



## THE TATMADAW



Top: Tatmadaw flag and insignia. Top left: Commander-in-Chief Vice-Senior General Min Aung Hlaing and Thai Prime Minister Yingluck Shinawatra. Top right: Deputy Commander-in-Chief General Soe Win with Chief Government Ceasefire Negotiator, former Minister for Rail Transportation and now Minister – Office of the President, Aung Min. Bottom: Tatmadaw escort for RCSS/SSA-S ‘peace’ delegation convoy from Tachilek to Kengtung, May 2012.

### DOES THE GOVERNMENT CONTROL THE TATMADAW?

Over the last year and a half, this has been the uppermost question in everybody’s mind regarding the Government of Myanmar’s ceasefire negotiations with the ethnic armed groups. This question became especially acute at the beginning of the year when President Thein Sein ordered a ceasefire but the Tatmadaw seemingly ignored the order and continued to press forward using heavy artillery to seize key Kachin Independence Army positions.

Many came to the conclusion that the President cannot control the Tatmadaw; it is its own master. Others concluded that the President and the Tatmadaw are playing ‘good cop’ and ‘bad cop’ roles in the negotiations with the various ethnic armed groups in order to draw them out and trap them in untenable positions. The suspicions have increased as fighting with the Kachins has not stopped, despite two meetings in Ruili with the Chinese present, and fighting in the Shan State has escalated in the last month. The recent anti-Muslim riots in Meiktila and Mandalay led by ‘monks’ have also fueled suspicions.

## THE 2008 CONSTITUTION

The government of President Thein Sein derives its legitimacy from the 2008 Constitution. It also prides itself in the fact that it is implementing the previous ruling State Peace and Development Council's Seven-Step Road Map. As long as the President can justify his actions according to the 2008 Constitution, he is safe. Therefore, to determine whether or not the President controls the Tatmadaw, it is important to look at the Constitution.

Both Chapter I – Basic Principles of the Union (Article 16) and Chapter V – The Executive (Article 199) define the Head of the Union of Myanmar and the Head of the Executive of the Union as the President. There is no one higher than or equal to the President. From these articles, it is clear that the Commander-in-Chief is subordinate to the President. Furthermore, Article 203 states that the President and his cabinet are responsible to the Pyidaungsu Hluttaw (National Parliament), not the Tatmadaw.

Article 342 states that the President shall appoint the Commander-in-Chief of the Defence Services *with the proposal and approval* of the National Defence and Security Council (NDSC). This further indicates clearly that the Commander-in-Chief is responsible to the President. He is the President's subordinate. The question that arises now is who are the members of the NDSC who must approve the appointment?

Article 201 states that the NDSC shall be formed with the following persons:

(a) The President	Elected by Parliament
(b) Vice-President	Elected by Parliament
(c) Vice-President	Elected by Parliament
(d) Speaker of the Pyithu Hluttaw (Lower House)	Elected by Parliament
(e) Speaker of the Amyotha Hluttaw (Upper House)	Elected by Parliament
(f) Commander-in-Chief of the Defence Services	Appointed by the President*
(g) Deputy C-in-Chief of the Defence Services	Appointed by the C-in-C (?)**
(h) Minister for Defence	Appointed by the President***
(i) Minister for Foreign Affairs	Appointed by the President
(j) Minister for Home Affairs	Appointed by the President***
(k) Minister for Border Affairs	Appointed by the President***

**Note:**

Appointed by the President\* - with the approval of the NDSC, Article 342.

Appointed by the C-in-C (?)\*\* - the Constitution does not specify who appoints the Deputy C-in-C. However, it can be assumed that he is appointed by the Commander-in-Chief.

Appointed by the President\*\*\* - but nominated by the Commander-in-Chief, Article 232 (ii).

While it may seem strange that the Commander-in-Chief has to approve his own appointment, the intention here is for the current C-in-C to have a say in who his successor will be. In any case, while the C-in-C could get 5 out of 11 votes in the NDSC, he does not hold veto powers. From the Constitution it is clear that, legally-speaking, the C-in-C is not as powerful as some make him out to be. But the question remains – why is the Tatmadaw still fighting when the President is negotiating peace with the ethnic armed groups?

## THE TATMADAW / DEFENSE SERVICES

Chapter I - Basic Principles of the Union (Article 20) states that –

- (a) The Defence Services is the sole patriotic defence force ....

- (b) The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces.
- (c) The Commander-in-Chief of the Defence Services is the Supreme Commander of all armed forces.
- (d) The Defence Services has the right to administer for participation of the entire people in Union security and defence.
- (e) The Defence Services is mainly responsible for safeguarding the non-disintegration of the Union, the non-disintegration of National solidarity and the perpetuation of sovereignty.
- (f) The Defence Services is mainly responsible for safeguarding the Constitution.

From the above, it is clear that, while the President is not the Commander-in-Chief, the Tatmadaw is bound by the Constitution, just as the President is. Neither the Commander-in-Chief nor the President can overstep his authority. It is equally clear that the military cannot interfere in governance nor the President in purely military affairs, except in the case of external aggression (Article 213). The difficulty that both of them may be having is in defining 'military affairs'. Are the peace talks political or military? To date, the Tatmadaw seems to be taking the view that the peace talks and achieving peace are political. It does not believe that it is directly responsible for getting involved in the negotiations or for finding ways to implement the ceasefires negotiated by the Government. Unless directly ordered, it will continue in its function of 'defending' the nation, which is and has always been, strong military action to prevent 'secessionists' from causing the disintegration of the nation.

The Tatmadaw sees the situation relating to the ethnic armies, especially in the case of Kachin Independence Organizations (KIO) and the United Wa State Army (UWSA), as being directly within its jurisdiction – preventing the *disintegration of the Union, disintegration of national solidarity and loss of sovereign power or attempts therefore by wrongful forcible means such as insurgency or violence* – Chapter 1, Article 40 (b) and (C).

Another possible dilemma for Vice Senior-General Min Aung Hlaing is that he has to balance his constitutional role with his strong man role. He cannot contradict the President but he also has to show his men that he is first and foremost a military man. This became clear in the Kachin case. The onset of fighting in June 2011 may have been decided at the Regional Command level, but the Tatmadaw underestimated the KIO and suffered heavy losses including officers. Since the Tatmadaw could not tolerate this at any price, it had to teach the Kachins a lesson. Thus, even had he wanted to, Min Aung Hlaing could not have ordered his subordinates not to retaliate. He, personally, was also not senior enough to overrule where military pride was concerned. Otherwise, he would have been seen as a weak general. As the momentum grew, despite the peace talks, the fighting was approved at the highest levels. The massive troop movement from bases in central Burma and the use of heavy artillery, helicopter gunships and attack aircraft, could not have been ordered without the authorization of the Commander-in-Chief. These may even have been authorized by the National Defence and Security Council. That may explain why, even after the President had 'requested' a cessation of hostilities, the Tatmadaw continued its attacks. It could not afford to stop until the Tatmadaw had been able to show that it had the upper hand both in terms of pride and in its role as the defender of the nation's territorial integrity.

## OPINION / ANALYSIS

The Tatmadaw or Burma Army was founded by Aung San as a political force to promote,

protect and sustain Bama/Burman nationalism, separate from the institution of the State (which was British at that time). The period after independence to 1962 under U Nu was an anomaly – an attempt to build a modern military institution answerable to the State. Over the past 50 years, the Tatmadaw was built up as an independent political institution. The current Constitution is an attempt to bring the Tatmadaw back under the control of the State. But this cannot be achieved overnight, nor will the Tatmadaw as a political institution disappear.

Those in the Tatmadaw, past and present, see themselves foremost as nationalists and patriots. To them, any attempt to dilute the Tamadaw is an attack on the Bama nation. In this sense, there is no split within the Tatmadaw or between the Tatmadaw and the Government. Both are dedicated to the preservation of the Bama nation (now called the Republic of the Union of Myanmar, but to them still the Bama nation). The Tatmadaw had a definite plan to legitimize its role through the Seven-step Road Map. There is no disagreement on this point. However, the way in which President Thein Sein is implementing the Road Map may be problematic to some. They may believe that the President is going too far too fast.

President Thein Sein has been able to convince the military establishment that economic reforms are needed to further legitimize the civilianized military government. His plan included an accommodation with DASSK and the ethnic nationalities in order to attract foreign investment. While the strategy has succeeded, both these moves have backfired to a certain degree. Once again the ruling elite miscalculated the extent of DASSK's popularity and the extent to which the general populace hated them. This has given DASSK a more significant political role than the military establishment bargained for. The government also thought they could buy off the ethnic groups like they did in the 1990's. This has not proven to be the case and the extent of international interest has taken them by surprise; what they thought was a simple peace process is turning into a full-blown dialogue on the nature of the nation, which they may not yet be willing to discuss. A public debate on nationhood and citizenship could be very threatening for Bama nationalists of all stripes.

The dilemma now for the ruling elite is whether to continue with the reforms and risk losing control, or change course. Personal greed could also threaten the reforms. In theory, the reforms will enlarge the pie. But, to date, this has not yet happened. There is a lot of talk and good will but the share the cronies have of the wealth is likely to shrink before it can grow again if the reforms work. Will the cronies and ex-generals allow this to happen for the sake of the country? A serious internal problem for the Bama nationalists is that the Tatmadaw's idealism, professionalism and patriotism have over the years been eroded by nepotism and corruption. The rapid expansion of the army and the officer corps has also diluted the Tatmadaw's patriotic fervour. Today, opportunism rather than professionalism motivate many young men to become officers – much like in the dying days of the Kuomintang regime in China. Therefore, returning to a more 'disciplined' system is not really practical.

In General Ne Win's time, there was supposed to be a council of senior ex-generals steering the country behind the scenes. Such a group could also exist today but not formally as a council. Than Shwe, Aung Thaung, and Thein Zaw, etc. could be part of the network. They may be retired, they can no longer dictate policy or be involved in the day-to-day administration, they may compete and not see eye to eye on various matters, but they will stand together to preserve the Tatmadaw and its role as guardian of the Bama nation. If Than Shwe and others are not happy, they could try to block the President, or they may even try to roll back some of the changes. But unless the President makes a very serious mistake and courts disaster, they cannot take much action except maybe to try and create a crisis.