU policy-makers, notably owing to the prevalence of higher priorities set by the sender of sanctions, or due to bargains between big member states.

This finding on the limited influence of policy feedback also contributes to the large body of literature on ethics in EU foreign policy, and in foreign policy more generally.<sup>46</sup> The case of EU foreign policy towards military-ruled Myanmar demonstrates that implementing an ostentatiously 'ethical' foreign policy can be more important than the actual effectiveness of democracy promotion. An assessment of the effectiveness of sanctions should not only take into account their tangible (economic and diplomatic) effects, but also their intangible impacts, as well as broader calculations of risk, costs and benefits at the time of decision-making.<sup>47</sup> This insight illustrates the complexity of foreign policy-making towards pariah states in general as well as some operational challenges of European democracy promotion in authoritarian contexts.<sup>48</sup>

A fifth contribution consists in delivering new insights to the literature on international sanctions on Myanmar. The study delivered a comprehensive impact assessment of the EU's economic and diplomatic policies from the complementary perspectives of International Political Economy and Foreign Policy Analysis. It explained why each measure did not tangibly influence the SPDC's behaviour with regards to the achievement of primary objectives. Previous studies had mainly focused on the impact of individual EU measures, without necessarily analysing the impact of EU policy in a broader international context.<sup>49</sup>

This impact assessment was connected to the overall policy-making process in order to explain why the EU imposed each measure despite its unlikely

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<sup>46</sup> Ruffa 2011; Thomas 2011; Khaliq 2008; Aggestam 2008; Manners 2008 and 2002; Balfour 2008; K. Smith 2007, 2003a and 2001; Gaskarth 2006; Hyde-Price 2006; Abrahamsen and Williams 2001.

<sup>47</sup> Economides and Wilson 2001: 157; Baldwin 1999/2000.

<sup>48</sup> Youngs 2010 and 2004a; Barrios 2009; Schlumberger 2006: 33-60.

<sup>49</sup> Frittin and Swanström 2010; R. Taylor and Pederson 2004; Collignon 1997.

influence on the SPDC. Non-statutory penalties are often overlooked in the literature. Notwithstanding, some informal restrictions (such as the denial of assistance by IFIs or disincentivising European investment and trade) yielded more formidable effects than most statutory measures like the visa ban on targeted members and supporters of the junta.

Furthermore, the empirical investigation demonstrated that the supreme concern of EU foreign policy consisted in supporting ASSK. It could be argued that sanctions imposed by the EU were directed at achieving domestic symbolism, as a signal of support to the NLD led by ASSK. This explanation could possibly be extended to other imposers of sanctions on Myanmar, like the US, Canada, Australia, Norway, or other Western states – notwithstanding the idiosyncratic process of policy-making in different states. Steinberg underscored the centrality of ASSK in Western policies towards Myanmar.<sup>50</sup> Myanmar is a specific case because of the personalisation of Western policy around Aung San Suu Kyi.

#### **4.2. Potential Directions for Further Research**

To conclude, further research stemming from this study could follow four different avenues. New research could attempt to: (1) explain EU foreign policy towards Myanmar in the post-SPDC era; (2) deepen the case study of EU sanctions on Myanmar from the perspectives of economics, legal, and political science; (3) apply the theoretical framework proposed in this thesis to explain other cases of the making of EU sanctions; (4) and apply normative liberal intergovernmentalism to explain cases of sanctions decided by other international organisations.

One avenue for further research would be to analyse EU foreign policy in the post-SPDC era. Two main questions arise after Myanmar's new and nominally civilian government introduced unprecedented political and economic reforms. The first question asks to what extent EU foreign policy did effectively contribute

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<sup>50</sup> Steinberg 2011: 35ff.

to the introduction of the long-awaited reforms that led to the election of ASSK in parliament on 1 April 2012. It is indeed paradoxical that sanctions were unable to budge their original target - the SPDC - for more than twenty years, whereas Myanmar's new government complied relatively quickly with some of the main objectives of EU policy. It would be interesting to know whether the new government consciously aimed at persuading the EU to rescind its sanctions regime (thus perceiving the EU as a foreign policy actor *per se*), or whether other international actors like the US, ASEAN, or China have been more influential in moving the domestic reforms process forward. More field research is needed to deliver a thorough answer.

This question on the effectiveness of EU sanctions became more acute after Thein Sein's government continued domestic reforms although the EU was relaxing its sanctions regime. On 12 April 2011, the EU suspended the application of restrictive measures for '12 months for new members of the government with no affiliation to the military [...]', and lifted the ban on high-level bilateral governmental visits to Myanmar until 30 April 2012.<sup>51</sup> The EU again suspended the visa ban on 87 persons in January 2012.<sup>52</sup> In April 2012, the EU eventually suspended all sanctions for one year with the exception of the arms embargo, following ASSK's election in the parliament.<sup>53</sup> It is meaningful to understand whether the EU's repeated decisions to relax sanctions encouraged Myanmar's new leadership to introduce reforms, or whether reforms would have been implemented even if the sanctions regime had remained in place.

The second question is related to the EU's historic decision to scale down sanctions in 2011 and 2012, for the first time in twenty years. Why did the EU so quickly repeal almost all its sanctions, whereas, hitherto, it had never effectively rewarded Myanmar during periods of partial compliance? The four hypotheses encountered in this thesis propose competing explanations to this paradigmatic policy change.

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<sup>51</sup> Council of the EU: *Decision 2011/239/CFSP of 12 April 2011*.

<sup>52</sup> Council of the EU: *Conclusions of 23 January 2012*.

<sup>53</sup> Council of the EU: *Conclusions of 23 April 2012*.



A second avenue for further research consists in deepening the EU-Myanmar case study by going beyond an analysis of EU policy-making. The study touched upon issues related to other disciplines of social science, which should be addressed to understand broader implications of EU foreign policy towards Myanmar. First, an economist could be interested to quantify the developmental costs of EU sanctions. This thesis showed that sanctions had a negative developmental impact, although they have not tangibly impacted on aggregate economic growth. The United Nations advocated that the humanitarian impact of sanctions should be an important concern of any sanctions policy.<sup>54</sup> The case of Myanmar underlines the need to confront the humanitarian argument in favour of so-called ‘smart’ sanctions with more rigorous analysis. Several senior EU policy-makers and pundits thus regretted that no independent and publicly-available analysis has been conducted on this important question.<sup>55</sup>

A second question is whether EU restrictions have effectively promoted democracy in Myanmar. A political economist could ask whether the positive effect of symbolically supporting the NLD has outweighed the economic costs inflicted on the population. This question is all the more meaningful after the EU repealed almost all restrictive measures. The NLD can no longer credibly use the threat of European sanctions as a bargaining chip with the government. If Myanmar continues domestic reforms without the pressure of Western sanctions, it could imply to some extent that EU pressure was not a necessary condition for reforms to take place.

A third element is related to the legal context of EU sanctions policy. This thesis identified several legal moot points related to the imposition of sanctions – such as the identification of targets, the notification of individuals targeted by sanctions, their right to appeal against the measures decided by the EU, or the legal rules to harmonise the coordination among the member states enforcing sanctions and the European institutions monitoring their implementation. Improving the legal framework of EU sanctions could help make them more

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<sup>54</sup> IASC and UNOCHA 2004.

<sup>55</sup> Interview 6; interview 49; interview 27.

effective as well as better respect the human rights of persons living in the targeted country. Since the EU increasingly uses sanctions in its external relations, it seems important to advance the research on this topic.

Beyond the EU-Myanmar literature, a third avenue for further research could ascertain whether the interpretation of liberal intergovernmentalism offered in the conclusion of this thesis can explain the making of EU foreign policy towards other pariah states. The main thread of normative liberal intergovernmentalism is that EU foreign policy-making towards pariah states remains embedded in the rationalist predicates of liberal intergovernmentalism, but that the drivers of foreign policy-making are ideological and therefore consensus-based. Among various comparative research methods, 'control cases' allow for qualifying the claims of a single case study by testing them with other, although less detailed, case studies.<sup>56</sup>

A comparative research could test the hypothesis that EU foreign policy is chiefly made by the largest member states. It seems at first sight logical that, as large EU member states and former colonial powers, the UK and France would play a predominant role in deciding EU sanctions regimes towards countries with which they enjoy historical and cultural ties. A possible exercise could therefore consist in comparing cases of EU sanctions wielded on former colonies of the largest EU members (e.g. Zimbabwe or South Africa for the UK; Côte d'Ivoire for France); former colonies of large, but not the largest, member states (e.g. Cuba for Spain); former colonies of smaller EU member states (e.g. Indonesia/East Timor for Indonesia and Portugal); and targeted states that had neither been colonised by a European power nor are neighbours of the EU (e.g. North Korea; Iran). Annex 6 indicates that this large member states hypothesis seems at first glance robust because EU sanctions often target former colonies of the largest member states. 50.8 percent (32 out of 59 cases) of EU sanctions targeted former British or French colonies; and 20.3 percent (12 out of 59 cases) targeted colonies of other EU member states like Italy, Spain, or the Netherlands. Also in regards to autonomous EU sanctions, 53.8 percent (21 out of 39 cases) targeted

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<sup>56</sup> King *et al.* 1994: 129 and 141.

former British or French colonies; and 15.4 percent (6 out of 39 cases) targeted colonies of other EU member states. A pertinent question is to what extent the three largest EU states effectively influence the making of EU sanctions on targets that were colonised by other EU members.

Another criterion for comparative study would consist in looking at the perception of a state's strategic weight. It would be interesting to compare the making of EU sanctions against targets located in the EU's neighbourhood (e.g. Belarus or Serbia); important trading partners targeted by EU sanctions (e.g. China); states that attempt to acquire WMDs (e.g. Iran or North Korea); or states that provide shelter to terrorist groups (e.g. Libya until 2004, Syria from 1986 until 2004, or Afghanistan).

Explaining why sanctions are scaled up also raises the question of scaling them down. New research could investigate why the EU resumes cooperation with former targets of sanctions. Pariah states that have complied with EU demands (e.g. Libya's compliance with Western demands in 2003 induced the EU to repeal sanctions in 2004<sup>57</sup>), or that have undergone regime change (e.g. South Africa in 1994), could hence be compared to other cases where the EU has scaled down restrictions although its target had not fully complied with its demands (e.g. Uzbekistan in 2007). There is hence ample scope to test whether normative liberal intergovernmentalism could be applied to other cases of EU sanctions.

A fourth avenue for further research would consist in examining whether a normative interpretation of liberal intergovernmentalism can successfully explain the decision of multilateral sanctions by other international organisations. There is potential to test whether the making of sanctions by other international organisations is also determined by the capacity of 'big member states' to harmonise their own domestic preferences with the social norms prevailing in this organisation. One of the large states could act as a 'sender' of sanctions, and the other large states would raise objections before reaching an agreement.

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<sup>57</sup> Council of the EU: *Common Position 2004/698/CFSP of 14 October 2004*.

In the case of the UN Security Council, it is possible that the five permanent members play the role of 'largest member states'. For instance, it was noted that France acted as sender of sanctions on Côte d'Ivoire in the UNSC as well as in the EU.<sup>58</sup> It would be insightful to investigate whether national pressure groups of big member states exert more influence on UN Security Council Resolutions than social norms characteristic of the UNSC. Finally, a normative version of liberal intergovernmentalism could tentatively be applied to explain how other regional organisations decide sanctions, like NATO, the African Union, the European Community of West African States (ECOWAS), or the Arab League. In various cases, diverse degrees of political integration and institutional cooperation may affect the importance of norms within each organisation. This study found that norms were the main driver of EU foreign policy-making towards Myanmar, but they may play a less important role in international organisations that are less integrated than the EU.

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<sup>58</sup> Interview 45. See: UNSC Resolution 1572 (2004); Council of the EU: *Decision 2010/801/CFSP of 22 December 2010*; *ibid.*: *Regulation No. 25/2011 of 15 January 2011*.

## **Annex 1: Chronology of Relations between the EU, Myanmar, and the US (July 1988-March 2011)**

### **23 July 1988**

General Ne Win resigns as BSPP-Chairman.

### **8-10 August 1988**

Mass demonstrations quelled by the army.

### **12-19 August 1988**

General Sein Lwin resigns as BSPP chairman. Former attorney general, Maung Maung, replaces him.

### **31 August 1988**

West Germany suspends all assistance to Myanmar for violation of basic human rights.

### **18 September 1988**

Army takes power in a *coup d'état*. General Saw Maung declares himself Prime Minister and announces that elections will be held after law and order is restored.

### **23 September 1988**

Washington suspends all arms sales and foreign assistance except humanitarian aid.

### **28 September 1988**

The European Community informally suspends development aid.

### **December 1988**

Germany suspends new bilateral development assistance.

### **1989**

The Bush administration decertifies Myanmar from the list of countries cooperating in efforts against narcotics. This measure denies Myanmar US assistance, and guarantees of Export-Import Bank and the Overseas Private Investment Corporation (OPIC). The US also opposes aid and loans for Myanmar from multilateral development banks.

The SLORC concludes separate cease-fire in the form of gentleman's agreements with the following ethnic insurgent groups: the Myanmar National Democratic Alliance Army (Kokang), the Myanmar National Solidarity Party, the United Wa State Party, the National Democratic Alliance Army (eastern Shan State), Shan State Army, and the New Democratic Army (Kachin).

### **2 January 1989**

The ambassadors of the US, EC member states, and Japan leave Yangon to avoid attending the national celebration of Myanmar's Independence on 4 January.

### **14 April 1989**

President George Bush suspends Myanmar's eligibility for benefits under Generalised System of Preferences (GSP) owing to violations of workers' rights.

### **27 May 1989**

Burma's official English name is changed to Myanmar.

### **20 July 1989**

Aung San Suu Kyi is placed under house arrest; other NLD leaders are also detained.

**8 May 1990**

US announce it will continue to withhold economic assistance 'until a government broadly acceptable to the Burmese people comes into being.'

**27 May 1990**

NLD wins landslide victory in general elections; elections disregarded by SLORC in controversy over their purpose.

**1990**

The European Parliament awards the Sakharov Prize for Freedom of Thought to ASSK.

**1991**

The SLORC concludes separate cease-fires in the form of gentleman's agreements with the following ethnic insurgent groups: Kachin Defence Army (ex-KIO 4th brigade), Pao National Organisation, and Palaung State Liberation Party.

**1991**

The European Community and its member states coordinate their action and suspend all non-humanitarian development aid.

**22 July 1991**

President Bush refuses to renew the bilateral textile agreement that lapsed on 31 December 1990.

**29 July 1991**

Council prohibits the sale of military equipment from Community countries to Myanmar.

**October 1991**

ASSK is awarded the Nobel Peace Prize for her efforts to bring democracy to Myanmar.

**1992**

The SLORC concludes a cease-fire in the form of a gentleman's agreement with the Kayan National Guard ethnic insurgent groups.

**3 March 1992**

UNHCR Resolution 1992/58 institutes the role of UNHCR special rapporteur. Rapporteurs were: Japanese Professor Yozo Yokota (1992-1996), Mauritius Chief Justice Rajsoomer Lallah (1996-2000), and Brazilian Professor Paulo Sérgio Pinheiro (December 2000-2008).

**14 April 1992**

The Coordinating Commission of the National Convention (NC) first meets. The six objectives of the NC are: 1. Non-disintegration of the Union; 2. Non-disintegration of national unity; 3. Perpetuation of national sovereignty; 4. Promotion of a genuine multiparty democracy; 5. Promotion of the universal principles of justice, liberty and equality; 6. Participation by the Defence Services in a national political leadership role in the future state. The opposition retorts that a NC should not be called until the following conditions are met: lifting of martial law, recognition of the 1990 elections results, and release of all political prisoners.

**April 1992**

General Saw Maung resigns as head of state due to mental illness.

**1993**

The EU confirms the 'suspension of all non-humanitarian aid programmes, cutting of defense links and a total ban on arms sales'.

**1994**

The Kachin Independence Army (KIA), the Kachin Independence Organisation (KIO)'s armed wing, signs a written ceasefire agreement with the SLORC. This is the only written ceasefire agreement signed between an ethnic army and Myanmar's national authorities. The SLORC concludes cease fires in the form of gentleman's agreements with other armed ethnic groups: Karenni Nationalities People's Liberation Front, Kayan New Land Party, and Shan State Nationalities Liberation Organisation in 1994.

EU member states sponsor a United Nations General Assembly Resolution on Myanmar. The EU has been ever since calling for a tripartite dialogue between SPDC, the NLD, and the ethnic nationalities.

First official contacts between the next EU German presidency (Klaus Kinkel) and the SLORC foreign minister Own Gyaw.

**February 1994**

UNSG Boutros Boutros-Ghali proposes to the then-Secretary-1 Khin Nyunt the establishment of a dialogue between the SPDC and the UN, which Khin Nyunt accepts in August 1994.

**30 April 1994**

US Congress places Myanmar on the list of international 'outlaw' states, which means that no funds made available under the Foreign Assistance Act can be used toward financing US shares in international organisations for programmes for Myanmar.

**1995**

The SLORC concludes cease fires in the form of gentleman's agreements with the following ethnic groups: New Mon State Party, Democratic Karen Buddhist Army, Karenni National Progressive Party, and Mongkok Peace Land Force – a splinter group from Kokang.

**February 1995**

The German deputy foreign minister visits Yangon, despite a recent bloody attack on the Karen headquarters of Mannerplaw.

The European communities allocate about 26 million Thai Baht in form of food and medicines to the 75,000 ethnic Karen minority living along the border.

**10 July 1995**

First release of Aung San Suu Kyi

**28 November 1995**

The National League for Democracy requests a review of the Convention's working procedures. Specifically, NLD delegates want to repeal orders which censor debate and allow for criminal punishment of those who speak against the military during the Convention. The authorities reject the request.

**29 November 1995**

The 86 delegates from the NLD boycott the National Convention. The number of MPs elected in 1990 now makes up less than 3 percent of all delegates.

**1996**

The SPDC concludes peacefires in the form of gentleman's agreements with the Shan State National Army/Mong Tai Army and the Karenni National Defence Army.

**30 March 1996**

NLD walks out from the Convention Hall, marking its rupture with the state-run National Convention. The official withdrawal is made definitive later in May 2004.

**April 1996**

James Leander Nichols, the honorary consul representing Denmark, Norway, and Finland, and a correspondent for Switzerland, is sentenced to three years in jail on charges of possessing two facsimile machines and a telephone switchboard.

**May 1996**

SLORC arrests 262 NLD elected members of parliament in their attempt to attend the first NLD party congress after ASSK's release.

**22 June 1996**

James Leander Nichols dies in Insein prison.

**25 June 1996**

The Commonwealth of Massachusetts passes legislation that adds a 10 percent premium on contracts with state agencies for companies that do business in Myanmar and prohibits those companies from purchasing or leasing state-owned property.

**July 1996**

Informal meeting between EU representatives and Myanmar's foreign minister Win Aung at the margin of the ASEAN Post-Ministerial Conference (APMC) to seek an explanation of James Nichols' demise.

**6 July 1996**

Danish beer multinational Carlsberg abandons plans to invest in Myanmar.

**7 July 1996**

Dutch brewer Heineken announces its withdrawal from a \$30 million venture in Myanmar. In response, Myanmar bans imports of Heineken and Carlsberg.

**18 July 1996**

Suu Kyi calls for economic sanctions against Myanmar in a videotape.

**July 1996**

Danish pension fund sells its \$10.45 million holding in Total SA, because of fears of an international boycott against Total SA.

**24 July 1996**

Canada and EU member states call for a UN 'contact group' to be formed to hasten political reform in Myanmar.

**July- August 1996**

European Commissioner for Humanitarian Aid, Emma Bonino, meets with Aung San Suu Kyi and visits refugee camps along the Thai-Myanma border.

**September 1996**

SLORC arrests 537 NLD activists in order to prevent a party congress in front of ASSK's house.

**30 September 1996**

President Clinton signs the FY 1997 Foreign Operations Appropriations bill, which bars US assistance to Myanmar, except for relief aid and anti-drug purposes. It also calls for the president to block new private American investment there in the event of 'large-scale repression of or violence against' the country's opposition.



**3 October 1996**

President Clinton bars Myanmar government leaders from entry into the United States.

**October 1996**

Troika meeting between EU representatives and Myanmar foreign minister Win Aung at the margins of the UN General Assembly with regards to James Nichols' demise.

**25 October 1996**

EU announces it will impose a ban on visas for officials of Myanmar's military junta and place a moratorium on high-level bilateral contacts.

**28 October 1996**

Council of the EU adopts Common Position 96/635/CFSP as a response to James Nichols' unexplained death.

**3 November 1996**

High-level contact between the NLD and the SPDC resumes. Police continues to close off the road in front of ASSK's house to prevent supporters from attending her weekend speeches.

**9 November 1996**

ASSK and NLD members attacked. This attack is deplored by the Irish Presidency.

**1997**

Establishment of the Euro-Burma-Office (EBO) in Brussels, a pro-democracy advocacy group with Harn Yawngwe as its director.

The SLORC concludes cease fires in the form of gentleman's agreements with the following groups: Karen Peace Force (ex-KNU 16th battalion), Communist Party of Burma – Arakan, KNU 2 Brigade Special Region Group – Thandaung, and Rakhine State All National Races Solidarity Party.

**2 January 1997**

The SPDC declares that ASSK's movements will remain restricted and some universities will remain closed in order to preserve order.

**31 January 1997**

Total and Unocal announce that they have signed a new production-sharing contract with Myanmar Oil and Gas Enterprise (MOGE) to expand offshore natural gas exploitation in the Adaman Sea.

**25 February 1997.**

The European Commission, supported by Japan, complains at a WTO meeting that Massachusetts's selective purchasing legislation violates the WTO Government Procurement Agreement (GPA).

**24 March 1997**

After a European Commission-sponsored study asserts the existence of 800,000 forced workers, the EU's foreign ministers vote to deny Myanmar's GSP benefits. The sanctions are estimated to affect only \$30 million Myanmar's exports annually, about 5 percent of the country's total exports.

**20 May 1997**

President Clinton issues an executive order that bars new investments, while allowing existing contracts to be fulfilled but not to be modified or expanded.

**21 May 1997**

SLORC detains more than 300 NLD members, including 50 elected members of Parliament, to prevent them from attending a party gathering to mark the anniversary of the 1990 elections.

**30 May 1997**

Dutch Presidency condemns the arrests and urges the SPDC to release the political prisoners; the European Parliament proposes to increase sanctions.

**31 May 1997**

Myanmar joins ASEAN. EU blocks meetings with ASEAN in the EU-ASEAN, ASEM, and ARF framework if Myanmar participates; US blocks the US-ASEAN and ARF meetings.

**20 June 1997**

UK suspends trade promotion activities in Myanmar.

**5 October 1997**

The EU extends for another six months its bans on non-humanitarian aid, visas for ruling military leaders, and the sale of military equipment for Myanmar.

**November 1997**

EU refuses to attend the EU-ASEAN summit unless Myanmar is only a 'passive observer'.

**15 November 1997**

SLORC replaced by SPDC, after several Generals are accused of corruption. The SPDC top four generals are the same as SLORC's, but there are 15 new high-ranking military officers.

**January 1998**

EU excludes Myanmar from participating in the second Asia-Europe meeting in London.

**3-4 April 1998**

Second Asia-Europe Meeting (ASEM 2) in London - Myanmar representative is not allowed to participate.

**20 August 1998**

The ILO releases results of its investigation on forced labour, concluding that the practice is widespread and systematic.

**September 1998**

European Commission logs a WTO complaint against Burma Massachusetts Act.

**October 1998**

The European Union expands its travel sanctions against Myanmar to include restrictions on transit visas as well as tourist visas.

**6 July 1999**

EU Troika visits Yangon and meets with Aung San Suu Kyi, SPDC-first Secretary General Khin Nyunt and foreign minister General Win Aung.

**26 April 2000**

EU extends its visa ban on Myanmar officials due to expire at the end of the month, imposes a freeze on assets held abroad by these officials, and bans the export of 'equipment that might be used for internal repression or terrorism' to Myanmar. A waiver on the visa ban is also introduced when in the interest of the EU. This regulation is approved on 22 May 2000, and enters into force on 24 May 2000.

**20 June 2000**

After several hearings, the US Supreme Court holds that the Massachusetts selective purchasing law is pre-empted by federal legislation and undermines the President's ability to conduct foreign policy.

**23 September 2000**

Second arrest of Aung San Suu Kyi.

**October 2000**

EU Troika cancelled by the Myanmar authorities, due to 'unfavourable circumstances'.

**December 2000**

Belgium allows Myanmar foreign minister Win Aung to attend the ASEAN-EU ministerial meeting in Brussels.

**29-31 January 2001**

EU Troika to Yangon composed of five representatives from the European Commission, Council, Sweden, and Belgium.

**October 2001**

The EU decides to renew its sanctions against Myanmar but says it will relax them if the reconciliation talks begin to yield positive results. The EU also agrees to allocate \$2 million for HIV/AIDS assistance in Myanmar.

**13-15 March 2002.**

EU Troika to Yangon (initially planned for December 2001) headed by Rafael Conde, Asia Pacific director of the Spanish ministry of foreign affairs.

**6 May 2002**

Second release of Aung San Suu Kyi.

**8-10 September 2002**

EU Troika meets with Aung San Suu Kyi and deputy foreign minister U Khin Maung Win.

**23 October 2002**

The EU agrees to extend its sanctions against Myanmar. The EU welcomed some steps taken by the regime but said they were unhappy with further efforts. They said the arrest of democracy activists in September was of 'grave concern'.

**14 April 2003**

EU extends existing sanctions for another year. The EU also threatens to widen the list of individuals subject to visa ban and asset freeze and to further strengthen the arms embargo by 29 October 2003, if no substantive progress is made.

**24 April 2003**

Aung San Suu Kyi says that military junta seems unwilling to engage in substantive talks on transition to democracy and that it was too early for Western governments to lift their sanctions.

**17 May 2003**

The US extends its ban on investment in Myanmar for another year, and refuses to lift the national emergency designation on Myanmar.

**30 May 2003**

Depayin incident, followed by Aung San Suu Kyi's third arrest. All senior NLD officers are placed under house arrest, party offices are closed.

**2 June 2003**

US State Department spokesperson calls on Myanmar's government to release Suu Kyi and reopen the party's headquarters. EU High Representative Javier Solana states that the 'repressive behavior confirms the regime's lack of interest in the return to democracy.'

**16 June 2003**

EU Council of foreign ministers decides to implement immediately strengthened sanctions, as a response to the Depayin incident. EU expands the list of targeted individuals on the visa ban to include the extended families of ministers, deputy ministers, former ministers as well as senior army staff officers.

**25 June 2003**

EU expands travel sanctions to include senior managers of state-run enterprises and officials from organisations linked to the government.

**28 July 2003**

President Bush signs the Burmese Freedom and Democracy Act.

**30 August 2003**

General Khin Nyunt unveils Myanmar's seven-step roadmap to democracy.

**18 October 2004**

Disbandment of Khin Nyunt and Military Intelligence apparatus.

**25 October 2004**

EU Council expands the travel ban to lower ranking members of the military and prohibits the granting of financial loans or credit to Myanmar state-owned enterprises. It bans new investments in state-owned enterprises, but the ban does not affect arrangements already in place. EU agrees not to support loans by international financial institutions to Myanmar. Article 5 of the Common Position 2004/730/CFSP of 25 October 2004 allows for provision of humanitarian aid to Myanmar in three specific sectors.

**February 2005**

The Netherlands prevents the Myanmar minister for national planning, U Soe Tha, from attending an ASEM Economic Ministers meeting in the Netherlands.

**July 2005**

Myanmar government cedes its turn as the chair of ASEAN.

**August 2005**

The Global Fund withdraws from Myanmar.

**September 2005**

The Netherlands refuses to grant a visa to the Myanmar minister for economy to attend the Asia-Europe economic ministers' meeting in Rotterdam.

**November 2005**

The Myanmar government starts to move to the new capital, Naypyidaw.

**November 2005**

Confidence-building mission by the Friedrich-Ebert-Foundation, welcoming a delegation from the Myanmar ministry of foreign affairs to seminars held in Brussels and Strasbourg on the 'Role and Structure of the Governmental Institutions of the European Union'.

**31 May 2006**

US State Department calls for a non-punitive UN Security Council resolution to change Myanmar's human rights policies.

**September 2006**

First 'track-two workshop' held by the FES with the Myanmar Institute for Strategic and International Studies (MISIS) on 'Challenges and Perspectives for the Future of ASEAN and EU-Relations'.

**End of 2006**

Opening of a Myanmar diplomatic representation in Brussels (first accredited to Belgium, the Netherlands and Luxembourg).

**11 January 2007**

US-led UNSC Resolution, cosponsored by the UK, criticises Myanmar for its policies. The voting was 9 in favour, 3 against and 3 abstentions. The Resolution was defeated because of vetoes of China and Russia.

**March 2007**

Second 'track-two workshop' held by the FES with the MISIS on 'Challenges and Perspectives for the Future of ASEAN and EU-Relations'.

**April 2007**

Recess in the National Convention, which finalised the Myanmar Constitution.

**September 2007**

Poorly paid workers protest against rise in bus fares resulting from 500 percent rise in the price of compressed natural gas used by bus companies. Some popular leaders like Min Ko Naing are arrested.

**3 September 2007**

Conclusion of the National Convention and publication of the Detailed Basic Principles of the Constitution.

**5 October 2007**

Protests by monks in Sittwe and Pakkoku repressed. Monks initiate nation-wide protests.

**October 2007**

SPDC starts to clamp down on peaceful protests known as the 'Saffron Revolution'.

**October 2007**

Third 'track-two workshop' held by the FES with the MISIS.

**2-3 May 2008**

Cyclone Nargis devastates the Irrawaddy delta region in Southern Myanmar.

**7 May 2009**

France proposes to use the Responsibility to Protect in response to Nargis crisis.

**10 and 24 May 2009**

Referendum on the constitution approved by 92.4 percent of voters.

**11 August 2009**

Verdict on Aung San Suu Kyi, sentenced to three years imprisonment commuted to 18 months house arrest by Senior General Than Shwe.

**12 August 2009**

EU condemns the verdict on Aung San Suu Kyi.

**13 August 2009**

EU extends visa ban to those involved in the prosecution of Aung San Suu Kyi.

**15-16 August 2009**

US Congressman Jim Web meets with Senior General Than Shwe and Aung San Suu Kyi.

**3-4 November 2009**

US Assistant Secretary of State visits Myanmar and meets Aung San Suu Kyi and Myanmar's leaders.

**17 December 2009**

Meeting between EU officials and Myanmar foreign minister on the fringe of the Copenhagen Summit.

**13 February 2010**

NLD vice chairman Tin Oo released from prison.

**1 March 2010**

Myanmar's Supreme Court rejects ASSK's appeal against the extension of her house arrest sentence.

**11 March 2010**

The 1990 election results are officially voided in the run-up to the 2010 general elections.

**29 March**

NLD announces its decision not to participate in the 2010 general elections, following an open vote held the same day.

**6 May 2010**

Deadline for political parties to register for the 2010 general elections. The NLD does not register (and therefore legally ceases to exist as a political party).

**13 August 2010**

Myanmar government announces that general elections will be held on 7 November 2010.

**14 September 2010**

The electoral commission states which parties are allowed to take part in the elections (37 parties); which ones had been disbanded for failing to register on time (5 parties); and which ones could not compete because of an insufficient number of registered candidates (5 parties). The NLD is officially disbanded as a party.

**October 2010**

ASEM summit in Brussels. EU Special Envoy for Burma/ Myanmar Piero Fassino and Commissioner for External Relations Benita Ferrero Waldner meet with Myanmar's foreign minister.

**7 November 2010**

Polling day. Competition is open for 330 (out of 440) seats in the Lower House (*Pyithu Hluttaw*, or People's Assembly) and 168 (out of 224) seats in the Upper House (*Amyotha Hluttaw*, or Nationalities Assembly), since the Constitution reserved 25 percent of the seats in both houses for the military.

**13 November 2010**

Expiration of ASSK's house arrest sentence.

**30 March 2011**

Swearing in of former Prime Minister Thein Sein as President of Myanmar.

## Annex 2: Dataset of EU Sanctions Regimes, January 1956 – January 2011

<i>Target</i>	<i>Begin</i>	<i>End</i>	<i>Duration</i>	<i>EUTreaty</i>	<i>UNsan</i>	<i>USsan</i>	<i>NeighCol</i>
Afghanistan	1996	2002	6	2	1	1	2
Algeria	1992	1998	6	1	0	0	2
Angola	1993	2002	9	2	1	1	1
Argentina	1982	1982	1	1	0	0	2
Armenia	1992	2011	19	1	0	0	1
Azerbaijan	1992	2011	19	1	0	0	0
Belarus	1997	2011	14	2	0	1	1
Bosnia-Herzegovina	1991	2011	20	1	1	1	1
Burundi	1993	1997	4	2	1	1	2
Cambodia	1992	1994	2	1	1	1	2
Central African Republic I	1991	1997	6	1	0	0	2
Central African Republic II	2003	2005	2	3	0	0	2
China	1989	2011	22	1	0	1	2
Comoros	2000	2001	1	3	0	..	2
Côte d'Ivoire I	2000	2002	2	3	0	1	2
Côte d'Ivoire II	2004	2011	7	3	1	1	2
Croatia I	1991	2011	20	1	1	1	1
Cuba	2003	2008	5	3	0	1	1
Djibouti	1991	1991	1	1	0	0	1
DR Congo /Zaire	1993	2011	18	2	1	1	1
Eritrea I	1999	2001	2	3	1	1	1
Eritrea II	2010	2011	1	4	1	1	1
Ethiopia	1999	2001	2	3	1	1	1
Fiji I	2001	2003	2	3	0	..	2
Fiji II	2006	2011	5	3	0	1	2
Former Yugoslavia / Serbia and Montenegro	1991	2011	20	1	1	1	1
FYR of Macedonia	1991	2001	10	1	1	1	1
Gambia	1994	1997	3	2	0	1	2
Guatemala	1993	1994	1	2	0	1	2
Guinea-Bissau	1998	2000	2	2	0	1	2
Guinea-Conakry I	1991	1997	6	1	0	..	2
Guinea-Conakry II	2009	2011	2	4	0	1	2
Haiti	1993	2004	11	2	1	1	2
Indonesia	1999	2000	1	3	0	1	2
Iran I	1984	1985	1	1	0	1	2
Iran II	2006	2011	5	3	1	1	2

<i>Target</i>	<i>Begin</i>	<i>End</i>	<i>Duration</i>	<i>EUTreaty</i>	<i>UNsan</i>	<i>USsan</i>	<i>NeighCol</i>
Iraq I	1984	1985	1	1	0	0	2
Iraq II	1990	2011	21	1	1	1	2
Israel	1982	1985	3	1	0	0	2
Kenya	1991	1997	6	1	0	..	2
Lebanon	2006	2011	5	3	1	1	2
Liberia	1992	2011	19	1	1	1	2
Libya	1986	2004	18	1	1	1	2
Moldova	2003	2011	8	3	0	0	1
Myanmar	1988	2011	21	1	0	1	2
Niger	1996	1997	1	2	0	..	2
Nigeria	1993	1999	6	2	0	1	2
North Korea	1991	2011	20	1	1	1	0
Pakistan	1999	2000	1	1	0	1	2
Palestinian Authorities	2006	2011	5	3	0	1	2
Peru	2000	2001	1	3	0	1	2
Poland	1982	1982	1	1	0	1	2
Romania	1989	1989	1	1	0	1	1
Russia	1999	2001	2	2	0	1	1
Rwanda	1994	2008	14	2	1	1	2
Sierra Leone	1997	2010	13	2	1	1	2
Slovenia	1991	1998	7	1	1	1	1
Somalia	1992	2011	19	1	1	1	2
South Africa	1956	1994	38	1	1	1	2
Southern Rhodesia	1966	1979	13	1	1	1	2
Soviet Union	1982	1983	1	1	0	1	1
Sudan	1992	2011	19	1	0	1	2
Syria I	1986	1994	8	1	0	1	2
Syria II	2005	2011	6	3	0	1	2
Togo	1992	2006	14	1	0	..	2
Turkey	1981	1997	16	1	0	..	1
Uzbekistan	2005	2009	4	3	0	1	0
Zimbabwe	2002	2011	9	3	0	1	2

68 cases of sanctions regimes

59 targeted countries

43 autonomous EU sanctions regimes

39 countries targeted by autonomous EU sanctions regimes



**Definitions**

A sanctions regime is defined by its beginning (i.e. imposition of a penalty), its end (i.e. repeal of the restriction(s) adopted), and the nature of its demands on the target (i.e. primary objectives). When different sanctions regimes are imposed, a single country is divided into separate cases. This implies that the original sanctions regime was first ended, and another sanctions regime is later imposed, usually with different demands. Sanctions regimes include non-statutory sanctions.<sup>1</sup>

**Sources**

This dataset draws on information from the following sources: European Commission/EEAS website (2011): *List of Restrictive measures (sanctions) in force*; Official Journal of the European Communities website (2011); UN Sanctions Committee website (2011); UN Political Division website (2011); HM Treasury financial sanctions database (2011); European Foreign Policy Bulletin Online (2011); EUR-Lex Celex website (2011); Lexis Nexis Eurofiles (2011); Sipri Arms embargo Database (2011); US Department of State Website (2011): *Directorate of Defense Trade Controls*; US Aid website (2011); Hufbauer, Schott and Eliot (1985/1990); Kreutz (2005); Hazelzet (2001); Portela (2005 and 2010); Cronin (2008); Abler (2008); and websites of newspapers and news agencies last consulted in 2011 (*The Economist*, *The Independent*, *The Guardian*, *Le Monde*, *der Spiegel*, Reuther, and Agence France Presse).

**Annex 3: Average Duration of EU Sanctions Regimes****Duration**

Total number of years for all cases of EU sanctions	581
Frequency	68
<b>Average</b>	8.54 years
Total number of years for autonomous EU sanctions	277
Frequency	43
<b>Average</b>	6.44 years

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<sup>1</sup> The sanctions regime on South Africa therefore starts in 1956 when the International Table Tennis Federation severed its ties with the all-white South African Table Tennis Union. Statutory sanctions were introduced in 1977 when an arms embargo was imposed under the mandate of UNSCR 418(1977) & UNSCR 421(1977). EU states also agreed on a Code of Conduct regulating the employment practices of European firms with subsidiaries in South Africa.

**Annex 4: UN and Autonomous EU Sanctions***UNsan*

	Frequency	Percent	Cumulative Percent
0	43	63.2	63.2
1	25	36.8	100.0
Total	68	100.0	

Codebook:

- 0: Autonomous EU sanctions regime  
 1: UN and EU sanctions regime(s)

**Annex 5: EU Sanctions on Targets of US Sanctions***USsan*

	Frequency	Percent	Valid Percent	Cumulative Percent
0	10	14.7	16.4	16.4
Valid 1	51	75.0	83.6	100.0
Total	61	89.7	100.0	
Missing	7	10.3		
Total	68	100.0		

Codebook:

- 0 Sanctions regime applied only by the EU and not by the US  
 1 Sanctions regime applied only by the EU and by the US (including under UN mandate)  
 Missing (..) Cases where no data on US sanctions could be found.

**Annex 6: Frequency of sanctions related to the duration of Treaties***EUTreaty*

Code	Treaty	Frequency of sanctions regimes	Years Treaty was enforced	Average new sanctions regimes p.a.	Percent
1	Before and during the EPC (1956-1992)	34	36	.94	13%
2	Maastricht Treaty (1993-1998)	14	5	2.8	37%
3	Amsterdam Treaty (1999-2009)	18	10	1.8	24%
4	Lisbon Treaty (2009-2010)	2	1	2.0	27%

**Annex 7: Sanctions on European Neighbours and Former Colonies***NeighCol*

	All EU Sanctions		Autonomous EU Sanctions	
	Frequency	Percent	Frequency	Percent
0	4	5.9	4	10.3
1	13	22	8	20.5
2	30	50.8	21	53.8
3	12	20.3	6	15.4
Total	59	100	39	100

Codebook:

- 0 Countries targeted by EU sanctions and neither a former European colony nor located in the European continent (nonmembership)
- 1 Countries targeted by EU sanctions and located in the European continent
- 2 Countries targeted by EU sanctions and former British or French colony
- 3 Countries targeted by EU sanctions and former colony of the other EU member states

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<sup>1</sup> The sources offered by Khaliq (2008) do not match with the referenced text.

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**List of Persons Interviewed**

- Interview 1. Interview with a former British ambassador to Myanmar; and former Member of Cabinet of the European Commission's Directorate General for External Relations, 2 February 2008, London.
- Interview 2. Interview with a Project Director, DFID office in Myanmar, 11 June 2011, Yangon.
- Interview 3. Interview with the Burma Research analyst, Southeast Asia Unit, FCO, 29 May 2010, London.
- Interview 4. Interview with the Burma Parliamentary and Public Affairs Officer, South East Asia and Pacific Group, FCO, 28 May 2010, London.
- Interview 5. Interview with the Burma/Myanmar Desk Officer, DG Relex, Southeast Asia Unit, Asia Directorate at the European Commission; since 2012 head of the EU office in Myanmar, 15 April 2009, Brussels.
- Interview 6. Phone interview with the Burma/Myanmar Desk Officer, DG Relex, Southeast Asia Unit, Asia Directorate at the EEAS, 2 May 2011.
- Interview 7. Phone Interview with the Burma/Myanmar Desk Officer, DG Relex, Southeast Asia Unit, Asia Directorate at the EEAS, 20 December 2011.
- Interview 8. Interview with the Southeast Asia Desk Officer, Policy Unit, Council of the EU, 20 April 2006, Brussels.
- Interview 9. Interview with the Burma/Myanmar and Thai-Burma/Myanmar border Desk Officer at DG ECHO, Southeast Asia Unit, European Commission, 6 April 2005, Brussels.
- Interview 10. Interview with a former German ambassador to Myanmar, 6 December 2008, Hildesheim
- Interview 11. Interview with a former German ambassador to Myanmar, 30 April 2006, Brussels.

- Interview 12. Interview with a chargé d'affaires at the German embassy in Myanmar, 24 May 2004, Yangon.
- Interview 13. Interview with a Director General for Asia at the Auswärtige Amt, 14 December 2005, Berlin.
- Interview 14. Interview with an investment analyst, research team, Governance and Sustainable Investment, F&C, 4 December 2009, London.
- Interview 15. Interview with the first secretary at the Myanmar embassy to Belgium, Luxembourg and the Netherlands, 30 April 2006, Brussels.
- Interview 16. Interview with the Country Coordinator, UNAIDS Myanmar, 4 November 2006, Wilton Park.
- Interview 17. Interview with the Vice-President, Public Affairs, Total Exploration & Production, 24 April 2006, Paris.
- Interview 18. Interview with the CEO of a local tourism company, Yangon, 10 June 2011.
- Interview 19. Interview with the ILO Liaison Officer, International Labour Organisation, ILO/DOSCOM - Yangon, Wilton Park, 4 November 2006.
- Interview 20. Interview with the Burma/Myanmar Desk Officer, Auswärtiges Amt, 15 October 2006, Berlin.
- Interview 21. Interview with a former member of the Bundestag from 1988 until 1998 and former cultural attaché of the German embassy in Yangon, 16 October 2006, Berlin.
- Interview 22. Interview with the Managing Director, Myanmar Vineyard, 18 June 2011, Yangon.
- Interview 23. Interview with a former prisoner of conscience and independent political activist, 22 December 2009, Yangon.
- Interview 24. Interview with the lead editor of The Voice magazine and The Living Colour magazine, and Secretary General and founder of Myanmar Egress, 23 December 2009, Yangon.

Interview 25. Interview with the Director of the FTUB London office, Free Trade Unions of Burma (FTUB), 11 October 2008, London.

Interview 26. Interview with a Member of the European Parliament, 24 April 2006, Brussels.

Interview 27. Interview with lead editor of The Voice magazine and The Living Colour magazine, Secretary General and founder of Myanmar Egress, 18 June 2011, Yangon.

Interview 28. Interview with the Burma/Myanmar desk officer, Asia Pacific Directorate General at the Auswärtige Amt, 6 December 2008, Hildesheim.

Interview 29. Phone interview with the Chief of Policy Planners, FCO, 20 May 2008.

Interview 30. Interview with the Under-Director General for Asia Pacific of the French Ministry of Foreign Affairs, 15 May 2006, Paris.

Interview 31. Interview with the representative for UN Affairs of the NCGUB, Htun, 14 April 2006, Brussels.

Interview 32. Interview with the first secretary of the Myanmar embassy in France, 13 December 2007, Paris.

Interview 33. Interview with the Acting Director of Strategic Communication, FCO, 20 September 2009, London.

Interview 34. Interview with the Director General, Directorate General of External Policies, European Parliament secretariat, 10 March 2006, Brussels.

Interview 35. Interview with the EU Special Envoy to Burma/ Myanmar, 30 October 2008, Brussels.

Interview 36. Interview with the head of the external relations policy department, European Parliament, 20 September 2007, Brussels.

Interview 37. Interview with the General Secretary of the European Institute for Asian Studies (EIAS) and former head of unit with the Socialist Group at the European Parliament, 20 October 2005, Brussels.



Interview 38. Interview with the Burma/Myanmar desk officer at the Bundesministerium für technische Zusammenarbeit und Entwicklung, 13 October 2006, Berlin.

Interview 39. Interview with the Vice-President of the Myanmar Fisheries Association, 20 December 2009, Yangon.

Interview 40. Interview with the UN Resident and Humanitarian Coordinator to Myanmar, 4 November 2006, Wilton Park.

Interview 41. Phone interview with the Director of Communications, Burma Campaign UK, 7 May 2004.

Interview 42. Interview with a Founder of Free Burma Coalition and veteran activist, Wilton Park, 5 November 2006.

Interview 43. Interview with the President of InfoBirmanie, 5 October 2008, Paris.

Interview 44. Interview with the political secretary of the EEAS Representation in Côte d'Ivoire until 2012, 25 January 2011, Abidjan.

Interview 45. Interview with the political counsellor of the French embassy in Côte d'Ivoire, 20 April 2011, Abidjan.

Interview 46. Interview with the founder of Network Myanmar and former British ambassador to Thailand, Vietnam and Laos, 15 May 2010, Guildford (Surrey).

Interview 47. Interview with the first secretary of the Russian embassy, 12 June 2011, Yangon.

Interview 48. Interview with an Asia senior associate, Stiftung Wissenschaft und Politik, 6 October 2006, Berlin.

Interview 49. Interview with a former student leader of the 1988 movement, 10 May 2012, New York.

## Email Exchanges

Email exchange 1. Email exchange with a researcher specialised in EU-Myanmar relations, 2 June 2010.

Email exchange 2. Email exchange with the founder of Network Myanmar and former British ambassador to Thailand, Vietnam and Laos, 23 December 2011.

Email exchange 3. Email exchange with the founder of Network Myanmar and former British ambassador to Thailand, Vietnam and Laos, 24 December 2011.

Email exchange 4. Email exchange with the Burma Policy Coordinator, Asia Division, Department for International Development, DFID, 19 July 2010.

Email exchange 5. Email exchange with the Burma/Myanmar Desk Officer, DG Relex, Southeast Asia Unit, Asia Directorate at the European Commission; since 2012 head of the EU office in Myanmar, 30 December 2011.

Email exchange 6. Email exchange with a former consultant for the European Commission, 21 July 2010.

Email Exchange 7. Email exchange with the Burma/Myanmar Desk Officer, Bundesministerium für technische Zusammenarbeit und Entwicklung, 12 June 2012.

Email Exchange 8. Email exchange with a Desk Officer Asia Pacific, Auswärtige Amt, 9 June 2012.