



# International Comparative Jurisprudence



## THE PAST AND PRESENT OF MYANMAR (BURMESE) PATENT LAW

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**Abstract.** In recent years, Myanmar has taken its place on the world stage, causing both disquiet and uncertainty in the international community in terms of its policies relating to various legal and political matters. This former kingdom with its long and impressive history, and comprising many different ethnic groups, has experienced long periods of occupation and colonial rule, the most recent being as a British colony prior to independence in 1948. Today, despite having a democratically elected government, Myanmar continues to live under the shadow of the former military dictatorship which ruled the country from 1962 to 2011. Many aspects of its legal system have recently come under scrutiny, including its policies towards intellectual property rights. This paper explores the history of patent law in Myanmar, making the connection with the country's turbulent past, as well as offering a glimpse of what may be a possible future regarding patent protection. It will also examine the international treaties and organizations to which Myanmar is a signatory, and its recognition of foreign patents. There will be some discussion of patent rights in neighbouring countries and other intellectual property protections.

**Keywords:** Myanmar, patent, intellectual property, Southeast Asia

### Introduction

Shrouded in secrecy, Myanmar remained hidden from the outside world until relatively recently. The increasingly authoritarian military junta that seized power in 1962 ruled for nearly 50 years, despite partial democratisation after 1990. Military control resulted in Myanmar being ostracized by the international community and the imposition of economic sanctions intended to bring about a change in policies and the easing of political repression. However, with the election of the dissident and political prisoner, Aung San Suu Kyi in 1990 as prime minister, the situation has improved. In recent years the majority of the global powers have dropped their sanctions as the government makes progress toward a truer democracy, such that the country can once again take its place on the international stage and more fully participate in regional affairs. Indeed, the country now presents itself as an emerging market, and one ripe with opportunity for foreign investors, although global corporations are still reluctant to embrace Myanmar as a trade partner and as a developing nation until the government introduces crucial reforms, such as establishing a legitimate system of patent law which has been absent for quite some time.

This paper will examine the history of patent law in Myanmar with reference to the country's troubled history, and will also suggest how in the future patents might be protected under law. It will consider the international treaties and organizations to which Myanmar is a party and their relationship to intellectual property. Particular emphasis will be given to Myanmar's role in Southeast Asia as a former regional power, which after gaining its independence from Great Britain in 1948 became an isolated autonomous entity.

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Throughout, reference is made to *Myanmar* rather than *Burma*, since the current government adopted this name in its dealings with the international community. The demonym, *Myanmar*, will also be used, although the language of the country will be referred to as *Burmese*.

## 1. Historical Overview

The land that now constitutes the modern state of Myanmar has a long history of occupation starting in the ninth century AD, followed by a brief period as a powerful regional imperial power, to eventual domination by the British East India Company in the late eighteenth century which consolidated its hold after the Anglo-Burmese Wars of the nineteenth century. It was during these wars that British forces overthrew a constitutional monarchy (Konbaung Dynasty) that governed the largest unified kingdom on the peninsula. Conquest began in the south, with the result that the kingdom was gradually reduced until the ruling dynasty was overthrown (Chew, 1979). British colonial rule followed a similar pattern as with other kingdoms across Southeast Asia where native peoples were subject to control by the competing colonial powers of France, Holland and Spain. At the time of its occupation by Great Britain, the British Crown determined that the ruling power in Myanmar was unable to govern itself and that little opposition could be expected.

### 1.1. Prior to Colonization

Nevertheless, a contrary view holds that prior to colonization Myanmar possessed many attributes of what Europeans would themselves have deemed civilized culture. Despite its monarchical system of government, Myanmar had a well developed and extensive administrative framework and codified international relations (Messerli, 2006). By the mid-eighteenth century, the country had established borders that approximate to those of today. Within there existed a complex network of provincial administrations supported the centralized government, which focused on effective communication and mobilization throughout the kingdom (Lieberman, 1996). In fact, by the turn of the nineteenth century Myanmar had attained unprecedented levels of internal control, unmatched by many of its neighbours until after the end of European intervention and the introduction of their own systems of control and administration. Such political prowess made the nation either a formidable foe or a worthy ally to other countries in Southeast Asia, most notably Thailand, which had achieved similar levels of development (Chew). These two countries emerged as the peninsula's sole superpowers, often going to war against each other over border disputes, although they were resolute in their resistance to the ever-encroaching Empire of China.

Notably, culture and society in pre-colonial Myanmar were far from underdeveloped, especially in matters of faith and religion. It was certainly the case that Buddhist monks were the most revered and venerated members of society, a sentiment that is still true today, but there is no evidence to suggest they had nearly as much influence as the Catholic Church in Europe. Surprisingly, men and women enjoyed high rates of literacy (Lieberman, 2003); even before British colonial rule, the country's government was publishing indigenous chronicles, contemporary literature, and the first official history of the nation (Charney, 2009). Theatre thrived with stories taking inspiration from everyday social issues and legendary tales (Lieberman, 2003). Generally speaking, society was moving further away from many of the repugnant cultural practices that existed in similar countries of the pre-imperial era.

Prior to British rule, Myanmar had made significant strides in the uptake of engineering, industrial technologies and agronomy. For example, complex metallurgy and advanced architecture allowed for the construction of towering pagodas that exist to this day (Messerli, 2006). Rural industry was booming, especially the cultivation of rice which meant that the country could feed itself, build reserves in case of drought, and export the surplus (Resnick, 1970). By the early nineteenth century, Myanmar's economy was advanced compared to its neighbours, it was sustainable, and it was also growing across all sectors.

Pre-colonial Myanmar might well have developed into a valuable trading partner for Great Britain rather than

become one of its imperial conquests. Moreover, the political complexion of the nation could have made the kingdom an ally for many other European nations. Myanmar's cultural potential was blunted by western attitudes towards its people and their traditions, as evidenced in the somewhat demeaning photos of natives in traditional dress that circulate in European countries from about the middle of the nineteenth century. The people of Myanmar were engaged, alert to the ideas of progress and enjoyed a stable economy, which could have led to even greater developments in production and prosperity. Nevertheless, the growing British Raj consumed Myanmar, effectively stalling political, social, and technological growth for over a century.

### *1.2. British Imperialism*

Myanmar was considered part of greater India while it was a colony of Great Britain. Following colonization, Myanmar's parliamentary monarchy was abolished and all former members of the government stripped of their titles (Chew). It is fair to say the general population was traumatized by such a radical change, so that society was irreparably damaged (Furnivall, 1953). The introduction of Christianity also progressively undermined the authority and influence of the Buddhist monks who were central figures in the culture of Myanmar (Messori). Unwilling to accept that Myanmar and its people were developing rapidly, Britain's primary focus was to impose its control through tyranny and a total disregard for the rights of its subjects, which effectively deterred active resistance.

Notwithstanding, Myanmar experienced an economic boom soon after colonization commenced. In particular, Great Britain quickly grasped the potential of Myanmar's ability to produce a rice surplus, introducing European economic and commercial practices. Before long Myanmar was exporting rice, creating a stable market for it around the globe so that by 1870 the country's rice exports stood at over 2 million tons of rice annually (Resnick, 1970), which reached 3.5 million tons in 1940. By this date 250,000 tons of timber was being exported, as well as 10,000 tons of minerals, and over 250 million gallons of petroleum being refined from the country's reserves of crude oil (Furnivall, 1953). However, this economic boom did nothing for the welfare of the native people of Myanmar. Nearly all profits went to the British Crown, with what remained given to a small, emerging class of Anglo-Burmese – the children of marriages between British citizens and indigenous peoples. The resulting social disintegration provoked quarrels between the many different ethnic minorities over the limited resources that were available. The British did not intervene to quell the discord, and actually promoted ethnic fragmentation by treating individuals from different groups with favoritism, making it visible that there was no unified nation (Furnivall). Essentially, while stifling development and leaving many aspects of the country's identity stagnant, Britain also managed to reintroduce ethnic division to Myanmar, something that had not been present for centuries.

During the Second World War, Myanmar was briefly occupied by Japanese forces. After 1945 and decolonization of the Indian subcontinent in 1948, Britain established an independent monarchy in Myanmar with a democratic framework (Charney). Unlike many former colonies, Myanmar did not become a member of the British Commonwealth, but was left to govern itself. Having lived under almost a century of colonial oversight, western influence and stripped of its autonomy, the country (which until independence in 1948 possessed a functioning government and economy) was handed a new political structure based on principles that were more in keeping with European values.

### *1.3. Modern Myanmar*

The country of Myanmar emerged as an independent sovereign nation on 4 January 1948 following the partition of greater India. Most visible remnants of British rule and Japanese occupation had all but disappeared by the time the new democratic republic emerged. For the next twenty years Myanmar experienced relative peace without any notable incidents involving neighboring states. The economy was stable and technological advances began to catch up with the developed world (Resnick). However, on 2 March 1962, a coup d'état by the country's military imposed a stranglehold on the country and its government. Despite its reasoning being

multifaceted, Soviet-inspired communist ideologies played a significant role in the military's decision to rebel (Holiday, 2005). In due course every aspect of society was brought under central control, including education, healthcare, and the media, with executive orders expropriating private businesses by diktat that could not be legally reversed; from thenceforth, the military government effectively isolated the country and its economy from the rest of the world (Nyun, 2008). There began an era of isolation and sanctions, which still colours attitudes and perceptions of many outsiders towards modern Myanmar.

Public indignation at high levels of corruption and the corresponding rise of a broad-based pro-democracy movement provoked an internal coup against the authorities, which led to an internal coup and the establishment of a formal military junta in 1989. The ruling military then announced that it would hold democratic elections (Nyun), however, it was displeased with the results of the nationwide general election, promptly ignored them, placing the president-elect (Aung San Suu Kyi) under house arrest for twenty years. During this time, the military government became increasingly tyrannical, showing little or no concern for even basic human rights. Opposition figures were intimidated and the practice of democracy thwarted (Holiday), and foreigners deported without reason. Mounting protests by students usually ended in bloodshed, and the ethnic stratification that began during the colonial period reached its peak. At the same time, international agencies began to investigate claims of human rights abuses in Myanmar, including forced labor and unlawful imprisonment.

In 1991, much of the developed world imposed economic sanctions on the country, with the result that Myanmar entered a period of governmental instability with frequent changes in the power structure and new leaders emerging with no idea how to handle the disgruntled population (Holiday). In 2007, a spate of demonstrations forced the military government to reevaluate its control of the country, recognizing that force had been less than successful in suppressing dissent than it had done so in the past. It was now that the military tried to introduce a series of pragmatic reforms in order to quell the unrest that was brewing within the populace (Kyaw, 2019). A new constitution was drafted and ratified in 2008, although its provisions allowed the military to retain a significant amount of power. Moreover, critics were skeptical about the legitimacy of the referendum elections that led to the formation of this new government.

Accordingly, under the 2008 constitution Myanmar's military automatically received one-third of all parliamentary seats, regardless of the results of the general election. Human rights abuses against different ethnic minorities continued in many of the rural areas, as did clashes between local insurgent groups and the military. Some aspects of modernity were permitted, such as access to the Internet and international banking, which became available in urban areas, although many rural villages still lacked electricity and reliable sources of clean water. Caught somewhere in the middle, between modern technology and pre-colonial cultural practices, Myanmar and its people, politics, and future as a member of the developing world found itself in a complicated situation.

Following the 2015 elections, the National League for Democracy emerged victorious, which seemed to welcome a new age of legitimate democratic practices for the people of Myanmar. However, the military government stalled the transfer of power through arbitrary laws aimed at specific individuals (Kyaw), which meant that the newly elected leaders were only been able to take office nominally in some cases, and not at all in others. Nonetheless, the new parliament established in 2016 did succeed in codifying democratic practices and restricting the influence of the military. The election results bode well for Myanmar citizens, yet the county has still to resolve many pressing issues relating to the economy, international relations, and basic human rights.

## **2. Discussion of Patent Law in Myanmar**

Prior to the colonial era the notion of intellectual property was little known in Myanmar, much like many other countries in Southeast Asia. This applied equally to patents, copyrights and trademarks. It was not that the government of the day, a highly literate society, efficient administrative network, and centralized agencies of government were unknowing or incapable of issuing patents. Surely, advances in manufacturing and increasing

agricultural and industrial output that allowed for durable architecture and monuments were enough of an inventive step to warrant protection? Indeed, the recorded history of Myanmar makes no reference to intellectual property or the law around it prior to colonization, which can be explained by philosophical differences that existed between Southeast Asia and Europe at similar stages of societal development. While the notion of intellectual property may have been addressed by scholars in Ancient Greece, the first patents and copyright were not granted in Europe until the late medieval period, and done so with far less sophistication than we see in patents being issued after the Venetian Patent Statute in 1474. It is well to remember that pre-colonial Myanmar had just emerged from Asia's medieval period; had it followed the European model we would most likely have seen patents, copyrights, and trademarks being issued at this time. Whereas post-medieval Europe upheld the moral worth of the individual and their contribution to society, Buddhist philosophies in post-medieval Southeast Asia continued to emphasize the interconnectedness of the world and the oneness of self and environment (Messeri). Hence, prior to colonialization, recognizing an individual for their contribution to science or technology was unimportant in the prevailing cultures of Myanmar and Southeast Asia. Even so, the incentive to continue to invent prevailed since it was considered vital to civilization as a whole. Ergo, since the main reasons for a patent system were either moot or covered by another facet of society in pre-colonial Myanmar, there was essentially no need for a patent system, and the issuance of patents would have been contradictory to public policy at the time.

### *2.1. India Patents and Design Act*

During the period of the British Raj, Myanmar was treated as part of greater India, its patents governed under the *India Patents and Design Act, 1911*. This legislation applied to practically all of Great Britain's possessions in Southeast Asia, including the lands that would become present-day Pakistan following Partition, as well as areas that were still under dispute between the British military and indigenous militia forces (Balida, 2004). Drafted entirely in English, and apparently without any contribution by the Indian scientific community, it reflects many of the same basic principles of European patent law of the early twentieth century. Inventions had to be novel, useful, and non-obvious, and patents were granted on a first-to-file basis. Under this act, they could be filed by anyone (inventor or otherwise) regardless of citizenship, as long as it was filed in the prescribed manner (Balida). While this does make it seem as if the British government was making the patent system accessible to all citizens of the Indian subcontinent, its prescribed manner instituted precepts that systematically barred indigenous peoples from making application. While the act never specifies, it is reasonable to assume that all patents needed to be drafted in the English language and any submissions to the contrary would be rendered null and void. Certainly, much of the educated community under the Raj would have spoken at least a modicum of English, but the provisions blithely ignored the legitimacy of intellectual property rights of non-English speakers. This reveals that the provisions in the act allowing patents to be filed by anyone proved superficial at best, and had only been included to mask the real colonial agenda. This was to ensure that inventions could only be patented by British nationals or those with very close ties to the British government, effectively depriving the peoples of Myanmar and other Southeast Asian nations of patent rights.

### *2.2. Original Patent System & Emergency Provisions*

The first legitimate patent act in Myanmar came to an abrupt end at the time of the British retreat from empire when the Myanmar people were left to govern themselves. An initial act, *The Burma Patents and Designs Act, 1939*, was drafted although it as never fully applied. All of its provisions were reused in a subsequent draft six years later in the form of *The Patents and Design Act of 1945*, which established a very basic patent system for the former colony (Balida). It was also drafted in English, most likely by the learned élite of the Myanmar population, but that was the only resemblance it bore to its predecessor. There were no provisions as to who could apply for a patent, what was considered patentable, and how this was to be done. The act merely outlines the continued protection of patents granted when Myanmar was considered part of greater India (Messeri). The preamble of the act is clear about its shortcomings, stating, "Whereas it is expedient to make legislative provision for the protection of inventions and designs, relatively it will be more essential for the present age than

the time it was passed.” While it was prudent for the fledgling Myanmar government to establish protection for the patents that had been granted during its time as a British colony, the lack of planning for the issuance of patents in the immediate future was surely a gross oversight. There may have been a notion that after the colonists left there would be no more interest in the patenting; the population would go back to making advancements in science and technology for public benefit alone. This was not the case, and not the only issue with this first patent act.

The appropriately named *Patents and Design (Emergency Provisions) Act of 1946* was the result of hasty legislation intend to correct the state of affairs in Myanmar’s patent system after decolonization. Prior to its enactment there was essentially no way that Myanmar citizens could obtain new patent rights. This was mentioned by the 1945 act, which suggests that the fledgling government was aware of issues with its patent system that could not be readily addressed. However, these emergency provisions left much to be desired. The act itself is less than a page long, much of which is a throwback to the convoluted past of intellectual property law in Myanmar during the period immediately after decolonization. The mandate of the act is that the *India Patents and Design Act, 1911* would again be the law of the land concerning patents. This means that, yet again, a significant portion of the population was shut out of the patent process due to the language requirement, as patent applications still needed to be filed in English despite that not being the official language of the country. The *Emergency Provisions* installed a few domestic authorities who could review applications and grant patents, which alleviated some of the geographical issues with operating under the old system, but still denied access for the majority of the people of Myanmar to the patent process.

Throughout the transition to a dictatorship and the decades that followed, there was little or no improvement in Myanmar’s patent practices, and equally little activity within the intellectual property community. This can be explained as follows: under the military régime almost all of the country’s limited scientific and technological resources were the property of the government in which many of the intellectual élite held position, often in concert with military establishments, including scientific laboratories. Thus, few of the people outside of military laboratories had the requisite tools or knowledge to develop something worth patenting, while those within said laboratories were not eligible to receive patent rights as their inventions and innovations immediately became property of the government. Also, few Myanmar citizens at this time would consider opposing the military régime out of fear of retaliation, which equally true for many tangible aspects of civil rights and even more so for something as abstract as intellectual property.

### *2.3. Abolishment by the Military Regime*

In 1992, the government of Myanmar abolished its patent system almost entirely, in part a move towards a more restrictive form of socialism in response to further economic sanctions by other countries (Holiday). The military régime at the time was a dictatorship, something regarded as abhorrent by most of the rest of the world. The political intent was to show that while the military did rule and control the country, the people of Myanmar were actually reaping the benefits of prudent socialism. During this time, not only intellectual property, but also healthcare, education, and many aspects of housing became completely socialized (Nyun). This ploy for a rebranding of the country was not very effective, as economic sanctions have only recently been lifted, some twenty years later.

The notion of dissolving the patent system in Myanmar can be traced back to differences in the philosophical outlook between Europe and Southeast Asia prior to the colonial era. In the western world, inventors were rewarded for their innovation with exclusive rights to create and gain wealth from their inventions. In the East, since the betterment of society as a whole from an advancement in science or technology could be seen as compensation in and of itself, the idea that one needed exclusivity over one’s invention could be seen as contrary to public policy. By dissolving Myanmar’s patent system the military government did not entirely remove the potential for pecuniary gain; it was merely the case that the socialization of intellectual property meant inventors

and innovators could not hold a monopoly on their creation.

Abolishing the patent system also meant that the government was able to eradicate all avenues of gaining legal recognition for an invention. Myanmar citizens at the time were still able to register their inventions with the Myanmar Registry Office of Deeds and Assurances, and doing so won them recognition, at least nominally, for their contribution to science or technology. A similar process was established for copyrights, but not trademarks, though there was no codified policy for rights that had previously been granted. Registering with this office did not entail any sort of examination or thorough review, nor was there a formal publication in any sort of public patent gazette. Registrants were merely issued a certificate that confirmed they had filed the proper forms to have their invention registered. The annals of the Myanmar Registry Office of Deeds and Assurances do not even include processes for reviewing applications and comparing them to the current state of the art. This suggests that there may be several Myanmar citizens who have been erroneously granted these pseudo-patents despite their lack of novelty or inventive step.

Under this registration system, a Myanmar citizen could sue anyone who infringes their rights as an inventor. In certain cases the Myanmar Penal code allows for an action to be brought against a third party who has misappropriated another's invention. However, the courts in Myanmar have yet to hear or rule on such a complaint (Thu, 2015), which may be due to a number of factors. The current judiciary in Myanmar must cope with innumerable claims arising from the theft of land and human rights abuses; a suit brought to the court concerning a lack of nominal recognition when no exclusive rights had been granted would probably be thrown out for either lack of merit or frivolity. Furthermore, the requirements to bring such an action, or even the fact that such an action is possible, were not widely publicized so that many citizens may not even realize there is legal redress available should their invention be misappropriated. With the arrival of the Internet in Myanmar and other advances in communication technology there is a pressing need for the government to establish a legitimate patent system for the simple reason that news of an invention can now be easily broadcast across the entire country, and also that Myanmar's citizens are more aware of stronger patent rights available in other developed and developing countries.

#### *2.4. The Draft Patent Act*

It was in July 2015 that Myanmar's government released a draft of its new Patent Act, which was intended to benefit rapid economic development, and also to bring it into line with several international treaties, which we will discuss later.

The primary aim of the Myanmar Draft Patent Act was to provide legitimate protection to innovations in the realm of science and technology for the peoples of Myanmar. We have already noted that prior to colonization the notion of intellectual property was practically nonexistent, obviating the need for a patent system, or one that was at least comprehensible to commercial interests in the western world. The 2015 patent act has the potential to usher in the first era where genuine patent rights will be readily available to the general population of Myanmar.

The draft act also intended to promote foreign investment with the lifting of economic sanctions by an increasing number of countries. Many different players in the building of vital infrastructure were obliged to reevaluate their practices to prepare for the anticipated influx of foreign people and products, especially from outside Southeast Asia. Understandably, foreign investors, whether large or small corporations, have certain minimum expectations, intellectual property rights being the most important. By establishing a system for patents, copyrights, and trademarks that is on a par with other developed countries, Myanmar aspired to join the ranks of the developed nations, or at least let it be known that it could be a worthy trade and investment partner.

Finally, the act aimed to boost local industry and encourage citizens to make their own advances in science and technology that could receive a patent after due consideration. During the military dictatorship when patents

were available, applications were rare; many inventors sought patent protection outside of Myanmar in countries whose patent systems were established and not likely to be ruled null and void in the near future. It was clear that the inevitable hurdles associated with obtaining a patent in Thailand, India, or China, were worth the effort in being able to prove property rights over what they had created.

The draft Patent Act contained many provisions that were similar to those found in the United States and the European Union, all of which stipulated that patents require novelty, involve an inventive step, and should be industrially useful. These are the very tenets of patent law worldwide, and it should come as no surprise that Myanmar chose to include them in the basics of its patent eligibility. The draft further defined novelty, inventive step, and utility, in terms that are similar, if not identical, to those of the European Union. Where the draft differed from standards we see in the West is in what prohibits the inventor from receiving a patent on their invention. Scientific breakthroughs and thought processes alone could not earn a patent. The same would apply to trivial things that may in fact be innovative, but have made no significant contribution to science or technology, or are merely too abstract to justify applying for a patent.

### 2.5. Patent Act of 2019

In March 2019, the Myanmar Patent Act became law. The act itself contains most of the same provision and stipulations as its draft predecessor (Thean-ngam, Chua, & Oo, 2019), although there was notable reorganization. One of the most significant additions act was to clarify that applications for patents can now be submitted in both English and Burmese. While there exists in Myanmar a significant population of ethnic minorities who do not speak Burmese at all, the fact that the English-only barrier has been removed is a huge improvement from previous patent legislation in Myanmar. This shows that the government and scientific community have made steps to further the country from its history of colonial oppression and solidify its independence. However, as of May 2020, the act has yet to be ratified.

## 3. Discussion of International Relations and Patent Cooperation

Despite being isolated and subject to economic sanctions, Myanmar was still able to join a number of international organizations and in doing so became a party to treaties that affect its consideration of intellectual property protections.

### 3.1. International Organizations

Since 1997, Myanmar has been a member of the Association of Southeast Asian Nations (ASEAN), an economic and political association dedicated to “partnership in dynamic development and in a community of caring societies” (Nguyen, 1999). Other members include Indonesia, Malaysia, Singapore, Thailand, Brunei, Cambodia, Laos, Vietnam and the Philippines. ASEAN was established in 1967. As the Southeast Asian equivalent of the European Union, member states do have some semblance of economic and political interdependence, but each is still a sovereign nation (Calboli, 2019). The official language of correspondence and diplomacy in ASEAN is English, despite this not being an official government language for the majority of member states. When Myanmar joined ASEAN, the other eight members at the time all maintained stable governments, many of which were fully democratic. What impelled Myanmar to join ASEAN in 1997 is unclear, although there is some irony in that its joining correlates with increased sanctions imposed by Western countries that followed months later. While other ASEAN countries criticized the Myanmar government for what has been called a counterfeit democracy, the country has continuously benefitted from sound political and economic relations with other members of ASEAN. Indeed, many countries have been critical of ASEAN for not taking stronger action against Myanmar for its repression and corruption, but there are other member states with similar issues that go unmentioned as well (Nguyen). While ASEAN promotes partnership and international support, its overall mission prefers to maintain the *status quo* and make only marginal improvements in areas such as pollution and literacy. Some would describe this as window dressing, which, true or not, will most



probably reflect well on Southeast Asia's outward appearance without causing major resistance from civilians or the military.

ASEAN has an internal covenant that focuses on intellectual property. The ASEAN Framework Agreement on Intellectual Property Cooperation came into force in 1995 and was subsequently ratified by its members (Calboli). As Myanmar did not join ASEAN until 1997, its acceptance was automatic upon accepting membership. The agreement aims to promote intellectual property rights in a region of the world where historically they had been largely absent. By the same token, the covenant also binds ASEAN countries to work together "to contribute to regional dynamism, synergy and growth" (Nguyen). The effects of this agreement manifest themselves in an increase in the legitimate recognitions of patents between ASEAN countries, as well as a codified search network within the region. However, this is problematic because not all member countries provide the same basic protections for intellectual property.

Myanmar has been a member of the United Nations (UN) since independence in 1948. In the same year it also became a signatory to the General Agreement on Tariffs and Trade (GATT), and also the World Trade Organization (WTO). When the latter was established in 1995 Myanmar was at its inception. Despite governmental discord in Myanmar, the economic sanctions against it, and allegations of human rights abuses, the country's membership of the UN, GATT, and WTO has never come under question. This means that Myanmar was a member of GATT during the 1986 Uruguay Trade Rounds which discussed, among other things, intellectual property rights (Calboli). At this point, Myanmar still had a functioning patent system but one that provided few legitimate protections. The focus on intellectual property from the Uruguay Trade Rounds may have prompted a review of the Myanmar patent system, which may have led the military government to abolish the patent system six years later. Rather than fix the problems with the patent system that had surfaced during these rounds, the government found it easier to eliminate the system entirely.

In 2001 Myanmar joined the World Intellectual Property Organization (WIPO), at which time there was virtually no patent or other intellectual property protection in the country. Meanwhile, it is not a member of the Paris Union for the Protection of Industrial Property, and neither is it a member of the Berne Union for the Protection of Literary and Artistic Works, both of which are the basic prerequisites to become a member state to WIPO. Myanmar satisfies this prerequisite through its membership to the UN, making it subject to all of the provisions of the WIPO Convention, despite not having a patent system or providing protection for copyrights and trademarks when it joined. While the practicality of this arrangement may be questionable, it is important to note that WIPO only concerns itself with international intellectual property rights and regulations and does not govern internal intellectual property affairs. As long as Myanmar accords with the other international players when it comes to patents and other international property, WIPO is not concerned as to whether or not the country properly manages the intellectual property rights of its citizens. Unsurprisingly, Myanmar is not a signatory to any of the other WIPO-administered treaties besides the establishing convention; not only is there no reason for it to be a part of these treaties, it most probably does not meet the requirements established by the other nations in a multi-lateral treaty through the absence of its own system of intellectual property. This may change if and when Myanmar's president ratifies the new act.

### *3.2. International Treaties*

Not being a signatory to any of the WIPO-administered treaties concerning intellectual property has not prevented Myanmar from being party to a number of multilateral treaties, which include provisions that address, at least tangentially, intellectual property. The International Covenant on Economic, Cultural, and Social Rights (ICECSR) concerns many different rights that are to be enjoyed by all citizens. These include specifications on standards of living, education, labor, and health. The covenant was drafted in 1954 and the first signatories joined in 1966 before it came into force in 1976. Myanmar signed the covenant in 2015, most likely as part of the country's attempts to move away from military dictatorship, believing that by focusing on improving the rights of all citizens, the government would be seen as moving to join the developed world. Myanmar has yet to

ratify the covenant, though it seemed highly likely that it would do so after recent elections. Besides a few small nations, the only country besides Myanmar that has signed but not ratified the ICECSR is the United States. Article 15 of the ICECSR comments on intellectual property, with the assertion that obtaining protection for developments in science and technology should be available to everyone. At the same time, this clause also mentions that all should enjoy the benefits of scientific progress. Balancing recognition and credit with societal gain is something that all countries need to take into consideration when evaluating their patent systems, especially those countries who are still in the development stage. While the provisions in the ICECSR do not enumerate any specific requirements for countries and rather list goals and aspirations, ratifying it would mean that a country has committed itself to at least consider, among other things, a fair and effective intellectual property system.

Myanmar is a full member of the Global System of Trade Preferences Among Developing Countries. This agreement only includes developing countries, mainly those in South America, North Africa, as well as southern and Southeast Asia. It was signed in 1988 and came into force the following year. While Myanmar was not one of the original signatories, it was one of the first additional member states to join. The agreement proposes full cooperation between developing nations as they move to join the developed world. Later rounds of the agreement confirmed that such cooperation includes support and recognition of each other's patent systems (Nguyen, 1999). This is important for Myanmar, as it still plans to debut its new patent system; according to the agreement, other developing countries are required to support the system it will have established. At the same time, Myanmar's patent system will have to recognize the legitimacy of patents granted by the other developing member states of this agreement.

As a member of ASEAN, Myanmar was a default party to the Agreement on Comprehensive Economic Partnership between Japan and Member States of the Association of Southeast Asian Nations which came about in 2008. The goal of this partnership agreement was to strengthen the relationship between Japan and ASEAN, and expanding it to include different aspects of the economy. Article 53 stipulates this is to include intellectual property. Intellectual property protections in Japan are far more robust and intricate than those in Southeast Asia, especially when it comes to things patentable. As a party to this agreement, the Myanmar government will have to consider the interplay between its patent system, those of other ASEAN countries, and the patent system of Japan as its patent act approaches ratification.

### *3.3. Recognition of Foreign Patents in Myanmar*

Without a working intellectual property system of its own, it is hardly surprising that the government of Myanmar did not generally recognize patents, trademarks, and copyrights granted by other sovereign entities. However, this did not actually present itself as an issue due to the timing of Myanmar's abolition of its intellectual property system and the economic sanctions imposed by many of the developed nations. The majority of economic sanctions (many of them severing the country's access to modern luxuries) were imposed in 1991 in response to international objections to increasing government corruption and human rights abuses in Myanmar. It was not until 1992 as part of the government's socialist rebranding, that it eradicated any viable protections for intellectual property from its laws. Thus, when Myanmar abolished its system of intellectual property (which normally would have been met with alarm by the rest of the world), it went unnoticed because few countries were doing business in Myanmar at that time.

With the lifting of economic sanctions it was quite evident that Myanmar had no legitimate patent system. Foreigners were still able to register their inventions in the same way as the country's citizens, affording little more than nominal rights. Myanmar's legal system is not restricted to its citizens, but extends equal rights in courts of law, albeit limited by the military régime. It is quite possible for a foreign individual or corporation to file for nominal intellectual property rights in Myanmar, which is what many attorneys working in Southeast Asian intellectual property recommend. They could also bring a suit in a Myanmar court over infringement, something that the country's citizens are denied. In practice, most foreigners have relied upon the patents they

received in their home countries or other Southeast Asian nations to protect them in Myanmar, citing as their rationale Myanmar's acceptance of international patent treaties.

#### 3.4. Comparison with Local Patent Systems

Many other countries in Southeast Asia have had a similar experience of patent law throughout their history, however today's practices vary significantly, two distinct examples being India and Thailand. India's first legitimate patent system was established under the *Indian Patents and Designs Act, 1911*. This was replaced by the *Patents Act, 1970*, which consolidated and clarified many of the provisions of the original act, although without making substantive changes. The aforementioned act was amended and rightly named *Patents (Amended) Act, 2005*, thereby expanding the field of patentable technology to include matters such as food, chemicals, and microorganisms. Further amendments in 2006, 2012, 2013, and 2014 addressed examination and filing requirements. The current act mirrors many of the general trends that we see in most patent systems used by the European Union. India has introduced numerous reforms to its patent system are part of its ongoing efforts to become a leader in the global patent industry. In 2013, the country was empowered as both an International Search Authority and an International Preliminary Examining Authority, and in 2014 the India Patent Office received nearly 43,000 patent applications, including direct and PCT national phase entries. This is more than any other country in the region. The robust bureaucratic framework in India surrounding intellectual property and the broad expanse of governmental affairs is one beneficial effect of British colonization and the influence of the Commonwealth. Note that Myanmar is not a member of this organisation of former British colonies.

The Kingdom of Thailand enjoys an extensive intellectual property system covering patents, copyrights, and trademarks, and also trade secrets, utility models, and even traditional knowledge. Unlike much of Southeast Asia, Thailand was never officially colonized by any European power. Instead, as the independent kingdom of Siam, Thailand served as a buffer state between the British Raj and French Indochina. While both France and Great Britain did have significant interests in the kingdom, there was an overarching fear of all-out warfare should either colonial power breach too far into its borders. This allowed the country to remain autonomous without significant impediments to its development while still benefitting from certain colonial influences. This is apparent in many aspects of contemporary Thailand, including its patent system. The Thai Patent Office has departments that focus solely on the issuance and administration of patents in the fields of physics, mechanical engineering, petro chemicals, technology chemistry, pharmaceuticals, biotechnology, as well as an entire examination team dedicated to certifying petty patents. Thailand has even instituted an online service, which allows Thai citizens to search for patents via the Internet. It also provides basic training in matters of intellectual property. Thailand has become a leader in the intellectual property sector in Southeast Asia, with more patents being issued to domestic and foreign applicants than any other ASEAN country. This can be attributed to its unique history and experience during the colonial period that stifled the development of many other neighboring countries.

#### Conclusions

Prior to colonization, Myanmar was a superpower in Southeast Asia, technologically advanced and innovative and ruled by expert administrators. British colonization set back economic progress, which left a moribund economy when the British Raj came to an end in 1948. Subsequently, despite democratic intentions, Myanmar entered a dark period of military authoritarianism in which social and economic life suffered and from which the country is only now beginning to recover.

Unsurprisingly, from a very low base for which British colonial occupation was responsible, intellectual property law have failed to develop in Myanmar. Left to its devices, in all probability Myanmar would have established a viable patent law system similar to that of Thailand. Furthermore, had Great Britain pursued different policy during decolonization, a succession government could have fostered the healthy growth of its

patent law system into a leading regional power like India. Even with the new patent act, Myanmar remains years behind where it could have been in development across all sectors, including intellectual property due to colonial oppression and euro-centric views of scientific innovation.

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