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The Fate of Armed Resistance Groups After Peace

by David C. Williams*

Introduction

After peace comes to countries torn by civil war, the various combatant forces must transition to the new condition. World-wide, typically, the insurgent groups simply put down their arms and go home; this process is commonly called disarmament, demobilization, and re-integration, or DDR.¹ Less typically but still commonly, the national army might go through some kind of restructuring, such as down-sizing; this process is commonly called security sector reform, or SSR.² The international community seldom considers any options other than these two, and the literature on the transition to peacetime generally refers only to these two, as though they were the only options.³

They are not, however, the only options. Insurgent groups frequently do not want to lay down their arms immediately, for the very good reason that they fear the national army might continue to attack them.⁴ At the time of writing, the Burmese Ethnic Armed Organizations (EAOs)⁵ find themselves in this situation: they want peace, but they do not want simply to disband.⁶ And so they asked the Center for Constitutional Democracy to prepare a memorandum detailing the full range of options.

The essay that follows is a version of that memorandum. As noted, it was written for the specific situation of the EAOs in Burma, but it is hoped that it might have broader applicability. It might provide a taxonomy or menu of options that anyone involved in the transition to peace might

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¹ See generally NICOLE BALL & LUC VAN DE GOOR, NETH. INST. INT'L REL., *DISARMAMENT, DEMOBILIZATION AND REINTEGRATION: MAPPING ISSUES, DILEMMAS AND GUIDING PRINCIPLES* (2006), http://www.clingendael.nl/sites/default/files/20060800_cru_paper_ddr.pdf.

² See generally GOVERNANCES & SOC. DEV. RESOURCE CTR., *TOPIC GUIDE ON SECURITY SECTOR REFORM* (2013), http://www.gsdr.org/docs/open/ssr_tg.pdf.

³ See, e.g., Alan Bryden & Vincenza Scherrer, *The DDR-SSR Nexus: Concepts and Policies*, in GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *DISARMAMENT, DEMOBILIZATION AND REINTEGRATION AND SECURITY SECTOR REFORM: INSIGHTS FROM UN EXPERIENCE IN AFGHANISTAN, BURUNDI, THE CENTRAL AFRICAN REPUBLIC AND THE DEMOCRATIC REPUBLIC OF THE CONGO* (Alan Bryden & Vincenza Scherrer eds., 2012), available at <http://www.dcaf.ch/Publications/Disarmament-Demobilization-and-Reintegration-and-Security-Sector-Reform>.

⁴ See, e.g., Nicolas Florquin & Stéphanie Pézard, *Insurgency, Disarmament And Insecurity In Northern Mali, 1990–2004*, in *ARMED AND AIMLESS: ARMED GROUPS, GUNS, AND HUMAN SECURITY IN THE ECOWAS REGION* 46, 59 (Nicolas Florquin & Eric G. Berman eds., 2005) (“Continued insecurity and distrust in [Mali’s] peace process led many ex-combatants and civilians to retain their weapons.”); Raymund Jose G. Quilop, *Small Arms and Light Weapons in the Philippines: Possession, Demand, Supply, and Regulation (Overview)*, in *PRIMED AND PURPOSEFUL: ARMED GROUPS AND HUMAN SECURITY EFFORTS IN THE PHILIPPINES* 231, 249 (Diana Rodriguez ed., 2010) (“The programme is falling short in its implementation, however, primarily because of . . . the perception that it is merely an anti-insurgency tactic, which makes insurgents unwilling to bring in their weapons.”).

⁵ See generally *More Process Than Peace*, *ECONOMIST*, 39 (Feb. 21, 2015); *Armed Ethnic Groups*, MYANMAR PEACE MONITOR, <http://mmpeacemonitor.org/stakeholders/armed-ethnic-groups> (last visited May 1, 2016) (profiling all EAOs).

⁶ See Kyaw Kha, *Suu Kyi Talks ‘Peace’ On Burmese New Year; Ethnic Leaders Respond*, *IRRAWADDY* (Apr. 20, 2016), <http://www.burmalink.org/suu-kyi-talks-peace-burmese-new-year-ethnic-leaders-respond>.

consider—insurgents, governments, and international actors assisting or “guiding” the process. Not all of these options will be relevant to any given peace process; some might be very bad choices for particular peace processes; and it is entirely possible that there are still more options not listed in the memorandum. But the goal of the memorandum was to break out of the strait-jacket of DDR/SSR so as to make clear that there are other possibilities. As will be explained, DDR and SSR are appropriate only for certain factual scenarios, so this memorandum outlines options for other factual situations.

In keeping with the eclectic nature of the CCD’s new publication platform, I have deliberately remained fairly close to the original version of the memorandum, so as to preserve the flavor. It was written for activists in the field and it speaks to their concerns rather than to an academic readership. For the most part, the revisions for this publication are limited to adding some examples of the different options, some framing comments, and some policy reflections.

Ceasefires and Peace Accords

A ceasefire merely means a cessation of hostilities.⁷ It does not necessarily involve the surrender of arms or demobilization. Instead, a ceasefire requires both sides merely to stop fighting for the time being.⁸

In many cases, the insurgent groups will want and need to keep their arms until the underlying reasons for the conflict can be addressed in peace negotiations.⁹ If they were immediately to lay down their arms, the government might lose all incentive to negotiate. For example, in Burma, the status of the EAOs will likely remain unchanged until the signing of the final Peace Accord. Nonetheless, some international actors will be pressuring the EAOs to DDR, lay down their arms and go home even before the signing of the final Peace Accord. This pressure is short-sighted, as it prioritizes disarmament over long-term solutions. In recent years, it has become plain that no peace will hold unless the underlying issues have been addressed.¹⁰

Options after the Peace Accord

After the signing of the Peace Accord, international practice is to de-militarize the situation. As a result, the EAOs will play a less prominent role as independent fighting forces. But there are a number of options, all present in international practice:

⁷ See PUB. INT’L L. & POL’Y GRP., CEASEFIRE DRAFTER’S HANDBOOK 1 (2013), available at <http://publicinternationallawandpolicygroup.org/wp-content/uploads/2013/10/PILPG-Ceasefire-Drafters-Handbook-Including-Template-Ceasefire-Agreement.pdf>

⁸ See *id.* (differentiating the core elements of a ceasefire, which include “(1) a cessation of hostilities, (2) the separation of forces, and (3) the verification, supervision, and monitoring of the agreement,” from the goal of *effective* ceasefire agreements, which achieve, *inter alia*, the establishment of “tactical, geographical, and political obstacles that deter the parties from returning to conflict”).

⁹ See Robert Muggah, *Negotiating Disarmament and Demobilisation: A Descriptive Review of the Evidence*, 77 COLOM. INTERNACIONAL 21, 34 (2013) (“There are often acrimonious disagreements between groups about pursuing D&D as a precondition for peace talks. Indeed, armed groups ranging from the Nepal Maoists and the Philippines-based Moro National Liberation Front to the El Salvadorian FMLN also rejected demands that disarmament should precede negotiations, let alone demobilization. This is because disarmament is an intensely political issue and linked to a widely recognized security dilemma for parties involved in or emerging from armed conflict.”).

¹⁰ See *id.*

- I. The EAOs undergo simple DDR: the EAOs disarm, demobilize, and reintegrate into the civilian population. Essentially, they dissolve.
- II. The EAOs undergo DDR and enroll in the Burmese army: the EAOs disarm, demobilize, and reintegrate into the civilian population, but provision is made in the Peace Accord for individual soldiers to enroll in the Burmese Army.
- III. The EAOs undergo both DDR (either with or without enrollment in the Burmese Army) and SSR: the EAOs disarm, demobilize, and reintegrate, and the Burmese Army agrees to Security Sector Reform—for example, to subject itself more thoroughly to the civilian government, withdraw from politics, and reduce its size
- IV. The EAOs become separate units in the Burmese Army under the general command of the Burmese military structure.
- V. The EAOs technically become units in the Burmese Army, but the state governments from which they come retain substantial operational control over them.
- VI. The EAOs become armed forces (or “security units”) under the control of the civilian state governments, and the constitution of Burma guarantees the states the power to raise and maintain such forces, immune to federal control.
- VII. The EAOs remain wholly independent fighting forces, just as they are now.

I. Option One: The EAOs undergo simple DDR

The most common approach world-wide is simple DDR: individual members of the resistance groups turn in their arms to some authority; the resistance groups dismantle their command structures; and the individual soldiers are “re-integrated” into the civilian population, usually through job training.¹¹ In simple DDR, the process typically passes through these three stages in order.¹²

The United Nations uses this approach almost ubiquitously¹³ and will probably push for its adoption in Burma. Indeed, the United Nations manual of operations specifies this process and only this process.¹⁴

But simple DDR would be a mistake for Burma. The approach assumes certain factual conditions that do not hold in Burma.

¹¹ See *supra* note 1, at 2–3; see also Stephanie Hanson, *Disarmament, Demobilization, and Reintegration (DDR) in Africa*, COUNCIL ON FOREIGN REL. (Feb. 16, 2007), <http://www.cfr.org/world/disarmament-demobilization-reintegration-ddr-africa/p12650> (describing DDR processes in Africa).

¹² See *supra* note 1, at 2–3. But see Hanson, *supra* note 11 (“Earlier DDR programs were executed sequentially, with one phase concluding before the next one began. But this linear process created numerous timing problems; ex-combatants waited for months in temporary camps before they could return to their communities, and delays in transition payments left ex-combatants without a means of support. Now, many experts stress the need to run the phases in tandem.”).

¹³ See UN DDR IN AN ERA OF VIOLENT EXTREMISM: IS IT FIT FOR PURPOSE? 25 (James Cockayne & Siobhan O’Neil eds., 2015), available at <https://collections.unu.edu/eserv/UNU:5532/UNDDR.pdf>.

¹⁴ See UNITED NATIONS, OPERATIONAL GUIDE TO THE INTEGRATED DISARMAMENT, DEMOBILIZATION AND REINTEGRATION STANDARDS 39 (2014) (“DDR is a key component of national and international efforts towards establishing a secure environment, without which reconciliation and long-term development will not be achieved.”).

First, the approach assumes the goal of the process is to give the state a monopoly on the legitimate use of force; to that end, the most important step is to make the resistance armies disappear.¹⁵ It thus assumes that the state is legitimate and so will typically use force only in good ways. It is not surprising that the United Nations should prefer this approach. Its members are all sovereign states, and so it makes sense that they want to ensure that sovereign states have a monopoly on the use of force. But in Burma, many worry that the state might still abuse its power and so will not be wholly legitimate—even after the adoption of a Peace Accord.¹⁶

So how great is the risk? We are assuming that a Peace Accord mandating constitutional reform has been signed, so the state will hopefully be more accountable and legitimate than it is now. But it is unlikely that the EAOs will get all the changes that they want.¹⁷ In addition, it will not be immediately clear whether the government will abide by the new rules. And even if the civilian government does abide by the rules, it is entirely unclear whether the Tatmadaw (the Burmese army) will do so.¹⁸ Even after constitutional reform, therefore, the ethnic armies may need to maintain the capacity for armed resistance, as per Options Five, Six, and Seven, and, to a lesser extent, Option Four.

Simple DDR also assumes that the resistance forces are illegitimate and individual soldiers need to be “re-integrated” into the civilian population.¹⁹ In other words, the individual soldiers joined the armies as individuals, either because they were forced (for example, as child soldiers²⁰) or they hoped to make ill-gotten gain. In this vision, the resistance forces are like parasites who prey on civilians; hence, they are radically separate from the civilian population.

In truth, in Burma, some EAOs have conformed to this profile some of the time. But the major players in the peace talks do not fit these assumptions. For the most part, they do not prey on the people; they protect the people.²¹ For the most part, the individual soldiers did not join under duress or in hopes of profit; they joined to help their people. The individual soldiers do not need to be “re-integrated,” because they were never de-integrated; the ethnic armies form an integral part of their people.²² And in many parts of Burma, the ethnic armies are seen as legitimate

¹⁵ See *id.* at 25–26.

¹⁶ See Timothy McLaughlin, *Myanmar to Sign Ceasefire Agreement with Eight Armed Groups*, REUTERS, Oct. 14, 2015, <http://www.reuters.com/article/us-myanmar-politics-idUSKCN0S82MR20151014>.

¹⁷ See, e.g., Saw Greh Moo, *Why Burma’s Ethnic Armed Groups are Reluctant to Their Sein Government’s Peace Plan – A Minority Perspective*, KAREN NEWS, July 10, 2015, <http://karennews.org/2015/07/why-burmas-ethnic-armed-groups-are-reluctant-to-agree-to-thein-sein-governments-peace-plan-a-minority-perspective.html> (“The exclusion of the three ethnic armed groups from the nation-wide ceasefire accord is a major reason why the 16-member ethnic bloc rejected the government’s proposal at their summit in June.”).

¹⁸ See Yola Verbruggen, *Is Myanmar’s Peace Accord a Sham?*, IRIN, (Feb. 24, 2016) <https://www.irinnews.org/news/2016/02/24/myanmars-peace-accord-sham>; Jared Genser, *Democracy on a Leash*, U.S. NEWS & WORLD REP. (Nov. 12, 2015, 4:47 PM), <http://www.usnews.com/opinion/blogs/world-report/2015/11/12/the-military-will-still-control-myanmar-after-aung-san-suu-kyis-victory>

¹⁹ See UNITED NATIONS, *supra* note 14, at 157–81.

²⁰ See *id.* at 225–34; see also John Williamson, *The Disarmament, Demobilization and Reintegration of Child Soldiers: Social and Psychological Transformation in Sierra Leone*, 4 INTERVENTION 185 (2006).

²¹ See Mae Sot, *Myanmar’s Ethnic Problems*, IRIN, Mar. 29, 2012, <http://www.irinnews.org/report/95195/briefing-myanmar-s-ethnic-problems> (“Each ethnic group regards the protection of their individual languages, customs, culture and natural resources important to their national identity.”); see also Edith T. Mirante, *Burma - Frontier Minorities in Arms*, CULTURAL SURVIVAL Q., Winter 1987, <https://www.culturalsurvival.org/ourpublications/csq/article/burma-frontier-minorities-arms>.

²² See *supra* note 21.

expressions of the desire of local populations for self-determination. As an example, overwhelmingly Kachin people refer to the Kachin Independence Organization (KIO) not as “the KIO” but as “*our* KIO.”

Option One is therefore suited only to certain countries at certain times. But it is unsuited to Burma’s current situation, and it is the worst choice for the non-Burman nationalities.

Example of Option One

Sierra Leone:

In February of 2004, the Government of Sierra Leone declared the DDR process complete after the United Nations Mission in Sierra Leone (UNMISL) and its partners disarmed more than 75,000 combatants.²³

Some 42,330 weapons and more than 1.2 million rounds of ammunition were collected from the combatants and destroyed.²⁴ Members of the main warring factions—the Revolutionary United Front, and the Civil Defence Forces, a government militia, as well as elements of the former Sierra Leone Army and the Armed Forces Revolutionary Council—received reintegration benefits. These included “skills training programmes and formal education as well as agricultural, fishery or entrepreneurial support, along with tool kits for various craft categories.”²⁵ The success in disarming and demobilizing combatants did not, however, match the success of reintegration efforts.²⁶ Most ex-combatants have joined the large pool of the unemployed.²⁷

A survey of ex-combatants found that many fighters expressed dissatisfaction with the DDR process, with significant numbers complaining that they or members of their communities were not able to gain access to the DDR program at all.²⁸ Despite specific complaints like those above, the DDR program received positive reviews overall from most ex-combatants.²⁹ Additionally, there was no evidence that the DDR program was subject to, or viewed as subject to, any form of political manipulation or partiality.³⁰

Following the completion of the DDR program in Sierra Leone, officials from neighboring countries and countries of the great lakes region began visiting the nation to observe its effects; it is now “considered as the best practice example throughout the world of a successful disarmament, demobilization [and] reintegration programme.”³¹

But, as mentioned previously, Sierra’s Leone’s result is specific, and involves a particular set of assumptions. Even one of the most successful examples of DDR demonstrates the

²³ See UNITED NATIONS MISSION IN SIERRA LEONE, FACT SHEET NO. 1: DISARMAMENT, DEMOBILIZATION AND REINTEGRATION (2005), http://www.un.org/en/peacekeeping/missions/past/unamsil/factsheet1_DDR.pdf.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *See id.*

²⁷ *See id.*

²⁸ See MACARTAN HUMPHREYS & JEREMY M. WEINSTEIN, WHAT THE FIGHTERS SAY: A SURVEY OF EX-COMBATANTS IN SIERRA LEONE JUNE-AUGUST 2003, at 3 (2003), *available at* http://www.columbia.edu/~mh2245/Report1_BW.pdf.

²⁹ *See id.*

³⁰ *See id.*

³¹ UNITED NATIONS MISSION IN SIERRA LEONE, *supra* note 23 (internal quotations omitted).

inappropriateness of the approach for use in the context of Burma. In large part, traditional DDR promises no protections to non-Burman nationalities. Burma's situation, which will require decisions "based on information on ex-combatants' needs and viable opportunities in local communities," differs from Sierra Leone's³²: Burma's EAOs are members of their communities, not removed or distant combatants, like those in the Sierra Leone case.

II. Option Two: The EAOs undergo DDR and enroll in the Burmese army

This option is the same as simple DDR, except that after disarmament and demobilization, some individual soldiers are enlisted or commissioned into the union army.³³ The chief advantage of Option Two over Option One is that some ex-combatants from the resistance forces will be given good jobs in the army. For that reason, many resistance armies bargain hard to get as many jobs for their people as possible.³⁴ The terms of the Peace Accord usually stipulate how many officers and enlisted personnel from each resistance force will be given jobs in the army.

If Option Two were adopted in Burma, some number of ethnic soldiers would move into the union army. Presumably, they would still feel a sense of loyalty to their ethnic group. For that reason, the Tatmadaw might treat the non-Burman nationalities slightly better, but the effect would probably be very small, because the number of transferring soldiers would be small, and the top command would still be in the hands of the old guard.

Otherwise, the disadvantages of Option Two are all the same as Option One, and it therefore would not satisfy the needs of the ethnic resistance armies.

Example of Option Two

Nepal (2011):

In November 2011, the four major Nepalese political parties signed a seven-point agreement, which provided three options to facilitate reintegration, one of which was to reintegrate up to 6,500 Maoist ex-combatants into the Nepalese Army (NA).³⁵ The integration process into the NA was to be overseen by the Supervision, Integration and Rehabilitation of the Maoist Army Combatants Committee (Special Committee) that had been established in 2008.³⁶ The ceiling on the number of ex-combatants was set to avoid political consequences of the mass entry of Maoist combatants into the NA, as well as to alleviate concerns over the growing size of the army and the resulting fiscal implications.³⁷

³² CHRISTIANA SOLOMON & JEREMY GINIFER, CTR. FOR INT'L COOPERATION & SEC., DISARMAMENT, DEMOBILISATION AND REINTEGRATION IN SIERRA LEONE 5 (2008), http://www.operationspaix.net/DATA/DOCUMENT/4024~v~Disarmament_Demobilisation_and_Reintegration_in_Sierra_Leone.pdf.

³³ See, e.g., Chiranjibi Bhandari, *The Reintegration of Maoist Ex-Combatants in Nepal*, ECON. & POL. WKLY., February 28, 2015, at 63, 64–65 (describing the reintegration of ex-combatants into the Nepal Army).

³⁴ See *id.*; cf. ANDERS NILSSON, REINTEGRATING EX-COMBATANTS 51–53 (2005) (describing the need to safeguard the societal prestige of re-integrated ex-combatants).

³⁵ See Bhandari, *supra* note 34, at 65.

³⁶ *Id.* at 64.

³⁷ See Kul Chandra Gautam, *Rehabilitation and Integration of Maoist Combatants as Part of Nepal's Security Sector Reform*, KULGAUTAM.ORG, <http://www.kulgautam.org/2009/08/rehabilitation-and-integration-of-maoist-combatants-as-part-of-nepals-security-sector-transformation/> (last visited May 1, 2016).

Pursuant to the outlined principle of inclusiveness, stipulated by Nepal’s Interim Constitution, the Nepalese Army, with the assistance of other security institutions, set out to provide that forty-five percent of army posts to be attributed through a separate composition of the following social categories: women (twenty percent), Janajati (thirty-two percent), Madheshi (twenty-eight percent), Dalit (fifteen percent) and Remote Areas (five percent).³⁸ Since the implementation of the DDR program, however, analysts observe that the NA still has a long way to go in its transformation into an inclusive institution.³⁹

III. Option Three: The EAOs undergo both DDR (either with or without enrollment in the Tatmadaw) plus SSR

Increasingly, people have come to understand that part of the root cause of some civil conflicts is the government’s abuse of its military power, often against civilian populations.⁴⁰ Therefore, many think that DDR should be supplemented by SSR—security sector reform.⁴¹ In other words, the resistance forces should not be required to give up their arms unless and until the Tatmadaw starts to reform itself.

In Burma, SSR should include some or all of the following:

- Reduction in the size of the Tatmadaw;
- Subjection of the Tatmadaw to civilian control (because under the current constitution, it is wholly independent within its own, very broadly defined sphere, including serving as the leading guardian of the constitution itself);⁴²
- Elimination of the military’s role in the civilian government, both in the legislature and in the ministries (because under the current constitution it controls three key ministries and twenty-five percent of the legislature);⁴³
- A rule that the Tatmadaw shall not be used against the civilian population—either at all or without permission of the state or regional legislature;⁴⁴
- A rule that soldiers should be stationed in their home states if they should so desire.

SSR is important for Burma. But as a strategy, it has several drawbacks:

³⁸ See SUBINDRA BOGATI, ASSESSING INCLUSIVITY IN THE POST-WAR ARMY INTEGRATION PROCESS IN NEPAL 11 (Bergof Foundation, Inclusive Political Settlements Paper 11, 2015), http://ips-project.org/wp-content/uploads/2015/11/IPSPaper11-Assessing-Inclusivity-in-the-Post-War-Army-Integration-Process-in-Nepal_English.pdf.

³⁹ See BOGATI, *supra* note 39, at 11–12.

⁴⁰ See, e.g., JONATHAN LOEB, HUM. RTS. WATCH, “MEN WITH NO MERCY”: RAPID SUPPORT FORCES ATTACKS AGAINST CIVILIANS IN DARFUR, SUDAN (2015).

⁴¹ SSR refers to the process of strengthening and rebuilding a state’s security sector and encompasses “a set of policies, plans, programs, and activities that a government undertakes to improve the way it provides safety, security, and justice. . . . The desired outcome of SSR programs is an effective and legitimate security sector that is firmly rooted within the rule of law.” U.S. AGENCY FOR INT’L DEV. ET AL., SECURITY SECTOR REFORM 3–4 (Feb. 2009), <http://www.state.gov/documents/organization/115810.pdf>.

⁴² See generally David C. Williams, *What’s So Bad About Burma’s 2008 Constitution? A Guide for the Perplexed*, in LAW, SOCIETY & TRANSITION IN MYANMAR 117 (Melissa Crouch & Tim Lindsey eds., 2014).

⁴³ See CONST. OF THE REPUBLIC OF THE UNION OF MYANMAR, May 29, 2014, arts. 109(b), 141(b), 232(b)(ii), 262(a)(ii).

⁴⁴ Cf. CHARLES DOYLE & JENNIFER K. ELSEA, CONG. RESEARCH SERV., R42659, THE POSSE COMITATUS ACT AND RELATED MATTERS: THE USE OF THE MILITARY TO EXECUTE CIVILIAN LAW (2012).

- In the short term, the Tatmadaw may flatly refuse to reform itself,⁴⁵ so it may not be possible or at least not possible to an adequate degree.
- Even if the Tatmadaw were really and truly subject to civilian control, the union government itself might use the military to abuse ethnic populations. If the ethnic armies disband (DDR), there will be no one to protect the people.
- Even if the Tatmadaw were theoretically made entirely subject to civilian control, local commanders might still use their soldiers to abuse the population.⁴⁶ If the ethnic armies disband (DDR), there will be no one to protect the people.

Example of Option Three

Colombia:

In 2012, the Colombian government and the Revolutionary Armed Forces of Colombia began formal peace talks to end five decades of active armed conflict in the country. Colombia has been facing numerous challenges, including widespread corruption, human rights abuses and impunity as a result of an overwhelmed judiciary, and uneven application of established laws.⁴⁷

In Colombia, some elements of SSR have been considered a necessity to stop the conflict.⁴⁸ The principal goal of the Colombian government was to “make the armed forces stronger and more efficient but not necessarily more receptive to democratic governance and human security.”⁴⁹ Hence, the core principles of SSR have been applied to a limited extent.⁵⁰ The focus of SSR was narrowed to fight drug and terrorist organizations and deal with the areas of the country affected by these illegal activities.⁵¹

The limited security sector efforts within Colombia in the past ten to fifteen years have focused primarily on improving the capacity of the security sector in order to “overpower non-state actors” and on reintegrating former paramilitary members while providing justice and reparations to victims throughout the country.⁵² The path to achieving these efforts has been marked by the passage of the Justice and Peace Law and the Victims Land and Restitution Law, which provide incentives (such as amnesties or reduced sentences) for demobilization to paramilitary members and facilitate the restitution of land deprived as a result of human rights abuses, respectively.⁵³ In

⁴⁵ See David Scott Mathieson, *Burma's Military Milestone*, IRRAWADDY (Mar. 30, 2015), available at <http://www.irrawaddy.com/contributor/burmas-military-milestone.html> (“In numerous speeches, the commander in chief of the military, Snr-Gen Min Aung Hlaing, has made clear that the military intends to preserve its role in ‘safeguarding the constitution,’ a euphemism for a refusal to allow any constitutional reform.”).

⁴⁶ For an example of post-conflict abuse conducted on local populations by local commanders despite concerted SSR efforts, consider post-2001 Afghanistan, where the security sector reform program (alongside its DDR counterpart) sought to “break the linkages between former Afghan Military Forces (AMF) commanders and their troops.” See Caroline A. Hartzel, U.S. INST. PEACE., MISSED OPPORTUNITIES: THE IMPACT OF DDR ON SSR IN AFGHANISTAN (Apr. 2011), https://www.usip.org/sites/default/files/SR270-Missed_Opportunities.pdf.

⁴⁷ See *SSR Country Snapshot: Colombia*, SECURITY REFORM RESOURCE CTR., <http://www.ssrresourcecentre.org/countries/ssr-country-snapshot-colombia> (last visited May 1, 2016).

⁴⁸ See Wolf Grabendorff, *Limited Security Sector Reform in Colombia*, in SECURITY SECTOR REFORM IN CHALLENGING ENVIRONMENTS 69, 71 (Hans Born & Albrecht Schnabel, 2009).

⁴⁹ *Id.*

⁵⁰ *Id.* at 71–72.

⁵¹ *Id.* at 77.

⁵² See SECURITY REFORM RESOURCE CTR., *supra* note 48 (listing central SSR Programs/Activities).

⁵³ *Id.*

addition, numerous state institutions have been created and charged with setting policy objectives for ensuring reintegration, effect provision of reparations, and participation in community justice pursuits.⁵⁴

The achievements of implementation of SSR between 2003 and 2007 were impressive. The numbers of homicides and victims of massacres, kidnapping, and forced displacement of persons were reduced. However, reducing the number of negative indicators within the society is not the same as creating the positive ones.⁵⁵

The experiences in Colombia with limited SSR have been shaped not only by the impact of a prolonged internal conflict involving various armed non-state actors, but also by “the need to engage an external power in the process to guarantee the strengthening and modernising [sic] of the core security actors and advances in security management, especially in the application of justice and the rule of law.”⁵⁶ Therefore, it is clear that military modernization is not enough. There is value to maintaining focus on the social dimensions of a conflict and in restoring rule of law through improving capacity in several government institutions and reducing corruption in public administration.

IV. Option Four: The EAOs become separate units in the Burmese Army under the general command of the Burmese military structure

Under this option, the ethnic armies would not initiate DDR processes at all; instead, they would retain their arms, keep their internal command structure, and remain functional fighting units.⁵⁷ But they would be under the general command of the Tatmadaw. Theoretically, they would be required to follow orders from the union army, and the union army might be in charge of recruitment, promotion, provisioning, and deployment.⁵⁸ The disadvantage of this arrangement would therefore be that the Tatmadaw would be able to reduce the effectiveness of the EAOs to protect local populations.

But Option Four should not be conceived as an all or nothing proposition; either the Tatmadaw has complete control over the EAOs or it has no control. Instead, control might be divided between the union army, the state governments, and the EAOs themselves. In this sense, Options Four and Five should really be seen as a continuum. At one end—the extreme version of Option Four—the Union Government would have dominant control over the EAO units integrated into the Tatmadaw. At the other end—the extreme version of Option Five—the state governments would have dominant control over those units.

⁵⁴ *Id.*

⁵⁵ See Grabendorff, *supra* note 49, at 81–83.

⁵⁶ *Id.* at 83.

⁵⁷ A historically dated example of this option comes from the Bolsheviks who, resisting the pressing of numerous nationalities after Russia’s Civil War to create separate autonomous armies, established national military units firmly subordinate to the central Russian authority. See Susan L. Curran & Dmitry Ponomareff, *MANAGING THE ETHNIC FACTOR IN THE RUSSIAN AND SOVIET ARMED FORCES: AN HISTORICAL OVERVIEW* (Rand Publication 2640/1, July 1982), available at <http://www.rand.org/content/dam/rand/pubs/reports/2008/R2640.1.pdf>.

⁵⁸ See, e.g., Frederic Wehrey & Ariel I. Ahram, *Taming the Militias: Building National Guards in Fractured Arab States*, CARNEGIE ENDOWMENT FOR INT’L PEACE (May 7, 2015), <http://carnegieendowment.org/2015/05/07/taming-militias-building-national-guards-in-fractured-arab-states-pub-60005>.

For example, the Peace Accord might contain one or all of the following provisions that would help the ethnic armies to protect their people:

- A rule that the ethnic armies may be deployed only within their home states. In effect, they would become border guard units, as Than Shwe demanded some years ago.⁵⁹
- A rule that only non-Burman nationalities from an EAO's home state may be recruited into the EAO.
- Alternatively, a rule that the EAOs will do their own recruiting.
- A rule that the EAOs will do their own promotions.
- A rule that in any given state, only the local EAOs may be stationed amongst, or, alternatively, used against the local population.

Taken together, these rules would help ensure that the EAOs would continue to be reflective of the local population, loyal to their interests, and able to buffer them against the other units of the Tatmadaw.

Even if all these provisions are adopted, however, the EAOs would still be technically under the operational command of the Tatmadaw; the EAOs would have to attack whomever the high command tells them to attack. In practice, however, if the EAOs were still drawn from a local population, they would presumably remain loyal to that population. They could refuse orders to attack that population. Indeed, even if they were posted elsewhere in Burma, the state governments might call them home to resist any abuses by other units of the Tatmadaw.

Ultimately, however, if the EAOs become units within the Tatmadaw, over time they will likely become more thoroughly integrated into the Tatmadaw, as happened in the United States of America as the state militias became more thoroughly integrated into the national military.⁶⁰ If this shift occurs because the people come to trust the military more thoroughly, then the shift will be appropriate. But if the shift occurs because the Tatmadaw forces it, then the Tatmadaw will be able to abuse the population without any effective resistance.

Examples of Option Four

New Zealand:

During both World War I & II, Maori soldiers were allowed to choose to fight in the general army or in special units composed entirely of Maori.⁶¹

⁵⁹ See Jim Della-Giacoma & Richard Horsey, *A House Divided: Finding Peace in Multiethnic Myanmar*, WORLD POLITICS REVIEW (Sep. 10, 2013), <http://www.worldpoliticsreview.com/articles/13200/a-house-divided-finding-peace-in-multiethnic-myanmar>; see also Tim Johnston, *Beijing Rebukes Burma After Border Fighting*, FINANCIAL TIMES (Aug. 30, 2009), <http://www.ft.com/cms/s/0/788c3d26-9559-11de-90e0-00144feabdc0.html#axzz4EhpPYsKU>.

⁶⁰ See generally E. Woodward Duke, *Nationalization of the National Guard: How to Make an Efficient Force of Our State Troops*, 113 SCI. AMER. 391 (1915).

⁶¹ See JAMES BELICH, *PARADISE REFORGED: A HISTORY OF THE NEW ZEALANDERS FROM THE 1880S TO THE YEAR 2000*, 211-12 (2001).

Great Britain:

The British Army has often contained units that are/were ethnically, religiously, and racially homogeneous. For example, since 1814, the British army has contained battalions composed entirely of Gurkha soldiers, and some are thinking about reviving a Sikh unit.⁶²

Similarly, the Indian Army during the time of British rule after 1893 was largely composed of ethnically- and religiously-defined units, and in World War II, the Indian Army even included Muslim battalion groups commanded by Muslims.⁶³

Burma:

Indeed, Burmese history itself contains examples of Option Four. During World War II, the British deployed units made up of particular ethnicities such as the Kachin and the Chin.⁶⁴ Throughout the 1940s, the British Burmese Army employed Karen, Kachin, Shan, and Chin regiments which were descendants of the old colonial Burmese and Indian Army Units—and they proved often to be the most effective parts of the army.⁶⁵ Captain Vincent Curl, who commanded the OSS 101 forces on the ground in Northern Burma organized a group of Kachins, ranging in age from thirteen to sixteen, whom Americans named the “Kachin Rangers.”⁶⁶ Even after the war ended and Burma became independent, these units stayed together in the Tatmadaw.⁶⁷

V. Option Five: The EAOs technically become units in the Burmese Army, but the state governments from which they come retain substantial operational control over them.

This option is similar to Option Four in that the EAOs would become units of the Tatmadaw. But they would be special units in that the state would also have extensive control over certain aspects of the EAOs. In effect, the EAOs would function in much the way that American National Guard units functioned in the time before they were nationalized.⁶⁸

This option lends itself to negotiating because the union and the EAOs could bargain over which aspects of the EAOs would be subject to Tatmadaw control and which would be subject to state control.⁶⁹ As a result, again, this is not really a single option but a continuum: at one end, the

⁶² See Hew Strachan, *For 200 Years, the Gurkhas Have Served Britain. We Would be Foolish to Ditch Them Now*, TELEGRAPH, June 9, 2015, <http://www.telegraph.co.uk/news/uknews/defence/11659934/For-200-years-the-Gurkhas-have-served-Britain.-We-would-be-foolish-to-ditch-them-now.html>.

⁶³ See Omar Khalidi, *Ethnic Group Recruitment in the Indian Army: The Contrasting Cases of Sikhs, Muslims, Gurkhas and Others*, 74 PACIFIC AFFAIRS 529, 531 (2001).

⁶⁴ See David W. Hogan, Jr., U.S. ARMY SPECIAL OPERATIONS IN WORLD WAR II 97–128 (DEP’T OF ARMY, CMH Publication 70-42, 1992), available at <http://www.history.army.mil/books/wwii/70-42/70-42c.htm>; see also *2nd Battalion, The Burma Rifles*, BURMA CAMPAIGN, <http://homepages.force9.net/rothwell/burmaweb/2ndburma.htm> (last visited May 1, 2016).

⁶⁵ CHRISTOPHER BAYLY & TIM HARPER, FORGOTTEN WARS: FREEDOM AND REVOLUTION IN SOUTHERN ASIA 381 (2007)

⁶⁶ GERALD ASTOR, THE JUNGLE WAR: MAVERICKS, MARAUDERS AND MADMEN IN THE CHINA-BURMA-INDIA THEATER OF WWII 236 (2004).

⁶⁷ Maung Aung Myoe, *Building the Tatmadaw: Myanmar Armed Forces Since 1948*, INST. OF S.E. ASIAN Studies 48 (noting that the Tatmadaw incorporated British troops into its ranks in ethnic units).

⁶⁸ See Duke, *supra* note 67.

⁶⁹ *C.f. Border Guard Force Scheme*, MYANMAR PEACE MONITOR, <http://mmpeacemonitor.org/background/border-guard-force> (last visited May 1, 2016). Bargaining provided leverage for the EAO units’ position against the government in the previous round of Border Guard Force Scheme negotiations. See *id.* In the same way, selecting

union would control most things, similar to Option Four; at the other, the states would be in almost complete control of the EAOs, which would in effect function as state armed forces (or “security units”), similar to Option Six.

From the perspective of the ethnic nationalities, it would be highly desirable for the state governments to be in control of recruitment, promotion, provisioning and training, so that they could ensure that the EAO units will be effective and strongly rooted in the local community.

The critical question will be operational control: which government will be empowered to order the EAO units into combat? Clearly, from the perspective of the non-Burman nationalities, it would be highly desirable for the state governments to hold overall operational control. But if the states were to have complete control, then the arrangement would fall not in Option Five (shared control) but in Option Six (state armed forces).

One version of Option Five that would be very protective of the ethnic nationalities would contain the following elements:

- Officially, the EAOs would become units of the Tatmadaw, with unit designations, badges, and so forth.
- But on a day to day basis, the EAOs would be under the operational control of the state governors.
- The union president could, however, “nationalize” the EAOs for active service in the Tatmadaw for service in wars against foreign countries but not against the people of Burma.
- The state governor could refuse to allow the union president to nationalize the state armed forces. Some U.S. governors feel that they have power to refuse to allow the president to call up their state national guard units.⁷⁰

Example of Option Five

U.S. National Guard:

The United States’ National Guard state-based militia units are unique and function as the nation’s only military forces shared by the states and the federal government. They serve as a ready and reliable force accessible to the states for state and combined state-federal purposes and to the federal government for federal purposes.⁷¹

States are free to employ their National Guard units according to the states’ constitutions and statutes. To this effect, National Guard forces are employed in response to quell and control floods, earthquakes, and other national disasters.⁷²

Separately, Article 1, Section 8 of the U.S. federal Constitution authorizes Congress to call “forth the Militia to execute the laws of the Union, suppress insurrections and repel invasions.” This

this option might promote increased negotiation and gain EAO some influence over certain aspects in the discussions.

⁷⁰ See, e.g., Jennifer Steinhauer, *51 Governors Resist Shifting Authority Over Guard*, NEW YORK TIMES, Aug. 15, 2006, at A14. C.f. Inspector General, Dep’t of Defense, Evaluation of Department of Defense Interaction with State Defense Forces (Apr. 30, 2014), <http://www.dodig.mil/pubs/documents/DODIG-2014-065.pdf>.

⁷¹ See TIMOTHY J. LOWENBERG, NAT’L GUARD ASSOC’N OF THE UNITED STATES, THE ROLE OF THE NATIONAL GUARD IN NATIONAL DEFENSE AND HOMELAND SECURITY, <http://www.ngaus.org/sites/default/files/pdf/primer%20fin.pdf>.

⁷² *Id.*

clause, along with the correlative statutory mandate under Title 32, grants the authority to the President to request deployment of the National Guard, under control of the state's Governor, as Commander-in-Chief of the state, to national security issues such as airport security following the attacks of September 11, 2001.⁷³

VI. Option Six: The EAOs become state armed forces (or “security units”) under the control of the civilian state governments, and the constitution of Burma guarantees the states the power to raise and maintain such forces, immune to federal control.

This option is similar to Option Five except that the states retain full control over their state armed forces, both organizational and operational. Each state armed force would be able to operate only within its own state boundaries, and the union government would have no direct power over them. The central government might, however, have power to make general regulations for standards of training or the like, but it would not have power directly to apply those standards.

In those states with more than one EAO, the various EAOs would need to merge into a single state armed force. The details of the merger could be determined by the state legislature, by a deal between the EAOs, or by a combination of both.

Because the state armed forces would be instruments of the state government, the state governments would have power to use them to govern only those subject matter areas given to them by the federal system in Schedule Two. For example, if the states were given the power to maintain law and order, they could use the armed forces to do so. But if they are not given power to wage foreign wars, they would not be empowered to use their armed forces to do so.

But the state armed forces would also have another function: if the central government were to consistently violate the limits placed on it by the constitution, then it would have broken the social contract with its people and voided the constitution. As a result, the people would be empowered lawfully to resist by force of arms. At that point, the state governments could use their armed forces to resist the union government, just as the EAOs have historically done.

Globally, this option is not common, but it is not unknown either. It is most commonly used in circumstances just like Burma's: local populations fear that a distant government controlled by people different from themselves will use the army to oppress them. As a result, the local populations keep an armed force just in case.

Examples of Option Six

Globally, there are relatively few examples of Option Six. But factually, Burma is an unusual case, and these examples may provide the best model for thinking about Burma's future because they are factually most similar: a long-standing culturally based civil war, resistance forces that functioned to some extent as local governments, and a fragile peace in which the insurgents still feel at threat from the national army.

Iraq:

Iraq's Kurdistan region is culturally different from the country's southern territories. The attempts by the central government in Baghdad to dominate the Kurdish region gave rise to long-standing

⁷³ *Id.*

civil conflict. The Kurdish Region became largely self-governing from 1992 onward. In the 2005 Constitution, the central government recognized the Kurdish Regional Government (“KRG”) as a federal unit of the country, a move that allowed the regional unit to write its own constitution, which has not yet been adopted, and exercise substantial autonomy.⁷⁴

The 2005 Constitution allows the KRG to maintain its own armed force, the Peshmerga, which is the same force that resisted the government in Baghdad for many years. Article 9(B) explicitly states that “(t)he formation of military militias outside the framework of the armed forces is prohibited.”⁷⁵ More relevantly, however, Article 121 provides that regional governments “shall be responsible for . . . the establishment and organization of the internal security forces of the region such as police, security forces, and guards of the region.”⁷⁶ Accordingly, the Peshmerga serves as the country’s “security force” of the regional government, despite having fought against Baghdad.⁷⁷

Sudan:

Sudan’s northern and southern regions are culturally different.⁷⁸ In the recent conflict, the Muslim north sought to dominate the south and, in particular, to impose Sharia law, which is largely Christian. The country plunged into a decades-long civil war. The various southern resistance armies governed significant areas,⁷⁹ and they eventually merged into a single resistance force, the SPLM/A.⁸⁰

In the 2005 Comprehensive Peace Accord (“CPA”), the two groups adopted a new constitution for the country as a whole, and another constitution for the region of Southern Sudan, which was given substantial autonomy.⁸¹

Under the CPA, after six years, Southern Sudan was able to decide whether to secede. It did so eventually in 2011—but until it did, Southern Sudan remained part of the Republic of Sudan.⁸² During that time period, the government of Southern Sudan retained its own army, the SPLA, because of the reasonable fear that the Republic would return to attack Southern Sudan.⁸³

The United States of America after the Revolution:

⁷⁴ See Const. of Iraq, Oct. 15, 2005, arts. 117, 120.

⁷⁵ *Id.* at art. 9(B).

⁷⁶ *Id.* at art. 121

⁷⁷ See *id.*

⁷⁸ See FRANCIS M. DENG, WAR OF VISIONS: CONFLICT OF IDENTITIES IN THE SUDAN, 24-25 (2011).

⁷⁹ See ROBERT O. COLLINS, A HISTORY OF MODERN SUDAN, 142-43 (2008).

⁸⁰ *Id.*

⁸¹ See *Council Aware of Great Responsibility, Says President; Now Drafting Text for Peace Support Operation to Help Implementation*, UNITED NATIONS (Feb. 8, 2005), <http://www.un.org/press/en/2005/sc8306.doc.htm>.

⁸² See MACHAKOS PROTOCOL, THE COMPREHENSIVE PEACE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE SUDAN AND THE SUDAN PEOPLE'S LIBERATION MOVEMENT/SUDAN PEOPLE'S LIBERATION ARMY (2002), available at

http://www1.chr.up.ac.za/chr_old/indigenous/documents/Sudan/Legislation/Machakos%20Protocol%202002.pdf.

⁸³ See, e.g., AGREEMENT ON SECURITY ARRANGEMENTS DURING THE INTERIM PERIOD, THE COMPREHENSIVE PEACE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE SUDAN AND THE SUDAN PEOPLE'S LIBERATION MOVEMENT/SUDAN PEOPLE'S LIBERATION ARMY (2003), available at

http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/sudan_security_09252003.pdf.

In 1776, the American colonies launched a revolution against the imperial government in London because the colonists felt themselves to be culturally different and so wanted to rule themselves.⁸⁴ After securing independence, the Americans adopted a new constitution that created a new central government but also protected the continuing autonomy of the states.

But the different states all felt themselves to be different from each other, and they worried that the new central government might use its army to oppress them, just as London had. And so the states were specifically empowered to keep their militias—which had just fought the war against empire—and the Second Amendment guaranteed the people the right to keep and bear arms.⁸⁵ The states were allowed to keep their militias because of a reasonable fear that the central government might attack them.⁸⁶

Eventually the central government would take primary control of the state militias, but only after time had passed and the states had agreed. Even today, the states keep law enforcement forces, and some of them are paramilitary, with sniper rifles, machine guns, grenades, and helicopters.

These examples all occur or occurred in countries composed of geographical units that are or were somewhat loosely federated. The Kurdish Regional Government (KRG) has a great deal of autonomy under the Iraqi constitution.⁸⁷ Under the CPA, South Sudan had not only a significant degree of power within Sudan but also the right to secede from Sudan after six years—a right that it exercised in 2011.⁸⁸ Finally, the United States was a plural noun (e.g. “these United States are resolved. . .”) until after the Civil War, at which point the state militias became more and more nationalized.⁸⁹ When geographical units join together in one country but still fear the central government, they will often desire both strong powers within the federal system and their own armed forces.

VII. Option Seven: The EAOs remain wholly independent fighting forces, just as they are now.

From the point of view of the EAOs, the advantage to this option is that it gives them maximum independence: they will not have to take orders even from the state governments. In practice, globally, many insurgent groups refuse to change their status even after the signing of a peace agreement. But research has revealed no peace agreement or constitution that allows for the existence of an armed force that is wholly independent of any government. They are considered

⁸⁴ See THE DECLARATION OF INDEPENDENCE (U.S. 1776).

⁸⁵ U.S. CONST. amend. II.

⁸⁶ For an example of this fear playing out in the text of a state constitution, see, for example, the Virginia Declaration of Rights, which heavily influenced the eventual federal Bill of Rights. It states, at article 13, that “a well-regulated Militia, composed of the body of the people, trained to arms, is the proper, natural and safe defence of a free State; that Standing Armies, in time of peace, should be avoided as dangerous to liberty; and that, in all cases, the military should be under strict subordination to and governed by the civil power.” THE VIRGINIA DECLARATION OF RIGHTS, art. 13 (U.S. 1776). The focus of this article expresses the bulwark of a free state against a standing central army. See 1 BERNARD SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 239 (Leon Friedman et. al eds., 1971).

⁸⁷ See Const. of Iraq, Oct. 15, 2005, arts. 117, 120.

⁸⁸ See Machakos Protocol, *supra* note 81.

⁸⁹ See Jeffrey Rogers Hummel, *The American Militia And The Origin Of Conscription: A Reassessment*, 15 J. LIBERTARIAN STUDS. 29, 67–69 (2001).

to be illegal. Nonetheless, in some countries, even after peace, independent fighting forces remain under arms. But this practice violates the international norm that military forces of all kinds should be subject to a civilian government.

If the EAOs remain independent forever, they will eventually lose legitimacy with the international community and probably with their own people. The EAOs have fought for many years so that the Tatmadaw will be subject to the civilian government at the central level. It would therefore be hypocritical for the EAOs to refuse to subject themselves to the jurisdiction of some civilian government.