The proactive cosmopolitan foreign policy of the European Union: The Burmese issue reconsidered

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Abstract

The European Union has turned away from the traditional notion of power politics and moved to assert instead soft civilian or normative power to influence the world. This paper examines the Union's foreign policy towards Myanmar looking from a constructivist perspective, focusing on the objectives of human rights and democratization. The paper sketches the constructivist approach to foreign policy, and then examines the evolution of the Union's foreign policy about human rights and democratization. Then this norm-based foreign policy and its effect on the Union's relations, and conflicts, with ASEAN over Burmese alleged human rights abuses will then come to the forefront. The norms of human rights, democracy, and good governance influence the Union's foreign policy, including that towards Myanmar. The Union's "sticks and carrots" approach differs greatly from the ASEAN approach and has prejudiced EU-ASEAN relations, in particular after the accession of Myanmar to ASEAN. Both approaches have proved rather unsuccessful in forcing Myanmar to develop her democracy and improve her human rights records.

Theoretical approach

The study of a state's foreign policy involves a diverse set of activities, dedicated to explaining and understanding the intentions, statements, and actions of an actor directed towards the external environment and the response of other actors to these intentions, statements, and actions. Within the field of foreign policy analysis, there are various theories and approaches which not only contain a distinct underlying model and logic of the actor's action, but also

contain different levels of analysis. Although each approach tries to understand the same dependent variable (an actor’s foreign policy), each applies an absolutely different “lens” with its distinct set of questions, basic premises, and focus. Each theoretical approach, therefore, tells an absolutely different story about foreign policy.

According to constructivism, the foreign activities of the European Union are driven largely by domestic and international norms stemming from social contexts surrounding the Union and its member states rather than by security in terms of autonomy and influence viewed by neorealists or by the increase of political power and financial gain as seen by utilitarian advocates. In fact, constructivist tradition stresses the significance of intersubjective bases of social action and social order. It recognizes the nature of “duality of structure,” at once constraining social action but also being (re)created and potentially transformed by it, and the important role of identities, rules, values, norms, and institutions in shaping human behavior. Actors are seen as *homo sociologicus* or role players who are embedded in a social context and have their behavior heavily influenced by that context. The actor fully recognizes himself as a member of the society and takes decisions and pursues courses of behavior, not to maximize his consequent gain to acquire exogenous and given goals, but on the basis of norms and rules emerging from a background of subjective factors, historical-cultural experience, and institutional involvement. Thus among various behavioral alternatives, the actor is seen to choose the one that follows rules and practices that are socially constructed, intersubjectively shared, value-based, and socially accepted and therefore matches the obligations of his identity or role to a specific situation. In other words, the actor bases his behavior on the “logic of appropriateness,” in which his behavior is “intentional but not wilful.” Within a logic of appropriateness, a sane person is one who is “in touch with identity in the sense of maintaining consistency between behavior and a conception of self in a social role.”

This study proposes, following Boekle, Rittberger, and Wagner, that the guiding rules of the European Union’s foreign policy are norms defined as intersubjectively shared, value-based expectations of appropriate behavior emanating from the actor’s social environment, i.e. social norms of sufficient commonality and
specificity. The degree of commonality rests on how far members of a social community commit themselves to a particular norm. The degree of specificity, on the other hand, involves how far such a norm exists in its formal expression, for instance, in written conventions and how far it clearly distinguishes between appropriate and inappropriate behavior. When a norm contains a certain degree of specificity, the expectation of behavior is then clearly realized and the actor has particular behavioral options which can be justified as appropriate. As a result, actors within a social system can clearly differentiate between appropriate and inappropriate behavior as well as can determine when a norm has been violated. Nonspecific norms are, therefore, unsuitable as a standard for appropriate behavior (and an independent variable), with which to depict foreign policy behavior. This article uses the constructivist "lenses" to observe the explanandum, the Union’s foreign policy. Therefore, the Union’s foreign policy is formulated and implemented by guiding norms with a certain degree of commonality and specificity at both international and domestic (European) levels. Stemming from these commitments, therefore, the Union’s foreign policy is seen as driven by, among other things, the influencing norm of human rights protection and, to a lesser extent, democracy and good governance, the evaluation of which will be the main interest of the following sections. However, it is not the intention of this article to conclude that the implementation of the Union’s various tools to obtain her policy aim of promoting human rights and, to a lesser extent, democratic rules and good governance in the world is, despite the claimed good intention, theoretically and practically correct.

One important point about the article’s explanandum needs to be clarified here. Within a broad definition of foreign policy as the activity of developing and implementing relationships between states and other international actors, through which domestic values, interests and policies of the actor in question are promoted, foreign policy activities of the Union can still mean different things to different people. In reality, the EU’s “foreign policy system” is argued to be composed of three pillars plus the member states’ foreign policies. The three pillars are Common Foreign and Security Policy (CFSP), the European Community pillar, and the
Justice and Home Affairs pillar (JHA). The EU produces foreign policy within all three pillars, as well as “across” them, in that decisions involve policy instruments from one or more pillars. However, the decision-making rules governing the three pillars are clearly distinct. On the one hand, decision-making in the EC pillar is by and large supranational. States can, in theory, be outvoted since qualified majority voting can often be used, and central institutions play a great role in legislation. On the other hand, an intergovernmental framework is the rule of the day in CFSP and JHA decision-making, meaning that the member states, with their capacity to veto decisions, retain more control over decision-making. The Union’s foreign policy to promote human rights in general and the one towards Myanmar in recent years in particular, which is the central concern of this article, is involved mainly with the EC and CFSP pillars.

Human rights and the Union’s cosmopolitan foreign policy

International norm of human rights: degree of commonality

It was once argued that the “rights of man” not only do not, but cannot, enjoy any protection under international law, because that law is concerned solely with the relations between states and cannot confer rights on individuals. Such an argument has, however, been increasingly seen as unfeasible. Despite the fact that there are more countries in the world today where fundamental rights and civil liberties are regularly violated than countries where they are effectively protected, international opinion, as expressed in the United Nations and elsewhere, and national opinion in many countries, is increasingly aware of human rights protection and has put the matter firmly on the international agenda.

The basic international framework for the protection of human rights is the International Bill of Human Rights, comprising the 1948 Universal Declaration and the two international covenants which came into force in 1976, namely the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. These instruments enshrine common values regarding fundamental freedoms and democratic principles, which are “universal, indivisible and interdependent.”
Even before the adoption of the International Bill of Human Rights, a commitment to the norm of human rights by most members of the world political system can be seen in the appearance of such norms in the Charter of the United Nations, an organization which, as of 2002, hosts 191 member states. The United Nations Charter, adopted in 1945, sets the goal of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, and religion" and therefore gives human rights a new international legal status. Apart from the fact that the organization hosts most states of the world community as its members, the degree of commonality of the Charter is also high because of the fact that more than fifty governments and over a thousand nongovernmental human rights organizations played a key role in its drafting. In fact, there are twelve international human rights treaties under UN auspices for which committees of experts were established to monitor their implementation.

The degree of commonality of the human rights norm is also evident in the International Bills of Human Rights. More than fifty governments participated in the drafting of the Universal Declaration at various sessions of the meetings of the Commission on Human Rights between 1947 and 1948. In spite of some diverging points among the drafting states, the document was finally adopted at a General Assembly of the United Nations on 10 December 1948, with forty-eight voting in favor, none voting against, eight abstaining, and two absent. The vote in favor was overwhelming and therefore the Declaration received a high level of commonality. The speech of Ms. Roosevelt, the then chairperson of the UN Commission on Human Rights, before the General Assembly, demonstrated the epoch-making value of the Declaration which "may well become the international Magna Carta of all men everywhere." It should, however, be remembered that, in spite of its high level of commonality and importance, the declaration contains no legal binding obligations. Both the CESC and CCPR also received a high degree of commonality with 149 state parties (and seven remaining signatories) and 152 state parties (and eight remaining signatories) respectively.

Apart from the International Bills of Human Rights, the
number of state parties to other international human rights treaties are as follows: 104 (with five remaining signatories) for the Optional Protocol to the International Covenant on Civil and Political Rights; fifty (with seven remaining signatories) for the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty; 169 (with seven remaining signatories) for the International Convention on the Elimination of All Forms of Racial Discrimination; 177 (with one remaining signatory) for the Convention on the Elimination of All Forms of Discrimination against Women; sixty (with twenty-seven remaining signatories) for the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; 136 (with twelve remaining signatories) for the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; 192 (with two remaining signatories) for the Convention on the Rights of the Child; seventy-two (with thirty-remaining signatories) for the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; seventy-three (with fifty-three remaining signatories) for the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and twenty-seven (with twenty-seven remaining signatories) for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It is therefore accurate to conclude at this stage that human rights as an international norm has been well instituted in international treaties with a high degree of commonality.

**Degree of specificity**

This section will deal with the degree to which human rights as an international norm have been defined and elaborated within important international human rights treaties. It is clear that the philosophical foundation of the mainstream concept of human rights has its origins in the liberal democratic tradition of Western Europe, which is based on Greek philosophy, Roman law, the Judeo-Christian tradition, the Humanism of the Reformation, and the Age of Reason. Importantly documents and philosophies, which
also serve as significant basis for the International Bills of Human Rights and other related treaties, are the Habeas Corpus Acts and the Bill of Rights of 1689, the French Declaration of the Rights of Man and the Citizen (1789), John Locke’s political philosophy, the USA Declaration of Rights of 1774, and the subsequent Declaration of Independence (1776).

Human rights are seen as “natural and inalienable” rights to which all human beings are entitled. In this sense, sovereignty pertains not to a monarch but to the people as a whole. Government is the instrument for securing lives, property, and the well-being of the governed. The individual conveys to society his own right to exercise certain functions, whilst retaining all other natural rights. Therefore, fundamental liberties and rights belong to the individual by nature, have not been surrendered to the community, and cannot be limited or denied by the state. Recent expression of such a mainstream understanding of “reserved natural and inalienable rights of human” can clearly be seen in the Universal Declaration which states that, “All human beings are born free and equal in dignity and human rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

Such a commitment to universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language, or religion is also explicitly stated in the Preamble, Article 1 and 55 of the UN Charter.

Which fundamental liberties and rights have been proclaimed as parts of the natural and inalienable rights of mankind? The mainstream stress has been on the basic civil and political rights of the individual rather than economic, social and cultural rights, although these latter have been emphasized by developing countries and have increasingly gained importance in international fora. Most states ratifying the International Covenant on Civil and Political Rights have also ratified the International Covenant on Economic, Social and Cultural Rights and, therefore, have given their support to both categories on an equal footing. By 1 January 1988 over eighty states, more than a half of which were developing countries, had ratified the two UN Covenants. In reality, the interconnection between the enjoyment of human rights and
economic development and the fact that achievement of neither is possible without the other had already been made clear in Resolution XVII of the Tehran Conference of 1968. Accordingly, a group of rights and freedoms, which appear in at least two out of three of the International Bills of Human Rights, could be counted as internationally recognized rights and fundamental freedoms underlying an “appropriate action” according to the international norm of human rights.

At this stage, it would be accurate to conclude that human rights as an international norm have been well instituted with a high degree of commonality and specificity in multilateral documents and, as a result, have had a high degree of influencing power over states’ foreign policies. But such a high degree of influencing power also depends on how far such a norm has been articulated and clearly specified within the state’s (in this case the Union’s) circle, which will be the main interest of the next section.

The norm of human rights in the European context

There exists no explicit reference to human rights or relevant international instruments in European treaties prior to the Single European Act. However, the commitment to human rights has gradually been introduced into the Community’s external relations through the position adopted by the Community institutions and the heads of state or government, which lays emphasis on the legal, political, and moral values underlying European identity. The most important values are the principles of representative democracy, the rule of law, and respect for human rights. The European Court of Justice has also developed a body of original case law, in which basic human rights are recognized not only as an integral part of the general principles common to the legal systems of all the Member States, which in turn provide the basis for Community law, but also as an indispensable element of relevant international and regional instruments, particularly the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953).

Human rights also appeared in the preamble to the Single European Act, in which political co-operation is formally enshrined. Thereafter, the Community’s position in this area became increasingly operational with the application of such
important documents as the declaration on human rights adopted by the Luxembourg European Council (28–29 June 1991) and a resolution on human rights, democracy and development adopted by the Council on 28 November 1991. Various initiatives promoted by the European Parliament, in particular an annual resolution on the world human rights situation, have also helped intensify the incorporation of a "human dimension" into the Community's external relations, while the Commission has also increasingly included respect for human rights as a criterion in the preparation and implementation of Community action in all areas. In the Treaty on European Union, it is explicitly stated that the development and consolidation of "democracy and the rule of law, and respect for human rights and fundamental freedoms" are among the objectives of the Common Foreign and Security Policy of the European Union, while the new title on development cooperation also includes a second direct reference to human rights and democratization with its statement that "Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law and that of respecting human rights and fundamental freedoms."

The new article 6 inserted in the Treaty of Amsterdam also reaffirmed that the European Union was "founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States." Moreover, member states who violate these principles in a "serious and persistent" manner, run the risk of seeing certain of their rights deriving from the application of the Union Treaty "suspended." Article 7 demonstrates a mechanism of sanctions against such breaches of human rights by the EU Member States. Respect for these principles is also required by countries applying for EC membership (Article 49). The treaty also introduces into the "first pillar" a general clause on combating discrimination, a provision on measures concerning asylum, refugees, and immigration and certain competences in the field of employment, working conditions, and social protection. The Treaty of Nice in its Article 181bis TEC, furthermore, extends the objective of promoting respect for human rights and fundamental freedoms, from development co-operation activities to all forms of
co-operation with third countries. The commitment to human rights has also been incorporated in various treaties, to which the member states of the Union are party, including the Brussels Treaty of 1948, the North Atlantic Treaty of 1949, the Statue of the Council of Europe of 1949, and the European Convention on Human Rights of 1950. It is, therefore, fairly accurate to conclude that agreement among EU member states on the importance of promoting human rights has been fairly uncontroversial.

One point needs to be highlighted here. The European human rights regime is itself stronger than that at international level, where the monitoring committees cannot or have no will to force violating states to comply. The European Convention, for example, lays down not only important civil and political rights but also empowers individuals to file a complaint against his or her own state, alleging violation of the convention to the European Court of Human Rights, whose judgment is binding on the state. According to the Amsterdam and Nice Treaties, moreover, the domestic human rights record has been placed high on the agenda of the member states. In addition to the inclusion of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law as founding principles of the Union, the suspension of member states’ rights have also been included (Article 7). Since the 1978 Declaration of the European Council, it has been asserted that “respect for and maintenance of representative democracy and human rights in each Member State are essential elements to membership of the European Community.” This rule was also explicitly guaranteed with the inclusion of Article 49 of the Amsterdam Treaty.

In spite of this stronger enforcement mechanism of the European human rights regime, it should also be noted that the EU itself is not a party to any international human rights treaties. It has even been argued that since it does not take part in any treaties constituting the European human rights regime, the Union does not have a comprehensive human rights policy and therefore faces a “legitimacy deficit.” Such a deficit stems from the fact that what the Union can at best do is to press third countries to ratify international human rights treaties, to which it itself is not a party. Against such an argument, however, it should be recognized, along
the line of the constructivists' arguments, that a norm which possesses a certain degree of commonality and specificity in the international and European context, consequently has a high degree of influence on the Union's foreign policy. Therefore, the norm of human rights, which has a high degree of specificity and commonality in the international context and a very high degree of commonality among the EU member states,\(^33\) is an influencing norm, and such a legitimacy deficit, if there is one, should not be seen as a problem which will obstruct the EU's active international role in this field.

The understanding of what constitutes human rights within the European context has mainly reflected elements in the International Bills of Human Rights.\(^34\) The Universal Declaration and the conclusion of the Vienna conference of 1993 explicitly stressed the characteristics of universality and indivisibility between civil and political rights and that of the economic, social, and cultural nature and interdependence between human rights, democracy, and development. The Luxembourg European Council's declaration on human rights (June 1991),\(^35\) the 1991 resolution on human rights, democracy, and development adopted by the Council, the 2000 joint statement on the European Community's development policy of the Council and the Commission, and the 2001 Commission communication entitled European Union's Role in Promoting Human Rights and Democratization in Third Countries, also reaffirmed such basic principles of human rights in the European context. Strict and complementary links have also been identified between human rights, democracy, and the relativity of the principle of non-interference.\(^36\) Moreover, the Declaration on Human Rights stated that "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 the dialogue with their countries."\(^37\) In fact, the indivisibility principle is also explicitly expressed with the inclusion in the Amsterdam Treaty of the Social Charter allowing the Community's decisions in areas falling under the category of social, economic, and cultural rights. The European commitment to civil and political rights as well as economic, social, and cultural rights was
also reaffirmed in the 2000 Charter of Human Rights and Fundamental Freedom. Therefore, all important human rights elaborated in important international treaties have also been instituted as significant components of the norm of human rights in the European context.38

**Human rights as the EU foreign policy objective**

The assertion of human rights as the Union’s foreign policy objective has been developed through declaratory diplomacy and dialogue mainly within the context of European Political Cooperation since the 1970s.39 During the 1970s, moreover, a number of member states, including the Dutch and Scandinavian governments, declared human rights as an essential element of their foreign policies.40 At that time, however, development aid was not used as either a carrot or a stick to encourage human rights objectives in third countries, except in cases of gross and persistent violations of fundamental human rights.41 In fact the Union maintained a neutral stance vis-à-vis the human rights records of third countries. The EC and its member states even considered the maintenance of trade ties with their neighbors in Eastern Europe more important than cutting off those links to realize improvement in human rights and political freedoms in such societies.42

Since the mid 1980s, however, there has been an alteration of the Union policy in the field. This is largely a result of pressure from the European Parliament and more demands by the public following the declaration of a state of emergency in South Africa in 1985 and Tiananmen Square in 1989. Other factors were the increasing political and economic influence of the Union in the world arena following the successful return to the deepening and widening of the integration process at the end of 1980s and, above all, the demise of the communist regimes in Eastern and Central Europe at the end of the 1980s.43 A more active policy to promote human rights in other countries around the world can be clearly seen in the 1986 declaration by the foreign ministers of the then twelve member states that the universal observance of human rights, representative democracy, the rule of law, and social justice was the legitimate and continuous duty of both the world community and all nations. As such, “expressions of concern at violations of human
After communism fell in states of Eastern and Central Europe, and such countries expressed their willingness to "rejoin Europe" through accession to the EU and NATO, the EC has increasingly used the "carrot and stick" approach to realize its human rights objective in its eastern neighbors. Political conditionality has been incorporated into the Community's trade and cooperation agreements, aid, association agreements and is one of the important accession criteria to encourage economic and political reforms based on the Commission's basic principles including human rights, democracy, and good governance. Political conditionality has since then been used to further the European human rights objectives in other third countries both by individual member states and at the Union level.

This more active approach was explicitly stated in the 1991 Declaration of the Luxembourg European Council, which reaffirmed that universal respect for human rights was an important aim of the Union and all member states and that inclusion of human rights clauses into the Community's agreements with the rest of the world was a way of promoting such an objective. The development and consolidation of human rights, democracy, and fundamental freedoms as main objectives of both the Union’s CFSP and the Community’s development cooperation policy as well as the application of positive and negative measures to make this aim universal have also been clearly stated in various Union documents, including the 1991 Resolution on Human Rights, Democracy, and Development, the Maastricht Treaty, the Declaration on the occasion of the 50th anniversary of the Universal Declaration of Human Rights, and the 2001 communication on the European Union’s Role in Promoting Human Rights and Democratisation in Third Countries.

The more progressive human rights related foreign policy since the end of 1980s has been called, in Paul Taylor's term, a "proactive cosmopolitanism." This was defined as a deliberate attempt to create a consensus on values and behavior—a cosmopolitan community—among diverse societies. Such an argument stemmed from the fact that the Commission had proclaimed that "respect for
human rights and democracy should be an integral, or mainstream, consideration in all EU external policies," and that "the most effective way of achieving change is...a positive and constructive partnership with governments, based on dialogue, support and encouragement." The positive measures include such tools as an open and constructive dialogue with the governments of developing countries on human rights issues and active support for "countries making the attempt to institute democracy and improve their human rights performance, holding elections, setting up new democratic institutions and strengthening the rule of law, strengthening the judiciary, the administration of justice, crime prevention and the treatment of offenders, promoting the role of NGOs and other institutions which are necessary for a pluralist society, and ensuring equal opportunities for all." They also embrace a "social intensive clause" in the Generalized System of Preferences (GSP) providing for additional preferences to be extended to countries honoring certain International Labour Organisation (ILO) standards. It has explicitly been stated, however, that in some cases, where the third country has no genuine commitment, negative measures may therefore be more appropriate. The EU's essential clauses and "suspension clauses" operate on this basis. The essential clause has been included in all the community's agreements since 1992 and is now applied to over 120 countries. Moreover, membership of the Council of Europe and of the European Convention for the Protection of Human Rights and Fundamental Freedoms has become an implicit condition for accession to the European Union. In fact such a commitment to the universal nature of norms with Western liberal origins and the legitimacy of using political conditionality to pressure developing countries to comply with such norms has placed into question the recognition of the basic norm of sovereignty and non-interference in other state's internal affairs.

A brief survey of the political situation in Myanmar

Myanmar had a short period of democratic government with a non-aligned movement philosophy under President U Nu during the 1950s, and three decades of isolation based on an austere and
inward-looking "road to socialism" under Ne Win from the 1960s to 1980s. This was followed by the nationwide pro-democratic demonstrations of 1988 and the subsequent short period of Maung Maung's democratic government, which was then deposed by the military and replaced by military rule under the State Law and Order Restoration Council (SLORC). Pro-democratic protests again led to a bloody crackdown by the government creating a new low for the government's already atrocious human rights record that caught the interest of, and clashed with, mainstream active human rights foreign policies around the world after the end of the Cold War. According to one source, no less than three thousand Burmese citizens were killed during the 1988 demonstrations. Moreover, the country has been placed under martial law ever since, and the absence of a constitution seems to be used as the justification for the military regime to stay in power.

In the 1990 general elections, the National League for Democracy (NLD), the main opposition party under the leadership of 1990 Nobel Peace Prize Laureate, Aung San Suu Kyi, won 82 percent of the seats in the National Assembly. However, the results of the elections were never honored by the military regime. Suu Kyi was subsequently placed under house arrest, while other NLD leaders were imprisoned or forced into overseas exile. Since then the country has been ruled by the SLORC junta, which has recently changed its name to the State Peace and Development Council (SPDC). Political imprisonment, forced labor, torture, and other breaches of the human rights of the people have been the norm. On 30 May 2003 the SPDC military junta launched a violent attack against Suu Kyi and her supporters during a trip to northern Myanmar, ordered her renewed detention, arrested NLD members, and closed all NLD offices. To date, only the NLD headquarters has been allowed to reopen, while Suu Kyi remains under house arrest.

In August 2003, the Burmese military regime presented a seven-step "roadmap" for constitutional and political reform. On 17 May 2004, the military regime further announced its intention to reconvene the country's national convention, in order to reopen negotiations on a constitution and new elections. The national convention was established in 1993 but adjourned in March 1996.
following the withdrawal of the NLD in protest over the undemocratic proceedings. The promised opening of the political system, if it occurs, will be a unique opportunity for national reconciliation. However, the prospects for a real and inclusive process of national reconciliation remain poor given the SPDC's absolute control over the process and the failure to reach an agreement between Aung San Suu Kyi and the SPDC leadership which could have enabled the participation of the NLD in the process.

On 19 October 2004, Myanmar again became the focus of international attention with the removal of prime minister Khin Nyunt, who had played a leading role in negotiations with ethnic nationality groups as well as with Aung San Suu Kyi in the lead up to the National Convention. Khin Nyunt has been replaced by Lt. Gen. Soe Win.

Violations of human rights and fundamental freedoms in Myanmar have been a major concern for the international community. In November 2000, the International Labour Organisation implemented measures against Myanmar under Article 33 of the ILO Constitution. This was the first time the Article has ever been applied to an ILO member. Since March 2002, an ILO liaison officer has worked in the country to help stop the use of forced labor. In May 2003, the government agreed to appoint a mediator for forced labor compensation. However, the implementation of the agreed plan of action has remained on hold since the events of May 2003.

The Union's policy towards Myanmar over human rights abuses

The sanctions on Myanmar imposed by the European Union include an embargo on arms, munitions, and military equipment in 1990; suspension of defense co-operation and the expulsion of all military personnel attached to the Burmese diplomatic missions in all Member States of the Union and vice versa in 1991; as well as the cessation of all bilateral aid other than strictly humanitarian assistance.

The EU Common Position on Myanmar, first adopted only in
October 1996, expressed disappointment at the unwillingness of SLORC to enter into a meaningful dialogue on the issue, and its concern over the lack of progress towards democratization and over the continuing violation of human rights. The Union explicitly criticized activities it regarded as inappropriate according to the norm of human rights, including the "practice of torture, summary and arbitrary executions, forced labor, the abuse of women, political arrests, the forced displacement of the population and restrictions on the fundamental rights of freedom of speech, movement and assembly," and the detentions in May and September 1996 of members and supporters of the NLD. The July Declaration by the Presidency called for immediate and unconditional release of all detained political prisoners, permission for legitimate political parties, including those from ethnic minorities, to pursue freely their normal activities, and truly meaningful dialogue between the military junta and pro-democracy groups with a view to bringing about national reconciliation. Additional "sticks" were also wielded to pressure SLORC to develop the democratic and human rights situation in the country including a ban on entry visas for senior members of SLORC and of other military and security forces formulating, implementing or benefiting from policies together with their families and the suspension of visits to Myanmar by ministers and officials at the level of political director and above. Following the recent expansion to twenty-five member states since 2004, all the new member states of the Union have expressed their determination to "share the objectives" of the 1996 common position and to ensure the correspondence of such a common position with their national policies. Separately, GSP privileges were withdrawn from Myanmar in 1997 on grounds of forced labor practices. In addition, the EU has decided that Myanmar is not eligible to benefit from the Union's "Everything but Arms" trade and development initiative.

In 1998 the Union, recognizing no positive improvement in the democratic and human rights abuses situation in Myanmar, decided to extend and strengthen the EU common position through a widening of the visa ban to include transit visas and to cover Burmese authorities in the tourism sector, while ensuring that the ban was applied rigorously to all individual members of the
SPDC and the military as well as their family members. Moreover, the Union expressed its position on Myanmar and its relations with the Association of Southeast Asian Nations (ASEAN) stressing that, although Myanmar had become a member of ASEAN, the EU could not agree to Burmese accession to the EC-ASEAN Agreement. Only a Burmese presence, under special conditions to be agreed upon, at the next meeting of the Joint Committee under the EC-ASEAN Agreement was then acceptable, while Burmese representation at future meetings held under that agreement had to be decided in light of the situation in Myanmar. In April 2000, the Council added an export ban on any equipment that might be used for internal repression or terrorism, a freeze on funds held abroad by persons related to important government functions in the country, and the suspension of high level bilateral government visits to Myanmar at the level of political director officials and above. At the same time, the Council also reiterated its desire to establish a meaningful political dialogue with the SPDC and indicated that the visa ban on the Burmese foreign minister might be waived where this would be in the interest of the EU.

In 2001 this strategy of offering a "stick and carrot" in order to attain the Union's human rights foreign policy objectives exerted itself clearly again. At the same time that the Union expressed its recognition of positive improvements in Myanmar (namely the release of some political prisoners, the opening of a number of NLD offices, the resumption of contacts with the International Labour Organisation and the non-hostile reaction to the efforts of UN Special Envoy, Tan Sri Razail Ismail, to promote national reconciliation in the country), these improvements were however regarded as "minimal concessions," not a sign of real change. Therefore the common position was extended for another six months until 29 April 2002. Based on its demand of positive politico-economic improvements, including the release of more political prisoners and an end to the practice of forced labor, the Council specifically stressed its readiness to accompany the deepening of the reconciliation process. The offers included humanitarian assistance and other positive measures.

The 2002 common position also extended the 1996 common position for another six months. In the Council Conclusion of 21
October 2002, while the Union welcomed the release of Suu Kyi from house arrest in May 2002 and that of a number of other political prisoners, disappointment was still expressed on such issues as the detention of citizens on political grounds, grave human rights abuses, as well as the humanitarian and economic situation in the country. The Union demanded undertakings such as the immediate ceasing of politically motivated arrest and detention, engagement in positive dialogue with opposition groups with an aim to contributing to peaceful transition and national conciliation, the lifting of all restrictions on freedom of association and expression including the freedom of the media, the permanent eradication of forced labor, and immediate release of all political prisoners.\(^{68}\)

The 2003 new common position was adopted on 28 April and was a consolidated version of the original 1996 common position with some amendments and new measures. For the explicit reason that what the military junta had done so far had been insufficient for the return to democracy in the country and for the amelioration of economic, humanitarian, and political problems in the country, sanctions were extended for another twelve months. The scope of existing sanctions was also extended to target more persons linked to the economic and/or political activities of the SPDC under the visa ban and asset freezing and through amending and strengthening the arms embargo. The attempt of the Union to use various “sticks” to pressure Myanmar in its goal of tackling the human rights abuses in the country can be clearly seen in the decision not to implement the new expanded sanctions until 29 October 2003 and only if there had been no substantive progress on a range of “key issues” including the start of a constructive dialogue with Suu Kyi and the NLD, the release of political prisoners, and the reduction of violence and human rights infractions. In spite of the planned date, however, the Union imposed the new expanded sanctions early, on 16 June 2003, as a result of the events of 30 May 2003\(^{69}\) and the detention of Aung San Suu Kyi.\(^{70}\) The Union also demanded the immediate release of Suu Kyi.

On 26 April 2004, the EU Common Position on Myanmar was extended by the Council in view of the military regime’s failure to make any significant progress in normalizing the administration of
the country and addressing any of the EU’s concerns as regards human rights in Myanmar. On 13 September 2004 EU foreign ministers agreed to Burmese participation in the Asia-Europe Meeting (ASEM) Summit at a level below head of state/government. At the same time, ministers also decided to further the Union’s sanctions against the military regime if it could not fulfill the three conditions set at the Gymnich meeting in Tullamore in April 2004, namely the release of Aung San Suu Kyi, other NLD leaders, and political detainees, genuine and open debate at the National Convention with NLD participation, and the re-opening of NLD offices and the termination of the harassment of the NLD and other organized political movements, in advance of Myanmar’s accession to the Asia-Europe Meeting in October 2004.

As the military regime failed to meet these demands on time, the Council agreed on 11 October 2004 to declare a common position and Council regulations on 25 October, to revise the common position, and to further tighten sanctions on the military government, especially by expanding the visa ban on senior military officials traveling to the EU to cover all officers holding the rank of Brigadier General or higher and their family members. New restrictions prohibited EU companies from investing in or making financial loans or credits available to, and on acquiring and/or extending a participation in, Burmese state-owned enterprises. All funds and economic resources belonging to individual members of, and natural and legal persons associated with, the government of Myanmar were also frozen. However, humanitarian assistance to such sectors as education and health was still announced as the Union’s commitment to the people of Myanmar. All non-humanitarian aid or development programs were terminated, except those in support of: human rights, democracy, good governance, conflict prevention and building the capacity of civil society; health and education, poverty alleviation with particular emphasis on basic needs and the livelihoods of the poorest and most vulnerable elements of the population; and environmental protection.

Apart from the common position, other Union official documents, including various declarations from the Presidency, several European resolutions, and a number of Council resolutions,
also confirm the Union’s approach of offering “sticks and carrots” to the junta. Basic messages from the Union since 1996 have reflected its deep concern over the continuing deterioration of the political situation in Myanmar as well as its insistence on demanding the military regime to implement without delay respect for human rights and fundamental freedoms, including the right to freedom of expression and peaceful assembly, to release, immediately and unconditionally, detained members of NLD and all other political prisoners, to enter into meaningful dialogue with Aung San Suu Kyi and other representatives of pro-democracy groups as well as with national minorities in Myanmar to bring about national reconciliation and democratic reform, and to stop forced labor practices. Moreover, specific demands of the Union have also been stated in various documents demonstrating the Union’s view on the immediate development of the political situation in the country over time. These include the demand for a full and satisfactory explanation from the Burmese authorities of the circumstances leading to and surrounding the death in custody, on 22 June 1996, of the late Mr James Leander Nichols, who had served as honorary consul for several European States. The EU called for an investigation by the United Nations Special Rapporteur on Myanmar into the death of Mr Nichols. The message of the Union and its demand from the military regime have been quite coherent over time.

The Union’s measures reconsidered

In spite of the more or less constant message to and demands against the regime, the application of international measures to realize such objectives has been claimed by many as ineffective, when compared with such actions by the USA. One of the reasons is that the first official position the Union had towards the military regime came only in 1996 and was in form of a common position. This is in comparison with a clear position towards the issue of the United States government since 1989. Moreover, the more active approach in 1996 seemed only to come as a direct result of a dramatic diplomatic incident between Denmark and Myanmar following the three-year imprisonment of James Leander Nichols,
the consul to Myanmar for Denmark, Norway, Finland, Sweden, and Switzerland, for the illegal possession of two facsimiles machines and a telephone switchboard, which resulted in his death after just two months in prison, and the junta’s refusal to allow an independent autopsy.79

In spite of its various sanctions on the military regime, the Union’s measures can be observed as “too soft” and merely “symbolic” in nature and therefore incapable of forcing the military regime to positive political change.80 There has been no legal obstacle to prohibit European companies from doing business in or with Myanmar, and this has allowed the regime to survive through foreign investment and the revenue from exports, in addition to the alleged revenue from illegal narcotics.81 The Union sanctions to date, which include the latest prohibition of EU companies from investing in Burmese state-owned enterprises, or making financial loans or credits available to them, or acquiring them in whole or part,82 impose no asset freezing and investment suspension of business entities other than state-owned enterprises actually owned by the military regime, its associates, and their families. Complete trade and investment sanctions on the military regime have also not been introduced. In fact, European investment and trade volumes in the country have increased significantly over the last decade,83 in particular in the energy sector. Total European FDI between 1995/6 and 1999/2000 in the oil and gas sectors accounted for USD 1,531 million of a total actual FDI for all sectors of USD 2,765 million.84 European FDI accounted for 43 and 71.2 percent of all investment in Myanmar in 1999 and 2000 respectively,85 and no less than 104 European companies are still active in Myanmar as against the total of 372 in 2004.86 Moreover, there is still no prohibition on European leading financial institutions providing international financial transactions, including SWIFT. This allows the military junta and its banks to conduct international financial transactions in Euros and other currencies despite the 2003 ban on remittances.87

European activities towards the military junta have to date been merely statements. The measure the Union has applied to Myanmar has been in the form of a common position, whose role is to “define the approach of the Union to a particular matter of
general interest of a geographical or thematic nature” with only the implication of policy conformity on the part of the member states. The Union has not acted in a stronger form of a common strategy aiming to “set objectives and increase effectiveness of EU actions through enhancing the overall coherence of the Union’s policy...in areas where the member states have important interest in common.” The “sticks” that the Union has applied are, as mentioned earlier, merely “soft measures.”

The “Burmese issue” and EU-ASEAN relations

The “constructive engagement” policy of the Association of Southeast Asian Nations (ASEAN) seems to represent the other end of the spectrum from the USA’s approach. Constructive engagement was initiated in 1991 by the then Thai prime minister, Anand Panyarachun, in reaction to SLORC ignoring the overwhelming triumph of the NLD in the 1990 election. The approach was subsequently regionalized as an ASEAN policy at the annual ministerial meeting in Kuala Lumpur in the same year.

This approach can indeed be seen as basing its rationale on region-wide accepted principles of self-determination, sovereign equality, and non-interference in the internal affairs of nations explicitly stated in the Declaration of ASEAN Concord and the Treaty of Amity and Cooperation in Southeast Asia signed by the heads of government of all five original member of ASEAN on 24 February 1976 at the Bali Summit, the first of such meeting. Based on such commitments, therefore, the “ASEAN way” of doing business has been developed as non-confrontational politics conducted through quiet, behind-the-scenes diplomacy. Such principles and this approach are then the policy foundation of ASEAN constructive engagement with Myanmar.

In essence, constructive engagement aims to realize a liberalization of the human rights situation through close cooperation with Myanmar on a wide range of issues. The general rationale for the policy of constructive engagement represents ASEAN’s “soft line” of thinking about human rights abuses in Myanmar requiring that international procedures bring abusers to justice and taking a secondary position to the much longer and
drawn out process of commercial and cultural ties aimed at coaxing dictators from power and “reforming” the offending governments. The then deputy minister of foreign affairs of Thailand clearly stated this point in 1998 saying that “Myanmar's active participation in the region's affairs, her integration with ASEAN, and the realization of her potential as both a regional partner and a member of the international community...were the genesis and rationale of Constructive Engagement,” while “In implementing the policy after 1991, emphasis was placed on quiet diplomacy and confidence-building measures, aimed towards encouraging the Burmese government to see the benefit of integrating the country into the region and the mainstream of the international community.” It was also stated that more sanctions on Myanmar were likely to be counterproductive, leading only to increased suffering for the ordinary people as “innocent, helpless victims of the policy that is supposed to be helping them,” exclusion of all the necessary conditions to gradually establish human rights and democracy in the country and to the heightening of sensitivities towards and mistrust of the international community. As a result, quiet diplomacy was claimed as the only proper way to make Myanmar engage with ASEAN. With subsequent access to ASEAN's various venues of co-operation and conflict resolution, the ASEAN traditions of conflict management and resolution through dialogue and consensus-building were hoped to be applied to the country's domestic situation. This region-wide ASEAN commitment to a constructive engagement approach to tackle the Burmese problem has been repeated by ASEAN leaders several times, President Arroyo has, for instance, demonstrated this year that Myanmar's Southeast Asian neighbors will pursue their constructive engagement policy with the ruling junta following the Yangon power struggle that ousted prime minister Khin Nyunt, and that “it has been the consensus of ASEAN...to pursue constructive engagement with Yangon” and “that is still our goal.” She also expressed her opinion that the conditional embrace, which sets ASEAN in conflict with the West which wants Yangon's military rulers isolated, “is the Asian way” and designed “to encourage Myanmar to open up its democratic space.”

In fact, the ASEAN nations have always repeated their shared...
concern with and commitment to international principles of democracy and human rights. They argue, however, that they only differ from the West in perspective regarding the best ways and means of improving the situation to the benefit of the people of Myanmar. While the West, “exasperated by the lack of progress, call for stronger pressures against Myanmar,” ASEAN, with its opinion that such measures are likely to be both ineffective and counterproductive, believes that “engagement through quiet diplomacy is likely to be more productive than the adversarial approach.”

While there is no question of right or wrong in this debate on approaches, this commitment to different courses of action has clearly affected the EU and ASEAN relations.

At the 1991 meeting in Luxembourg, the EC demanded an ASEAN assessment of the situation in Myanmar, where the result of the 1990 general elections had been ignored and the NLD leaders were being repressed. This request was raised again at the 1991 meeting between ASEAN foreign ministers and their dialogue partners. However, no consensus on the issue was reached and therefore the situation in Myanmar was absent from the ASEAN Joint Statement. In 1993, when the Asian Regional Forum (ARF) was founded, ASEAN and the EC expressed their agreement to disagree over the Burmese issue at the ASEAN Ministerial Meeting in Singapore.

With the ASEAN aim to encourage Myanmar to apply for ASEAN membership, the country was offered observer status at the Ministerial Meeting in Bangkok that year. This was followed in 1995 by a positive response from the military regime expressing its intention to join the regional group including accession to the Treaty of Amity and Cooperation and the release of Suu Kyi from six years of house arrest. Myanmar and the other two potential member states, Laos and Cambodia, were therefore invited to meet the ASEAN partners. Myanmar received official observer status of ASEAN and membership of ARF in July 1996, and subsequently gained its membership, along with Laos, in 1997. It is, however, worth recalling that, in spite of the human rights abuses and the deteriorating democratic situation in both Myanmar and Cambodia at that time, Myanmar was accepted as an ASEAN member, while Cambodian accession was postponed until a peaceful solution was
found to the political crisis following a coup by the first premier Hun Sen and the exile of second premier Narodom Ranariddh. This difference in treatment of the two countries demonstrated ASEAN double standards.\textsuperscript{101}

The admission of Myanmar into ASEAN in 1997 directly led the EU to suspend all dialogue processes\textsuperscript{102} with ASEAN until April 2000, when the General Affairs Council approved concurrently an EU Common Position on Myanmar and an arrangement for the Burmese foreign minister to participate in EU-ASEAN Ministerial Meetings. The Union also denied any possible negotiation on an extension of the 1980 Co-operation Agreement, a legal basis of EU-ASEAN relations, to Myanmar until the democratic and human rights situations in that country had improved significantly. The Joint Co-operation Committee (JCC), which is an official-level committee meeting once every year established under the EC-ASEAN Co-operation Agreement to "promote and keep under review the various co-operation activities envisaged ... in the framework of the Agreement," was also blocked following Burmese accession to ASEAN. The meeting was, however, held again in May 1999 with the "passive presence" of Myanmar and a work program to re-launch EC-ASEAN Co-operation, the "New Dynamic" in EU-ASEAN Relations, was approved.

Since the inception of constructive engagement, ASEAN has demonstrated its respect of an official policy of noninterference in the internal affairs of member countries\textsuperscript{103} and sets its official position to engage Myanmar in the region in order to gradually encourage political development in the country despite criticism from Western governments. At the 1997 ARF, for instance, the foreign ministers of ASEAN countries were reported to be noncommittal towards the Western call at the July 27 gathering in Kuala Lumpur to make greater efforts to encourage democratization in Myanmar, in spite of some Asian diplomats' confession in private that they were similarly dissatisfied with the pace of reform in Myanmar.\textsuperscript{104} Malaysian foreign minister, Abdullah Ahmad Badawi, responded to Ms Albright's remarks by saying, "It is for ASEAN to decide later what we will do, and we will bear in mind the views of Ms. Albright and others." The joint statement after the meeting of ASEAN foreign ministers on July 25 denied any linkage
between human rights and trade and investment policy with the declaration that "Human rights should not be made conditional to the promotion of free trade among nations" and was therefore a clear rejection of the Western policy line. Malaysian prime minister Mahathir Mohamad even argued against the applicability of Western definitions of democracy and human rights to Asian societies.

After more than a decade of ASEAN’s constructive engagement and the West’s more aggressive policy towards Myanmar, it has become clear that both policy stances fail to influence the democratization process and improvement of the human rights situation in Myanmar. Human rights abuses, deterioration of individual fundamental freedoms, and the deadlock of the democratization process are still the norm in the country. For ASEAN, in particular, it has become clear that the major aim to integrate Myanmar economically, politically, and ideationally into the region and of loosening the close relations between the regime and China have also not been realized. It has even been charged that constructive engagement has failed to fulfill its rationale of encouraging political improvement in Myanmar, while Myanmar has enjoyed the advantage of widening its relations with the world through ASEAN at almost no cost. Burmese engagement with ASEAN has not led to economic development in the country, supposedly the first step towards democratization and political improvement. Unlike the East Asian tigers, Myanmar lacks both effective bureaucratic governance and a more or less integrated nation. In fact, the inclusion of the three new members in ASEAN seemed to bring about a stalemate of regional economic integration, in particular after the economic crisis of 1997. The constructive engagement of ASEAN seems to have huge economic advantages not for the people of Myanmar but for the generals in Rangoon and the elite of the member countries of ASEAN. In 1998, when the country opened its market to foreign investment, “ASEAN investors accounted for almost 60 percent of the FDI prior to the crisis,” and Singapore and Thailand were ranked as the second and fourth largest contributors of approved FDI in Myanmar with USD 604 million and 422 million respectively.

By contrast, “Sanctions surely hurt the economy but they don’t
have a very reliable effect on the politics.” In the Burmese case, the imposition of sanctions would even be more ineffective given the fact that Burma’s neighbors, in particular China and Thailand and, to a lesser extent, other ASEAN members, have been less hostile with and have provided economic supplies to the regime. Such connections and the relatively closed economy of Myanmar have allowed the country to withstand sanctions well. Moreover, it seems that sanctions have only negative effects for the general population of the targeted nation, while the military and political elite, the supposed main target, can use their influence and power to avoid the negative impacts of such policy.

Therefore, it has become clear in recent years that both the West and ASEAN, while officially tied to a distinct policy towards Myanmar, have tried to elaborate a new approach to suit the changing situation and to lessen the weaknesses of their official approaches. The EU shows signs that it is possible to bypass ASEAN and instead act bilaterally with individual Southeast Asian countries that share Europe’s desire to deepen relations. The Union, for instance, gestured to ASEAN members in its 2003 communication, entitled A New Partnership with Southeast Asia, that the European Cooperation Agreement of 1980 was “old” and lacked any “realistic prospect of re-negotiation.” Therefore, the Union was prepared to develop stronger relations with particular ASEAN countries “that have expressed the interest.” It was also ready to deepen economic relations outside the ASEAN framework, while leaving political concerns to the ASEM or the ARF. On the other hand, the Union has sometimes softened its position towards ASEAN over Myanmar. One recent example was the Union’s stance on Myanmar’s participation in ASEM 5 in Hanoi on 7–9 October 2004. After its insistence that Myanmar should not be included at the meeting, the Union stated in the conclusions of the External Relations Council (GAERC) of 13 September 2004, that the participation of Myanmar was accepted with the expectation that the participation of the Burmese government at the ASEM Summit would be at a lower than head of state/government level. The ASEM 5 Summit also addressed the situation of human rights in Myanmar and marked both EU and ASEAN enlargements to twenty-five and ten member countries respectively.
In ASEAN, there has also been an attempt to scrap its policy of non-interference in each other's affairs and move toward "constructive intervention" or a "flexible engagement" policy. With its emphasis on the recent increase of regional interdependence, it has been accepted that "the dividing line between domestic affairs on the one hand and ...external or transnational issues on the other is less clear" and that "When a matter of domestic concern poses a threat to regional stability, a dose of peer pressure or friendly advice can be helpful." Although the non-interference principle is still highly respected, the new message has been sent that such non-interference should not be absolute. Instead, it "must be subject to reality tests and accordingly it must be flexible." However, the initiative, with agreement only from the Philippines, has not been adopted as region-wide position. It has lately been argued to only reflect the dissatisfaction of the regime's neighboring countries with the earlier rationale for constructive engagement that the ASEAN norm would eventually force Myanmar to conform. The ASEAN approach to tackle the situation, despite an attempt to widen the possibility of using a region-wide "stick" to exert pressure for changes in Myanmar as stated in the flexible engagement initiative, continues to be based more on the far-sighted constructive engagement rationale of using quiet diplomacy and friendly relations to engage Myanmar to regional integration, common economic prosperity and to gradually adopt region-wide norms as a combined engine to set the process of improvement of the country's domestic situation in motion. Such an initiative, however, represents the reevaluation and assessment by ASEAN leaders of their policy towards Myanmar and the consequent attempt to adapt such actions to a changing environment and interests. This move is actually pleasant and promises, if developed more in the future, to open more policy options so that ASEAN can be more flexible in handling the situation.

Conclusion

The main aim of this paper is to observe the foreign policy activities of the European Union towards the recent political
situation in Myanmar. It tries to argue that the Union’s activities in this area have been driven, in large part, by the Union’s commitment to the norm of human rights and, to a lesser extent, democratization, and that this commitment contains a high level of both degrees of commonality and specificity within the world community as well as the European system. Since this policy position of the EU towards the country is greatly different from the ASEAN approach, the relations between the two regions have been affected negatively. One point is clear that there are no right or wrong answers in both approaches. Each approach contains certain limitations and advantages and represents the main norms, interests, and environmental contexts surrounding the particular international actor. In the end, one should not forget the old saying that “where you stand depends on where you sit” and therefore different norms, basic interests, and politico-economic contexts will naturally lead the EU and ASEAN, albeit having the same concern to promote the strengthening of human rights and fundamental freedoms in third countries, to interpret the situation differently and to impose different approaches. It is, therefore, the obligation of academia and the general public alike, instead of condemning each particular approach, to learn and understand both approaches in terms of their origin, rationale, and advantages as well as limitations.

Notes


2 In fact, realism and liberalism, in spite of great differences in other aspects, share the same view of the actor model and logic of action, which allow them to be viewed as being in the rationalist or neo-utilitarian tradition. Both perspectives make the significant assumption of actors as homo oeconomicus or goal-oriented individuals and/or organizations who always calculate their policy choices in terms of costs and benefits and choose the alternative behavior that serves their best interests at minimum effort or cost. As such, they act on behalf of the logic of consequentiality, following which the actors' behavior is seen as driven by instrumental reasons—to get what the actors want. Actors are seen to make their choices after evaluating their likely consequences for personal and/or collective objectives, conscious that other actors are doing likewise. The actor's foreign
policy, like other behavior, is explained by identifying the expectations that the willful actors, who fully understand the constraints and opportunities of the environment around them, make about the consequences of particular behavior in terms of the degree of the fulfillment of their established interests (preferences) and resources.


11 In the Burmese language, the country Burma/Myanmar is known as either *Myanma* (မြန်မာ) or *Bama* (ပအိုင်း). While the first is the written, literary name of the country, the later is the oral, colloquial name and both names have been in use alongside each other for centuries. The first record of the name in a Burmese inscription is dated 1190 with the spelling of *Mranma*, which is still valid in Burmese until today. Over time, however, the "r" sound disappeared in most dialects of the Burmese language and was replaced by a "y" glide, so although the name is spelled "Mranma," it is actually pronounced *Myanma*. At the time of independence in 1948, the name *Myanma* was chosen for the new country and this has been the official name of the country in the Burmese language ever since, while the name *Bama* is used by Burmese people in colloquial conversation. In English, on the other hand, the name officially chosen for the country at the time of independence was Burma, which was already the name that the British gave their colony before 1948. In 1989, however, the English name Burma was
officially replaced by Myanmar, which was thought, among other things, to be more inclusive of minorities, to promote the literary language and get rid of the English name "Burma" which mirrors the colloquial Burmese name Bama. The new name "Myanmar" has been recognized by the United Nations, but several countries, including the United Kingdom, USA, and Canada continue to refer to it as Burma (Dr. Sunait Chutintaranond, director of Thai and Southeast Asian Study Center; http://en.wikipedia.org/wiki/Explanation_of_the_names_of_Burma/Myanmar).


See http://usembassy.state.gov/bogota/wwwshr01.shtml.


There appeared marked differences among member states concerning, among other things, such issues as the rights of women and racial minorities, religious liberty, the point at which human life begins, the extent to which freedom of speech should be protected, the right to dissent, and the role of economic and social rights. Such divergences were mainly the result of total disagreement between the West and the Soviet bloc on certain conceptions of fundamental human rights principles as freedom and democracy. To briefly, but clearly, demonstrate such ideational divergence, some famous conversations between the
representatives of the two blocs will be shortly dealt with. While the West argued that there was "no true individual freedom in the Soviet Union because the rights of the individual were subservient to the state," Soviet bloc representatives countered that "the cult of individualism" led to economic exploitation and that economic rights were more important than political rights. This argument was also counter-argued by the British delegates that "This declaration must uphold as a model for all humanity the figure of free men, not well-fed slaves."

The Soviet Union and its satellites constituted the majority of the abstentions. It was even said by the Soviet representative that the Declaration overemphasized "18th century rights" at the expense of economic rights. Saudi Arabia abstained because, in its opinion, the Declaration was too Western-oriented. South Africa, whose long embrace of apartheid began that same year, also abstained, arguing that the Declaration embodied too expansive a view of human rights. See http://usembassy.state.gov/bogota/wwwshr01.shtml.

As of 9 June 2004, in http://www.unhchr.ch/pdf/report.pdf. The term “state parties” mean states which have already ratified the treaties and include states that accede to and succeed the state parties.

Such an idea of human rights as natural and inalienable rights of mankind is explicitly exposed in Article 2 of the French Declaration of the Rights of Man and the Citizen which states that “The aim of all political association is the conservation of the natural and inalienable rights of man. These rights are: liberty, property, security and resistance to oppression,” while an individual retains his right of resistance to oppression. The same message is also been stated in the USA Declaration of Rights of 1774 pronouncing Americans as a “free people claiming their rights as derived from the laws of nature and not as the gift of their Chief Magistrate” and also “the immutable laws of nature” as the principle source from which the colonies derived their rights. It is also proclaimed in the Declaration of Independence (1776) the necessity for a people “to assume among the powers of the Earth the separate and equal station to which the Laws of Nature and of Nature’s God entitled them” and that “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness” in a sense that “to secure these rights Governments are instituted among men, deriving their just powers from the consent of the governed ; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it.”

Robertson and Merrills, Human Rights in the World, p. 12. The Resolution XXI of the Tehran Conference states that: “the problems of economic, social and cultural rights should receive due and increasing attention... in view of the increasing importance of realizing these rights in the modern world.”

Resolution XVII of the Tehran Conference states that: “The enjoyment of economic and social rights is inherently linked with a meaningful enjoyment of civil and political rights, and...there is a profound interconnection between the realisation of human rights and economic development.”

Such rights and fundamental freedoms include those of entitlement to equality
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of rights without discrimination of any grounds, life, liberty and security of person, protection against slavery, protection against torture and cruel and inhuman punishment, recognition as a person before the law, equal protection under the law, access to legal remedies for rights violations, protection against arbitrary arrest or detention, hearing before an independent and impartial judiciary, the presumption of innocence, protection against ex post facto laws, protection of privacy, family and home, freedom of movement and residence, the seeking of asylum from persecution, nationality, marriage and the founding of a family, owning property, freedom of thought, conscience, and religion, freedom of opinion, expression and the press, freedom of assembly and association, political participation, social security, work under favorable conditions, free trades union, rest and leisure, food, clothing and housing, health care and social services, special protection for children, education, participation in cultural life, the social and international order needed to realize rights, self-determination, humane treatment when detained or imprisoned, protection against debtor's prison, protection against the arbitrary expulsion of aliens, protection against the advocacy of racial or religious hatred, and protection of minority cultures.


The Declaration establishes the principles and the main features of a political platform actively promoting human rights and democratic principles.

The Resolution lays down the guidelines, procedures, and priorities for improving the consistency and cohesion of the whole range of development initiatives.


Smith, European Union Foreign Policy, p. 10, note 10.


Smith, European Union Foreign Policy, p. 101, note 10. This idea is based on Kathryn Sikkink’s argument that two necessary components of a comprehensive human rights policy are a willingness to submit national human rights practices to some international review and to project human rights values internationally by incorporating such values into foreign policy. See Kathryn Sikkink. ‘The power of principled ideas: human rights policy in the United States and Western Europe,’ in Judith Goldstein and Robert Keohane, eds., Ideas and Foreign Policy (Ithaca, NY: Cornell University Press, 1993), pp. 142–3.

Noted that all “European Treaties” are adopted unanimously by all member states of the Union and are legally binding to all of their signatories.

38 See, for instance, rights as proclaimed in the European Convention of Human Rights.
39 See, for example, the early EPC meetings of the 1970s on the Middle East, the Conference on Security and Cooperation in Europe (CSCE), apartheid in South Africa and situation in Central America.
46 In 1990–1 major member states including the UK, Germany, and France all announced that considerations of democracy and human rights would dictate their aid allocation.
52 The human rights clause has been included in all subsequently negotiated bilateral agreements of a general nature (excluding sectoral agreements on textiles, agricultural products, and so on). The approach was outlined in the Commission’s Communication on the Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries COM (95) 216 final. An explanation of what the essential clause is can be seen in the Commission of the European Community, *Communication on the European Union’s Role in Promoting Human Rights and Democratisation in Third Countries*. COM (2001) 252 final, p. 9.
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54 For example, see Christopher Clapton, 'Sovereignty and the Third World state,' Political Studies 47 (1999), p. 3.
57 Suu Kyi also received the Sakharov Prize for Freedom of Thought from the European Parliament in 1991.
58 In other words, the NLD won 392 of the total 485 seats of the National Assembly.
60 An ethnically-diverse country consisting of 60 percent ethnic Burman and 40 percent spread across several ethnic groups and sub-groups, with a long history of the "divide and rule" strategy of the British, has seen a number of armed insurgencies against the central government in pursuit of greater regional autonomy or independence. However, most of these groups have recently signed ceasefire agreements with the military regime, while only a few have continued their armed insurgency. The ethnic groups are mainly located in the border areas and thousands of Burmese citizens remain in exile in Bangladesh and Thailand. The military junta's approach to returning refugees has also been harsh. For example, Rohingya refugees returning from Bangladesh are officially classified as "non-citizens" and subject to movement restrictions, which seriously hinder their reintegration. See http://europa.eu.int/comm/external_relations/ myanmar/intro/index.htm.
61 Exceptions may be made for projects and programs in support of human rights and democracy as well as those concentrating on poverty alleviation and the provision of basic needs to the poorest section of the population (The Common Position Defined by the Council on the Basis of Article J.2 of the Treaty on European Union on Burma/Myanmar, 28 October 1996 in http://www.xs4all.net/~bcn/281096.html).
Declaration by the European Union, Bulgaria, Cyprus, the Czech Republic, Hungary, Iceland, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovakia and Slovenia, concerning Myanmar, 7 November 1996, http://www.xs4all.net/-bcn/71196.html. On 11 November 1996, Estonia associated itself with the above-mentioned declaration. The new member countries of the EU through 2004 enlargement are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia with Romania and Bulgaria as candidate states.


These include, for instance, up to 5 million Euros assistance for activities in the framework of the joint plan of action elaborated by UN Agencies in response to the spread of HIV/AIDS, the invitation and granting of a visa to the Burmese foreign minister to join the planned EU-ASEAN Ministerial meeting in 2002, the member states' support for the Burmese application to the International Hydrographic Organisation and their advice on Myanmar's chances of qualifying for bilateral debt relief under the IMF/IBRD's "Heavily Indebted Poor Countries" Initiative. The Union also agreed to possibly reconsider the common position and measures taken at the time should developments in Burma "either positive or negative, so require (Burma/Myanmar: Council conclusions General Affairs Council, 08/10/2001, Press Release: Luxembourg (08-10-2001), http://www.xs4all.net/-bcn/burma_myanmar_coun_con.html. Also European Pariliament Resolution on the Political Situation in Myanmar (Burma) of Minutes of 04/10/2001, B-5 0622, 0639,0650,0656,0657 and 0664/2001, http://www.xs4all.net/-bcn/euro_p_res1.html.


Daw Aung San Suu Kyi and her colleagues were attacked by the military at Sagaing and a number of deaths occurred.


The military regime in Myanmar has little access to foreign aid, including assistance from international financial institutions. The EU, Canada and the USA have already removed GSP preferences on imports from Myanmar and provide no preferential financing for exports to or investment in the country. The US trade ban has had a large impact on the textiles sector. Total foreign debt was estimated at the end of 2003 at US$ 6.2 billions. There has been a dramatic reduction in foreign investment in recent years (from US$ 2.8 billion in 1996/97 to US$ 19.1 million in 2001/02). EU exports to Myanmar totaled 54 million euros in 2003, imports from Myanmar totaled 388 million euros, http://europa.eu.int/comm/external_relations/myanmar/intro/index.htm.


In 1989, Myanmar was decertified by the Bush Administration from the list of countries cooperating in efforts against narcotics, and, as a consequence, denied access to US assistance and Export-Import Bank. The US government also opposed aid and loans from multilateral development banks. In 1990, the Burmese eligibility for the General System of Preferences’ privileges was also suspended due to harsh violations of internationally recognized workers’ rights in the country. In 1991, the Bush Administration refused to renew a bilateral textile agreement, and, in 1994, placed Myanmar on the list of “rogue states,” preventing the US government from financing international programs for this country, Institute for International Economics’ web site http://www.iie.com/research/topics/sanctions/myanmar.htm.

Tamen. ‘European Union’s sanctions related to human rights,’ p. 21, note 53.


The other measures are an arms embargo, the expulsion of military attachés, ban on non humanitarian aid, a visa ban on SPDC, its associates and their families, asset freezing of the SPDC and associates, suspension of high level government visit to Burma, and withdrawal of GSP trade preferences to the country.


International Monetary Fund, Myanmar: Recent Economic Developments, Statistical Appendix, Table 39, 1997, at netec.mcc.ac.uk/BibEc/data/imfimfscrl1.html.


Articles 13, 14 and 15 of the Treaty on European Union. The remaining “joint action” measure is, however, in this case not possible, since there has been a denial on the part of the Union to deal with Burma on a bilateral basis.

ASEAN was established on 8 August 1967 in Bangkok with the Bangkok Declaration by five original members, namely Indonesia, Malaysia, the Philippines, Singapore, and Thailand. The member states have later extended to include all ten states of the region with the accessions of Brunei Darussalam (1984), Vietnam (1995), Laos and Burma (1997), and Cambodia (1999).

The policy is, however, argued to originate in the 1988 initiative of General Chavalit Yongchaiyudh, the then Thai army commander, to negotiate generous deals on logging and fishing with the Burmese military regime. This led to subsequently intensive exchanges between the military and civilian bureaucracies and between the two sides. For more details see Kay Moller, 'Cambodia and Burma: The ASEAN way ends here,' Asian Survey 38, 12 (1998).

The Declaration of ASEAN Concord and the Declaration of ASEAN Concord II of 7 October 2003 signed by heads of state of all ten member countries of the Association. In Article 2 of the Treaty of Amity and Cooperation in Southeast Asia, which is legally binding to all signatories, it was again reemphasized as solid commitment of all signatory states to guide the relations with one another by “fundamental principles.” The principles include mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations; the right of every State to lead its national existence free from external interference, subversion, or coercion; and non-interference in the internal affairs of one another, settlement of differences or disputes by peaceful means, and renunciation of the threat or use of force and effective cooperation among themselves. See Treaty of Amity and Cooperation in Southeast Asia, 24 February 1976, http://www. aseansec.org/1217.htm.


'Engaging Myanmar in ASEAN.'

'Engaging Myanmar in ASEAN.'


'Engaging Myanmar in ASEAN,' note 94.


Kavi, 'The evolution,' p. 20. Kavi argued on the issue that, "With the Western
dialogue partners inside a new regional security framework the Burmese issue began to be pushed on to the back seat as the suppression continued in Burma."

The regime also allowed the repatriation of thousands of Muslim Rohingyas refugees from Bangladesh in 1992 in order to solve a longstanding conflict between the regime and Indonesian and Malaysian governments over the country's treatment of Muslims.

100 Mann (Mac) Bunyanunda, 'Burma, ASEAN and human rights,' pp. 123-4, note 89.

101 The ASEAN-EU political dialogue meetings are in “block-to-block” formation, including all representatives of all EU and ASEAN member states. Such meetings include regular Ministerial Meeting every 18 to 24 months, meeting of foreign ministers of both regional groups (every second year since 1978), EU-ASEAN Senior Officials Meeting (since 1995), ASEAN Post Ministerial Conferences taking place immediately after ASEAN annual Ministerial Meetings, Asian Regional Forum between ASEAN 10 members and 12 ASEAN dialogue partners including Australia, Canada, China, North Korea, South Korea, USA, India, Japan, New Zealand, Russia, Mongolia, and the EU plus a ASEAN observer, Papua New Guinea, and the ASEM Summit

102 In an apparent exception to this rule, ASEAN accepted the unanimous call by ARF participants to act as a mediator to restore political stability in Cambodia and foster reconciliation there. Despite conflicting signals from the Hun Sen regime, ASEAN has been attempting to negotiate a solution that would allow national elections planned for May 1998 to happen as scheduled and enable the leaders of ousted first prime minister Prince Norodom Ranariddh’s FUNCINPEC party to return to freely choose a new prime minister and prepare for the elections. The statement released at the close of the ARF meeting said that the foreign ministers "supported ASEAN’s initiative in this regard" (see JEI Report No. 27B, July 18, 1997).


104 While criticizing Constructive Engagement for resulting in no gains, a Western diplomat also admitted that: "We ourselves espouse constructive engagement with undemocratic countries—Clinton did it most recently when justifying his visit to China, and Canadian PM Jean Chretien said the same to support his policy of engaging Cuba. So we can hardly knock ASEAN for doing the same with Myanmar, Laos and Vietnam." See Roger Mitton, 'Divided we stand: to intervene or not in the affairs of a member state," at http://www.asiaweek.com/asiaweek/98/0731/nat_4.html; and Mann (Mac) Bunyanunda, 2002, note 89, pp. 125-127.


107 R. Cribb (‘Burma’s entry into ASEAN: Background and implications,’ Asian Perspective 22, 3 (1998), p. 57) argued that, “Unless ASEAN develops a kind of
two-tier membership, the admission of Burma and the former Indochina states will almost certainly slow the broader process of ASEAN integration, regardless of the delaying effects of economic crisis. None of the new members could responsibly open its economy to competition within the ASEAN market in the way that countries such as Thailand and Malaysia have begun to do...But even before the economic crisis the combined resources of the older ASEAN states would not have been enough to raise Burma to economic parity in ASEAN affairs in the foreseeable future."

112 'Sachs on sanctions: An interview with Jeffery Sachs,' *Irrawaddy* 12, 9 (October 2004).
113 In its 2004 Commission Work Programme, such bilateral agreements were proposed to Indonesia, the Philippines, and Thailand. See 'Burma holds EU-ASEAN relations back," *EurAsia* (October-November 2003), p. 25.
114 The idea was put forward by the Malaysian deputy premier Anwar Ibrahim and Thai foreign minister, Surin Pitsuwan, in 1997.
117 Such dissatisfaction has been argued to be the result of increasing problems between Thailand and Burma over the latter’s increasing alleged commitment to drug-trafficking, raising considerably the refugee influx to Thailand and the subsequent heightening of conflict along the two countries’ borders. The last point has been reflected in the junta’s striking down of various cooperative arrangements it made with Thailand and its order to shoot down any Thai aircraft that entered Burmese airspace during the regime’s attacks against ethnic insurgencies. See Rodney Tasker and Shawn W. Crispin, 'Flash point,' *Far Eastern Economic Review* (1 June 2000), p. 26;and Shawn W. Crispin, San Tun Du, Santi Sak and Bertil Lintner, 'Drug tide strains ties," *Far Eastern Economic Review* (9 September 1999).
118 Mann (Mac) Bunyanunda, 'Burma, ASEAN and human rights,' pp. 127–8, note 89.