

# THE MYANMAR COUP AND THE ROLE OF ASEAN

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## ABSTRACT

On 1<sup>st</sup> of February 2021, the Myanmar military detained members of the National League for Democracy, including President Win Myint and State Counselor Aung San Suu Kyi, and later removed 24 ministers, and finding 11 replacements within the same day. The Myanmar army commander-in-chief, General Min Aung Hlaing, justified this move by claiming a fraud in the 2020 general elections, and declared an emergency for a period of one year, after which he claims new elections would be conducted. Plans for the takeover of the government commenced almost immediately after the victory of the NLD in the general elections, and when Suu Kyi refused to give in to the military demands during Chinese-brokered negotiations between the NLD and the Military, they decided to stage the coup. This paper intends to analyse the chain of events of the Myanmar coup and what ASEAN can do in such a situation. The authors intend to look at the role of ASEAN in this Myanmar coup. Chapter 1 introduces the entire topic and gives a background of the Myanmar coup. Chapter 2 looks into the response of the international community to the coup. Chapter 3 analyses the concept of the ASEAN Way and how that might have affected the role of ASEAN in the coup, and Chapter 4 will look at the role that ASEAN could have played. The authors conclude in Chapter 5 with what ASEAN should do now.

Keywords: Myanmar; coup; ASEAN; ASEAN Way

## UNDERSTANDING THE MYANMAR COUP

On 1<sup>st</sup> of February 2021, the Myanmar military (also known as the Tatmadaw) detained members of the National League for Democracy (NLD), including President Win Myint and State Counselor Aung San Suu Kyi, and later removed 24 ministers, and finding 11 replacements within the same day<sup>1</sup>. The Myanmar army commander-in-chief, General Min Aung Hlaing, justified this move by claiming a fraud in the 2020 general elections, and declared an emergency for a period of one year, after which he claims new elections would be conducted<sup>2</sup>. Plans for the takeover of the government commenced almost immediately after the victory of the NLD in the general elections, and when Suu Kyi refused to give in to the military demands during Chinese-brokered negotiations between the NLD and the Military, they decided to stage the coup. The 2008 constitution not only gives an unfair advantage of reserving 25% of the parliamentary seats for the military, but also hands within their control three of the most important ministries, namely home affairs, defence, and border affairs. These are not enough for the military to pursue their political ambitions, and since they consider themselves as the ‘Father of the Nation’, the loss of the military backed Union Solidarity and Development Party (USDP) in the 2020 general election was a source of shame and embarrassment for them, motivating them to usurp the power<sup>3</sup>.

The Tatmadaw had expected Suu Kyi to go against them before the International Court of Justice in 2019, where there were allegations of genocide of the Rohingya against the Myanmar Military leaders, but instead, Suu Kyi denied these allegations and defended the military in an international forum. She claimed that these allegations were ‘incomplete and misleading’<sup>4</sup>, and thus by doing this, she was able to retain the public support for the NLD in the 2020 elections. The Tatmadaw had expected Suu Kyi to go against them and recognise the Rohingya as a nationalist cause, which would cost her votes for the elections, paving way for the USDP’s victory.

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<sup>1</sup> Head, J. (2021, February 1). Myanmar coup: Aung San Suu Kyi detained as military seizes control. BBC News. <https://www.bbc.com/news/world-asia-55882489>.

<sup>2</sup> Charney, M. W. (2021, February 4). Myanmar coup: How the military has held onto power for 60 years. The Conversation. <http://theconversation.com/myanmar-coup-how-the-military-has-held-onto-power-for-60-years-154526>.

<sup>3</sup> Drury, F. (2021, February 1). Myanmar’s coup: Why now - and what’s next? BBC News. <https://www.bbc.com/news/world-asia-55882938>.

<sup>4</sup> Brody, R. (2019, December 17). *Aung san suu kyi denies burmese genocide of rohingya at the hague*. Human Rights Watch. <https://www.hrw.org/news/2019/12/17/aung-san-suu-kyi-denies-burmese-genocide-rohingya-hague>.

The military leaders have taken umbrage to the fact the media has termed the events as a coup, and has been referring to the military as ‘regime’ or ‘junta’, and the Myanmar Ministry of Information, in a statement to the Myanmar Press Council, claimed that the power was taken constitutionally<sup>5</sup>. However, can be interpreted through the military’s legislative decisions that they are willing to curb all forms of expression that challenges their authority. The Tatmadaw proposed for the enactment of a cyber security law which created provisions for the arrest of social media users for posts comprising of words and images that constitute “misinformation or disinformation that causes public panic”<sup>6</sup>, and phone and internet connections to both Yangon and Naypyitaw were disrupted by the military<sup>7</sup>. These steps clearly show that the military is trying to assert its dominance over the people, and has started off by digitally curbing all means to show unrest.

### **THE INTERNATIONAL RESPONSE TO THE COUP**

The Myanmar coup received an assorted set of responses from the international community.

#### *ASEAN Nations*

Malaysia viewed the current developments in Myanmar with regard to the military coup with ‘serious concern’ and calls for the military to give utmost priority to the assurance of peace in the nation, and further urged all parties engaged in the conflict to uphold the rule of law<sup>8</sup>. Furthermore, Malaysian Prime Minister Muhyiddin Yassin also referred to the coup as being “one step backward in the process of democracy in that country”<sup>9</sup>. Despite its concern, Malaysia had ordered the deportation of 1200 Myanmar nations, which was challenged in the

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<sup>5</sup> Business Standard India. (2021, February 15). Myanmar’s military leaders warn media, say ‘don’t call it a coup’. *Business Standard*. [https://www.business-standard.com/article/international/myanmar-s-military-leaders-warn-media-say-don-t-call-it-a-coup-121021500022\\_1.html](https://www.business-standard.com/article/international/myanmar-s-military-leaders-warn-media-say-don-t-call-it-a-coup-121021500022_1.html).

<sup>6</sup> Bloomberg Quint. (2021, February 13). Don’t call it a coup, myanmar military leaders warn media. *BloombergQuint*. <https://www.bloombergquint.com/onweb/don-t-call-it-a-coup-myanmar-military-leaders-warn-media>.

<sup>7</sup> Kipgen, N. (2021). The 2020 myanmar election and the 2021 coup: Deepening democracy or widening division? *Asian Affairs*, 52(1), 1–17. <https://doi.org/10.1080/03068374.2021.1886429>.

<sup>8</sup> Tomacruz, S. (2021, February 1). ASEAN states split over Myanmar military coup. *Rappler*. <https://www.rappler.com/world/asia-pacific/asean-states-split-over-myanmar-military-takeover>.

<sup>9</sup> Jefriando, M., & Widiyanto, S. (2021, February 5). Indonesia, Malaysia seeking ASEAN meeting on Myanmar after coup. *Reuters*. <https://www.reuters.com/article/us-indonesia-malaysia-idUSKBN2A50G1>.

Malaysian High Court by Amnesty International and Asylum Access<sup>10</sup>, over which a temporary stay was granted<sup>11</sup>.

Malaysia's views were largely similar to that of Indonesia's, as they asked the parties to uphold the 'principles of democracy and constitutional government' and urged them to exercise self-restraint<sup>12</sup>. Indonesia plans to facilitate dialogue between the junta and the protestors<sup>13</sup>, as Yuyun Wahyuningrum, the Indonesian representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR), noted that Myanmar's military actions violated the principles of the ASEAN Charter regarding the enforcement of constitutional governance. Furthermore, Eva Kusuma Sundari, former chair of the ASEAN Inter-Parliamentary Myanmar Caucus, suggested that Indonesia should impose an embargo on the numerous businesses owned by military leaders of Myanmar, as a means to deter the human rights violations committed by them<sup>14</sup>. Therefore, President Joko Widodo, after meeting with Muhyiddin Yassin, claimed that the two countries' foreign ministers, after deliberations, have urged the ASEAN Chair to set up a special meeting on Myanmar<sup>15</sup>.

Another country that shared the views of Malaysia and Indonesia on the coup was Singapore. Singapore expressed 'grave concern' over the situation in Myanmar, and hoped for parties to 'exercise restraint' and 'maintain dialogue'<sup>16</sup>. Singapore did not recognise the military as

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<sup>10</sup> Al Jazeera. (2021, March 9). *Malaysia court allows challenge to Myanmar nationals' deportation*. Al Jazeera. <https://www.aljazeera.com/news/2021/3/9/malaysia-court-allows-challenge-to-myanmar-nationals-deportation>.

<sup>11</sup> Human Rights Watch. (2021, February 24). *Malaysia: Investigate return of 1,086 myanmar nationals*. Human Rights Watch. <https://www.hrw.org/news/2021/02/24/malaysia-investigate-return-1086-myanmar-nationals>.

<sup>12</sup> Tomacruz, S. (2021, February 1). ASEAN states split over Myanmar military coup. *Rappler*. <https://www.rappler.com/world/asia-pacific/asean-states-split-over-myanmar-military-takeover>.

<sup>13</sup> Allard, T. (2021, February 22). Indonesian plan calls for Southeast Asia to hold Myanmar junta to election pledge. *Thomson Reuters*. <https://www.reuters.com/article/us-myanmar-politics-asean-exclusive-idUSKBN2AM0PH>.

<sup>14</sup> Idrus, P. G. (2021, February 4). *Myanmar coup may destabilize ASEAN: Experts*. Anadolu Agency. <https://www.aa.com.tr/en/asia-pacific/myanmar-coup-may-destabilize-asean-experts/2134105>.

<sup>15</sup> Bangkok Post. (2021b, February 5). Indonesia, Malaysia seeking Asean meeting on Myanmar after coup. *Bangkok Post*. <https://www.bangkokpost.com/world/2063259/indonesia-malaysia-seeking-asean-meeting-on-myanmar-after-coup>.

<sup>16</sup> Tomacruz, S. (2021, February 1). ASEAN states split over Myanmar military coup. *Rappler*. <https://www.rappler.com/world/asia-pacific/asean-states-split-over-myanmar-military-takeover>.

Myanmar's official government<sup>17</sup>, and Vivian Balakrishnan, the minister of foreign affairs of Singapore called the attack of the military on the protestors a matter of 'national shame'<sup>18</sup>.

There are a few countries who oppose the views shared by Malaysia, Indonesia and Singapore. Countries like Cambodia, Philippines and Thailand have observed that the coup is an 'internal affair'<sup>19</sup>. Other authoritarian nations like Vietnam and Laos have refused to make official statements on the matter<sup>20</sup>. Lastly, Brunei, the ASEAN Chair for the period has called for "dialogue, reconciliation and the return to normalcy in accordance with the will and interests of the people of Myanmar"<sup>21</sup>. Furthermore, in a statement released by the ASEAN Secretariat, the Chairman noted the importance of adhering to principles of democracy, as enshrined within the ASEAN Charter<sup>22</sup>.

### *The United States of America*

Coming the United States of America, National Security Advisor to President Joe Biden, Jack Sullivan, expressed the President's 'deep bipartisan concern' over the issue<sup>23</sup>, and imposed sanctions on Aung Pyae Sone and Khin Thiri Thet Mon, adult children of Myanmar's military leader Min Aung Hlaing. They, along with six Burmese companies, were blacklisted by the U.S. Treasury Department, and all their American assets were frozen<sup>24</sup>. Furthermore, the efforts

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<sup>17</sup> Ong, J. (2021, March 1). *Budget debate: Singapore urges Myanmar to stop using lethal force, free Suu Kyi immediately*. The Straits Times. <https://www.straitstimes.com/singapore/politics/spores-foreign-minister-vivian-balakrishnan-calls-on-myanmar-to-desist-from-use>.

<sup>18</sup> Reuters. (2021, March 5). Singapore says 'national shame' for armed forces to use weapons against own people. *Reuters*. <https://www.reuters.com/article/us-myanmar-politics-singapore-idUSKBN2AX09P>.

<sup>19</sup> Bangkok Post. (2021a, February 1). West condemns Myanmar coup but Thailand, Cambodia shrug. *Bangkok Post*. <https://www.bangkokpost.com/world/2060651/west-condemns-myanmar-coup-but-thailand-cambodia-shrug>.

<sup>20</sup> ANI News. (2021, February 6). *Myanmar's coup reveals cracks in divided region*. ANI News. <https://www.aninews.in/news/world/asia/myanmars-coup-reveals-cracks-in-divided-region20210206103157/>.

<sup>21</sup> CNA. (2021a, February 1). *ASEAN chair Brunei calls for 'dialogue, reconciliation and return to normalcy' in Myanmar*. CNA; Channel News Asia. <https://www.channelnewsasia.com/news/asia/myanmar-asean-aung-san-suu-kyi-military-coup-14087150>.

<sup>22</sup> ASEAN Secretariat. (2021, February 1). *ASEAN chairman's statement on the developments in the republic of the union of myanmar*. ASEAN Secretariat. <https://asean.org/asean-chairmans-statement-developments-republic-union-myanmar/>.

<sup>23</sup> The White House. (2021, February 10). *Remarks by president biden on the administration's response to the coup in burma*. The White House. <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/10/remarks-by-president-biden-on-the-administrations-response-to-the-coup-in-burma/>.

<sup>24</sup> Lewis, S., & Psaledakis, D. (2021, March 11). U.S. imposes sanctions on children of Myanmar military leader, companies. *Thomson Reuters*. <https://www.reuters.com/article/us-myanmar-politics-usa-sanctions-idUSKBN2B22MF>.

of the ASEAN nations for their attention towards the regional crisis was appreciated, and a call for immediate restoration of Burmese Democracy was made by NSA Jack Sullivan<sup>25</sup>.

### *The United Nations*

The United Nations (UN) General Assembly President, Volkan Bozkir, condemned the Myanmar coup, and called for the immediate release of all political leaders<sup>26</sup>. The United Nations Security Council (UNSC) was unable to release a joint statement condemning the military coup in Myanmar due to China using its veto powers to block the action<sup>27</sup>. The UNSC has decided to conduct closed door meetings to discuss the rising death tolls as a result of the coup<sup>28</sup>. Since the UNSC is at a stalemate concerning Myanmar, and all actions directed against the military would be blocked by China and/or Russia<sup>29</sup>, the UNGA could call for an Emergency Special Session and invoke the General Assembly resolution 377(V), also known as the ‘Uniting for Peace Resolution’<sup>30</sup>. The UN could impose an embargo on the arms supplied to the Myanmar military, recommend member states to impose targeted sanctions, call for the release of the detainees and reinstatement of the democratically elected government, and as a final measure, consider the suspension of the membership of Myanmar and the use of force<sup>31</sup>.

The UN Special Envoy to Myanmar, Christine Schraner Burgener, said that the coup was shocking as Myanmar had seen a commitment on the part of the military resolve electoral dispute through established legal mechanisms. She called for the repeal of the state emergency, and asked the UNSC to unite in favour of democracy in Myanmar, and also highlighted how the coup would hamper the progress made towards handling the state of the Rohingyas in Myanmar. Furthermore, Thomas Andrews, the UN Special Rapporteur on the situation of

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<sup>25</sup> CNA. (2021b, February 5). *US conveys concern over Myanmar coup to ASEAN ambassadors*. Channel News Asia (CNA). <https://www.channelnewsasia.com/news/asia/us-conveys-concern-myanmar-coup-call-asean-ambassadors-sullivan-14118976>.

<sup>26</sup> UN News. (2021a, February 2). *Security Council unity ‘crucial’ to support democracy in Myanmar*. UN News. <https://news.un.org/en/story/2021/02/1083622>.

<sup>27</sup> BBC News. (2021, March 17). *Myanmar coup: China blocks UN condemnation as protest grows*. *BBC News*. <https://www.bbc.com/news/world-asia-55913947>.

<sup>28</sup> UN News. (2021b, March 5). *Hopes for UN Security Council action against Myanmar military coup ‘waning’ fast, warns Special Envoy*. UN News. <https://news.un.org/en/story/2021/03/108657>.

<sup>29</sup> Smith, M. (2021, February 11). *How to dodge the Chinese veto on Myanmar*. *Washington Post*. <https://www.washingtonpost.com/opinions/2021/02/11/how-dodge-chinese-veto-myanmar/>.

<sup>30</sup> United Nations General Assembly. (1950). *377 (V)-Uniting for Peace*. United Nations. [https://undocs.org/en/A/RES/377\(V\)](https://undocs.org/en/A/RES/377(V)).

<sup>31</sup> Barber, R. (2021, February 25). *UN security council won’t respond to Myanmar’s coup, but the general assembly can*. Just Security. <https://www.justsecurity.org/74936/un-security-council-wont-respond-to-myanmars-coup-but-the-general-assembly-can/>.

human rights in Myanmar, called for the release of all the detainees and a restoration of communications, and asked the Tatmadaw to respect the people's right to freedom of expression and assembly<sup>32</sup>. Thus, keeping in mind the past acts committed by the Myanmar military, with special emphasis on the condition of Rohingyas, it is extremely important the UN take some action. As Amnesty International's Deputy Director of Advocacy correctly puts, "You cannot leave perpetrators of grave crimes under international law on the loose and then act surprised when they trample human rights again"<sup>33</sup>.

### THE ASEAN WAY AND THE COUP

Myanmar has a long and complicated relationship with the ASEAN. It could be traced back to 1967, when the organisation first came to existence, and Myanmar had received the offer to join the organisation<sup>34</sup>, but U Ne Win rejected this offer, in fear of losing its neutrality<sup>35</sup>. However, Myanmar bid farewell to neutrality as it bid farewell to the non-aligned movement<sup>36</sup>, and joined ASEAN in 1997, with growing Chinese influence being cited as the primary reason<sup>37</sup>. The opposition to Myanmar's membership of ASEAN by Thailand and Philippines was rejected, as it was deemed to be a deviation from the 'ASEAN Way'<sup>38</sup>. ASEAN has followed a policy of constructive engagement with respect to Myanmar, which is a two-pronged process, (i) socialisation of Myanmar's elite towards good governance and gradual liberal reform and (ii) financial investment into the country<sup>39</sup>. In 2004-2005, the ASEAN Inter-Parliamentary Myanmar Caucus (AIPMC) was created as a network of national parliamentary

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<sup>32</sup> Andrews, T. (2021, February 1). *UN expert calls for strong international response including sanctions and arms embargo*. Office of the High Commissioner of the United Nations Human Rights Council. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26706&LangID=E>.

<sup>33</sup> Tadros, S. (2021, February 2). *Myanmar: UN Security Council must act urgently, hold military accountable*. Amnesty International. <https://www.amnesty.org/en/latest/news/2021/02/myanmar-un-security-council-must-act-urgently-hold-military-accountable/>.

<sup>34</sup> Roberts, C. B. (2010). *ASEAN's Myanmar crisis: Challenges to the pursuit of a security community*. Institute of Southeast Asian Studies.

<sup>35</sup> Mya Than. (2005). *Myanmar in ASEAN: Regional cooperation experience*. Institute of Southeast Asian Studies. Narine, S. (1997). ASEAN and the ARF: The Limits of the 'ASEAN Way'. *Asian Survey*, 37(10), 961–978. <https://doi.org/10.2307/2645616>.

<sup>36</sup> Misra, K. P. (1981). Burma's farewell to the nonaligned movement. *Asian Affairs*, 12(1), 49–56. <https://doi.org/10.1080/03068378108730012>.

<sup>37</sup> Sigur Center for Asian Studies. (2012). *Asean and burma/myanmar: Past and prologue*. Elliott School of International Affairs, George Washington University. [https://www.risingpowersinitiative.org/wp-content/uploads/policybrief\\_apr2012\\_aseanmyanmar.pdf](https://www.risingpowersinitiative.org/wp-content/uploads/policybrief_apr2012_aseanmyanmar.pdf).

<sup>38</sup> Yukawa, T. (2018). The ASEAN Way as a symbol: An analysis of discourses on the ASEAN Norms. *The Pacific Review*, 31(3), 298–314. <https://doi.org/10.1080/09512748.2017.1371211>.

<sup>39</sup> Renshaw, C. S. (2013). Democratic Transformation and Regional Institutions: The Case of Myanmar and ASEAN. *Journal of Current Southeast Asian Affairs*, 32(1), 29–54. <https://doi.org/10.1177/186810341303200102>

caucuses, to promote liberal-interventionist policies towards Myanmar. The AIPMC has been a key driver behind the ASEAN making Myanmar forfeit its chairmanship of the Association in 2005, and its calls for suspension of the nation from the Association, and demanding that the nation be subject to UNSC intervention has played a major part in the democratization of the nation<sup>40</sup>. ASEAN has accredited itself for the release of the Aung San Suu Kyi in 1995; when Suu Kyi was placed under house arrest, Malaysian leader Mahathir Mohammed warned that Myanmar could face expulsion from the ASEAN if Suu Kyi isn't released, which was not viable since the ASEAN Way prohibits the use of sanctions to get results<sup>41</sup>. The ASEAN Economic Community (AEC) has played an important role in giving access to regional and international markets, and connecting it to a global supply chain, to a low-income country like<sup>42</sup>, and ASEAN member states have granted preferential tariffs to Myanmar<sup>43</sup>. The ASEAN nations have also supported Myanmar at the International Labour Organisation, by not supporting the resolution passed against Myanmar condemning the country's forced labour records<sup>44</sup>. Therefore, the ASEAN has played a key role in shaping the policies of Myanmar.

*The ASEAN Way* is a method of interaction between the ASEAN member nations, as a means to alleviate tensions between them, involving the use of tools like 'informal dialogue'<sup>45</sup>, 'extensive consultation' and 'consensus building', in order to develop intramural security<sup>46</sup>. The ASEAN Way propagates the use of three principles by its member states, *viz*, restraint, respect, and responsibility. Another approach to the ASEAN Way is the concept of 'flexible consensus', that does not require unanimity between the ASEAN states, as long as there is no damage caused to the interests of all the member states<sup>47</sup>. The ASEAN Way is also known as

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<sup>40</sup> Jones, L. (2009). Democratization and foreign policy in Southeast Asia: The case of the ASEAN Inter-Parliamentary Myanmar Caucus. *Cambridge Review of International Affairs*, 22(3), 387–406. <https://doi.org/10.1080/09557570903104008>.

<sup>41</sup> Sigur Center for Asian Studies. (2012). *Asean and burma/myanmar: Past and prologue*. Elliott School of International Affairs, George Washington University. [https://www.risingpowersinitiative.org/wp-content/uploads/policybrief\\_apr2012\\_aseanmyanmar.pdf](https://www.risingpowersinitiative.org/wp-content/uploads/policybrief_apr2012_aseanmyanmar.pdf).

<sup>42</sup> Oxford Business Group. (2016, February 18). *Myanmar and ASEAN build their relationship*. Oxford Business Group. <https://oxfordbusinessgroup.com/analysis/myanmar-and-asean-building-relationships-new-friends-and-old>.

<sup>43</sup> Haacke, J. (2006). Myanmar and ASEAN. *The Adelphi Papers*, 46(381), 41–60. <https://doi.org/10.1080/05679320600831896>.

<sup>44</sup> Haacke, J. (2006). Myanmar and ASEAN. *The Adelphi Papers*, 46(381), 41–60. <https://doi.org/10.1080/05679320600831896>.

<sup>45</sup> Ganesan, N. (2006). Thai-Myanmar-ASEAN Relations: The Politics of Face and Grace. *Asian Affairs: An American Review*, 33(3), 131–149. <https://doi.org/10.3200/AAFS.33.3.131-149>.

<sup>46</sup> Narine, S. (1997). ASEAN and the ARF: The Limits of the 'ASEAN Way'. *Asian Survey*, 37(10), 961–978. <https://doi.org/10.2307/2645616>.

<sup>47</sup> Acharya, A. (1999). Realism, Institutionalism, and the Asian Economic Crisis. *Contemporary Southeast Asia*, 21(1), 1–29.



the “Hands-off Policy”, and is reinforced by a decision-making process that is based on “consultation and consensus” and a focus on the peaceful resolution of inter-state disputes, but remains silent on resolving intra-state conflicts of ASEAN member states<sup>48</sup>. Myanmar's State Peace and Development Council had reacted with considerable hostility to the advocacy of flexible engagement<sup>49</sup>. The financial aspect of the *ASEAN Way* has targeted to reduce the development gap between the ASEAN 6 (Brunei, Malaysia, Indonesia, Philippines, Singapore, Thailand) and the CLMV [Cambodia, Laos, Myanmar and Vietnam]<sup>50</sup>. ASEAN has been following a policy of ‘constructive engagement’ towards Myanmar since 1991, in order to adapt a non-confrontational strategy to ‘Aseanize’ the nation<sup>51</sup>. Aung San Suu Kyi had commented that ‘constructive engagement’ was flawed as it concentrated on economic prospects at the expense of political change, and the practice of closed-door negotiations among ASEAN States has become difficult in the case of Myanmar which has attracted international attention and requires action by the ASEAN<sup>52</sup>.

Furthermore, it can be argued that the ASEAN had violated this principle of non-intervention in Myanmar in 1997, when it had asked the junta to open dialogue with Aung San Suu Kyi, as a consideration for being allowed into the ASEAN<sup>53</sup>. Another example of the breach of the ASEAN Way by its member states in Myanmar is the Malaysian and Indonesian protests against Myanmar’s expulsion of the Rohingya Muslims to Bangladesh<sup>54</sup>. The Myanmar government, during the 2014 ASEAN Foreign Ministers meeting, asked the ASEAN to refrain from discussions on ‘Myanmar’s ethnic issues’<sup>55</sup>, when the Rohingya issue was brought up.

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<sup>48</sup> Malindog-Uy, A. (2021, February 10). *Myanmar Crisis: What Is ASEAN Doing?* The ASEAN Post. <https://theaseanpost.com/article/myanmar-crisis-what-asean-doing>.

<sup>49</sup> Haacke, J. (1999). The concept of flexible engagement and the practice of enhanced interaction: Intramural challenges to the ‘ASEAN way’. *The Pacific Review*, 12(4), 581–611. <https://doi.org/10.1080/09512749908719307>.

<sup>50</sup> Cuyvers, L. (2019). The ‘ASEAN Way’ and ASEAN’s development gap with Cambodia, Laos, Myanmar and Vietnam: A critical view. *Asia Pacific Business Review*, 25(5), 683–704. <https://doi.org/10.1080/13602381.2019.1652980>.

<sup>51</sup> Rüländ, J. (2000). ASEAN and the Asian crisis: Theoretical implications and practical consequences for Southeast Asian regionalism. *The Pacific Review*, 13(3), 421–451. <https://doi.org/10.1080/09512740050147942>

<sup>52</sup> Moller, K. (1998). Cambodia and Burma: The ASEAN Way Ends Here. *Asian Survey*, 38(12), 1087–1104. <https://doi.org/10.2307/2645823>.

<sup>53</sup> Rüländ, J. (2000). ASEAN and the Asian crisis: Theoretical implications and practical consequences for Southeast Asian regionalism. *The Pacific Review*, 13(3), 421–451. <https://doi.org/10.1080/09512740050147942>.

<sup>54</sup> Goh, G. (2003). The ‘ASEAN Way’ Non-Intervention and ASEAN’s Role in Conflict Management. *Stanford Journal of East Asian Affairs*, 3(1), 113–118.

<sup>55</sup> Sun, Y. (2014). *Myanmar’s ASEAN Chairmanship*. Stimson Center. <https://www.jstor.org/stable/resrep10803>

The ASEAN created an ad hoc task force to monitor the repatriation of the Rohingyas<sup>56</sup>, and drafted a report titled ‘Preliminary Needs Assessment for Repatriation in Rakhine State, Myanmar’<sup>57</sup>, which had several concerns, including the failure to consult the Rohingya refugees<sup>58</sup>. The task force and the report focused more on the repatriation than the safety of the refugees, and the ‘harmful non-interference mantra’ of the ASEAN is to blame<sup>59</sup>.

The reason why the *ASEAN Way* has failed to bear fruit in Myanmar is that conflict avoidance usually presupposes evolutionary peaceful change<sup>60</sup>, and as no change could be foreseen, there was not much the ASEAN could do. Therefore, in the case of Myanmar, informal consultation work against cumulative gains due to the lack of enforcement mechanisms. Furthermore, the *ASEAN Way* is criticised as being time-consuming, with reference to the delays and discrepancies caused in the implementation of the ASEAN Free Trade Agreement<sup>61</sup>. It might be argued that the *ASEAN Way* and the policy of constructive engagement has been successful citing the example of Cyclone Nargis, where the ASEAN acted as a conduit for international aid by providing emergency relief assistance through the ASEAN Agreement on Disaster Management and Emergency Response<sup>62</sup>, but the policy does not prove to be efficient when it comes to influencing political change in the country. Furthermore, the ASEAN way has engaged in a troika mission in Cambodia, and this policy is different from the policy of constructive engagement in Myanmar, which has led to allegations of double standards in the ASEAN Way<sup>63</sup>.

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<sup>56</sup> Septiari, D. (2019, November 4). ASEAN forms new team to monitor Rohingya repatriation. *The Jakarta Post*. <https://www.thejakartapost.com/news/2019/11/04/asean-forms-new-team-monitor-rohingya-repatriation.html>.

<sup>57</sup> Emergency Response and Action Team. (2019). *Preliminary Needs Assessment for Repatriation in Rakhine State, Myanmar*. ASEAN. <https://asean.org/storage/2020/03/13.-June-2019-Preliminary-Needs-Assessment-for-Repatriation-in-Rakhine-State-Myanmar-ad-hoc-AHA-Ctr.pdf>.

<sup>58</sup> Human Rights Watch. (2019, June 19). *ASEAN: Don't Whitewash Atrocities Against Rohingya*. Human Rights Watch. <https://www.hrw.org/news/2019/06/19/asean-dont-whitewash-atrocities-against-rohingya>.

<sup>59</sup> Human Rights Watch. (2020, June 26). ASEAN: Overhaul Regional Response to Rohingya Crisis. *Human Rights Watch*. <https://www.hrw.org/news/2020/06/26/asean-overhaul-regional-response-rohingya-crisis>.

<sup>60</sup> Ganesan, N. (2006). Thai-Myanmar-ASEAN Relations: The Politics of Face and Grace. *Asian Affairs: An American Review*, 33(3), 131–149. <https://doi.org/10.3200/AAFS.33.3.131-149>.

<sup>61</sup> Nesadurai, H. E. S. (2003). *Globalisation, Domestic Politics and Regionalism*. Routledge. <https://doi.org/10.4324/9780203130889>.

<sup>62</sup> Creach, Y.-K., & Fan, L. (2008, December). ASEAN's role in the Cyclone Nargis response: Implications, lessons and opportunities. *Humanitarian Practice Network*. <https://odihpn.org/magazine/asean-s-role-in-the-cyclone-nargis-response-implications-lessons-and-opportunities/>.

<sup>63</sup> Haacke, J. (1999). The concept of flexible engagement and the practice of enhanced interaction: Intramural challenges to the ‘ASEAN way’. *The Pacific Review*, 12(4), 581–611. <https://doi.org/10.1080/09512749908719307>.

## THE ROLE ASEAN COULD HAVE PLAYED

The ASEAN's political strategy has suffered from incoherence because ASEAN and its member states have remained more concerned with creating a unified position against external pressure than on developing a single policy towards Myanmar<sup>64</sup>. The ASEAN Way directs the member states to refrain from all sorts of interventions, including political measures. For example, if the admission of a state into a regional or international organisation is made dependent upon certain terms and conditions, which fall within the competence of the state, and are not stated in the constitutive act of the organisation, could be considered as an unlawful intervention into the State's political sphere<sup>65</sup>. The policy of the member states to "refrain from making the domestic political systems of a State and the political styles of government a basis for deciding their membership in ASEAN"<sup>66</sup> is one of the fundamental implications of the ASEAN Way. Thus, abiding by the non-intervention principles of the ASEAN, democracy cannot be forced into Myanmar. The ASEAN Way or the policy of non-intervention is undoubtedly a 'part and parcel of customary international law'<sup>67</sup>. Through the International Court of Justice's verdict in the *Nicaragua* case<sup>68</sup>, it can be inferred that although the non-intervention policies are legally enforceable, as the non-intervention policies are codified under various ASEAN documents like the Bangkok Declaration, the Zone of Peace, Freedom, and Neutrality (ZOPFAN) Declaration, and the Treaty of Amity and Cooperation<sup>69</sup>, slight deviations do not destroy its legally binding character, if they are accompanied by a strong *opinio juris sive necessitatis*<sup>70</sup>. For example, the Chair of the ASEAN Standing Committee had expressed 'revulsion' at the Myanmar junta's violent suppression of protesters in September 2007<sup>71</sup>. Constructive engagement, rather than ostracism, is a more practical solution in the case

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<sup>64</sup> Davies, M. (2012). The Perils of Incoherence: ASEAN, Myanmar and the Avoidable Failures of Human Rights Socialization? *Contemporary Southeast Asia*, 34(1), 1–22.

<sup>65</sup> Corthay, E. (2015). The ASEAN Doctrine of Non-Interference in Light of the Fundamental Principle of Non-Intervention. *Asian-Pacific Law & Policy Journal*, 17(2), 1–41.

<sup>66</sup> Acharya, A. (2014). *Constructing a security community in southeast asia* (3rd ed.). Routledge. <https://doi.org/10.4324/9781315796673>.

<sup>67</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua. v. U.S.) (International Court of Justice June 27, 1986) at 202.

<sup>68</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua. v. U.S.).

<sup>69</sup> Katanyuu, R. (2006). Beyond non-interference in asean: The association's role in myanmar's national reconciliation and democratization. *Asian Survey*, 46(6), 825–845. <https://doi.org/10.1525/as.2006.46.6.825>.

<sup>70</sup> Corthay, E. (2015). The ASEAN Doctrine of Non-Interference in Light of the Fundamental Principle of Non-Intervention. *Asian-Pacific Law & Policy Journal*, 17(2), 1–41.

<sup>71</sup> Wah, C. K. (2007). Introduction: ASEAN — Facing the Fifth Decade. *Contemporary Southeast Asia*, 29(3), 395–405.

of Myanmar, as a military regime which is determined to isolate its people from foreign influence is present in the nation<sup>72</sup>.

### *Legal Issues*

The legal grounds used by the junta to justify the coup was invoking section 417 of the Constitution of the Republic of the Union of Myanmar (2008). Section 417 allows the declaration of an emergency if there is sufficient reason for the ‘disintegration of the Union or the national solidarity’ or ‘loss of sovereignty’. The junta alleged a large-scale voter fraud concerning the November 2020 elections, and accused the Union Election Commission of being unwilling to investigate, or actively colluding in it<sup>73</sup>. However, the allegations were not backed by evidence, and even if they were, the question of ‘disintegration of the Union’ or ‘loss of sovereignty’ would be debatable. Furthermore, section 418 (a) states that the President is to sanction the emergency by transferring control of the Union to the Commander-in-Chief of the Defence Services, General Min Aung Hlaing in this case. Yet, it was not President Win Myint who declared the emergency, but the newly appointed vice president, retired general Myint Swe of the USDP, after President Win Myint was detained and forced to relinquish his position<sup>74</sup>. Thus, the military coup in Myanmar was unconstitutional.

Article 6(2)(c) and 6(2)(d) of the Charter of the Association of South East Asian Nations<sup>75</sup> bases the admission of States into the organisation on the condition that they would be abiding by the Charter, would be able as well as willing to carry out the obligations of the Membership. Myanmar’s deviation from the democratic system violates the Preamble of The Charter, along with Sections 1(4), 1(7) and 2(2)(h)<sup>76</sup>. It has been argued that since Myanmar ratified this Charter on July 18, 2008, the ASEAN would be justified in placing sanctions upon nations who violate the Charter<sup>77</sup>. However, imposing sanctions on Myanmar would cause an acceleration

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<sup>72</sup> Wah, C. K. (2007). Introduction: ASEAN — Facing the Fifth Decade. *Contemporary Southeast Asia*, 29(3), 395–405.

<sup>73</sup> Strangio, S. (2021, February 17). Was myanmar’s coup legal? And does it matter? *The Diplomat*. <https://thediplomat.com/2021/02/was-myanmars-coup-legal-and-does-it-matter/>.

<sup>74</sup> Strangio, S. (2021, February 17). Was myanmar’s coup legal? And does it matter? *The Diplomat*. <https://thediplomat.com/2021/02/was-myanmars-coup-legal-and-does-it-matter/>.

<sup>75</sup> ASEAN. (2007). *Charter of The Association of Southeast Asian Nations*. <https://www.asean.org/storage/images/archive/21069.pdf>.

<sup>76</sup> ASEAN. (2007). *Charter of The Association of Southeast Asian Nations*. <https://www.asean.org/storage/images/archive/21069.pdf>.

<sup>77</sup> Arendshorst, J. (2009). The Dilemma of Non-Interference: Myanmar, Human Rights, and the ASEAN Charter. *Northwestern Journal of International Human Rights*, 8(1), 102–122.

of Chinese influence in the country, as China already has free economic reign over the country. The ASEAN Charter has been termed as an ‘aspirational document’<sup>78</sup>, as it promotes certain principles and values, but leaves the implementation and enforcement in the hands of the member states. Furthermore, the ASEAN could aid by instituting channels for dialogue and negotiations between the civilians and the Tadmaw, and the existence of the ASEAN Way potentially opens the doors to backchannel negotiations with both the sides<sup>79</sup>.

### ***Human Rights and Refugee Issue***

Myanmar already has a severe issue pertaining to the Rohingyas, and the military coup is going to stir up this debacle. Although several countries were open to refugees, yet, as the influx rose, additional refugees were denied, and some countries, like Thailand, were forced to repatriate the refugees<sup>80</sup>. In order to safeguard human rights, the ASEAN had created the Working Group for an ASEAN Human Rights Mechanism<sup>81</sup>, but Myanmar was against the recommendation of an enforceable human rights body, and in turn suggested the creation of a non-binding commission on human rights. Myanmar also made the ASEAN leaders withdraw their invitation to the UN Special Envoy Ibrahim Gambari to address the Summit relating to the concerns in Myanmar<sup>82</sup>. Given the dismal human rights situation in Myanmar due to the coup, coupled with the humanitarian problem associated with the Rohingya, the Myanmar case should not be treated by ASEAN and its member states as an “internal or domestic affair,” but rather as a regional concern if not an international quandary that needs ASEAN’s and the international community’s attention<sup>83</sup>.

### ***Elections***

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<sup>78</sup> Seng, T. S. (2021, February 5). ASEAN can do better on Myanmar this time. *Channel News Asia*. <https://www.channelnewsasia.com/news/commentary/myanmar-coup-junta-military-aung-san-asean-14111926>

<sup>79</sup> Tan, C. (2021, March 10). To save myanmar and itself, asean must be bold. *International Policy Digest*. <https://intpolicydigest.org/to-save-myanmar-and-itself-asean-must-be-bold/>.

<sup>80</sup> Arendshorst, J. (2009). The Dilemma of Non-Interference: Myanmar, Human Rights, and the ASEAN Charter. *Northwestern Journal of International Human Rights*, 8(1), 102–122.

<sup>81</sup> The Working Group for an ASEAN Human Rights Mechanism. (n.d.). *Who we are*. Retrieved 25 March 2021, from <https://aseanhrmech.org/who-we-are/>.

<sup>82</sup> Anthony, M. C. (2008). The ASEAN Charter: An Opportunity Missed or One that Cannot Be Missed? In D. Singh & T. M. M. Than (Eds.), *Southeast Asian Affairs 2008* (pp. 71–86). ISEAS Publishing. <https://doi.org/10.1355/9789812307910-007>.

<sup>83</sup> Malindog-Uy, A. (2021, February 10). *Myanmar Crisis: What Is ASEAN Doing?* The ASEAN Post. <https://theaseanpost.com/article/myanmar-crisis-what-asean-doing>.

Prior to 2012, ASEAN had an insignificant role in the regional elections of its member states, and were limited to analysis of reports, but this changed in the case of Myanmar where the ASEAN took an active role in the national elections. ASEAN's first involvement in the regional elections were in 2010 when the ASEAN urged the junta in power to conduct free and fair elections, a proposal which was rejected by the junta<sup>84</sup>. On 20<sup>th</sup> March 2012, Myanmar President Thein Sein, on the suggestion of former ASEAN Secretary General Dr Surin Pitsuwan, invited the ASEAN Secretariat, the ASEAN Member States, the European Union as well as the United States to send observer teams to Myanmar to witness and monitor the April 2012 by-elections in the country<sup>85</sup>. The success of ASEAN's observation of the 2012 elections in Myanmar can be cited as an evidence which supports the success of the force of 'collective peer pressure' and its judicial application at the appropriate stress points<sup>86</sup> as a furtherance of the ASEAN Way. The ASEAN's presence in the 2020 general elections in Myanmar could have legitimized the electoral process, and it could have been used to undercut the Tatmadaw's claim of voter fraud. The ASEAN could use these non-coercive and low-degree tools of intervention to restore democracy in Myanmar<sup>87</sup>, one such tool being the observation of elections that would supposedly be conducted by the Tatmadaw after the emergency.

### **THE WAY FORWARD: WHAT ASEAN SHOULD DO**

ASEAN's influence in Myanmar's transition to democracy has been considered as negligible<sup>88</sup>. ASEAN had not set democracy as a condition for its membership, as there were living examples of countries like the Brunei Darussalam, which is an absolute sultanate, and Laos and Vietnam, which are communist states<sup>89</sup>. ASEAN did play two roles in accelerating Myanmar's transition

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<sup>84</sup> Amador III, J. S. (2012). Giving ASEAN a Role in Philippine Elections: The Case for Regional Participation in Deepening Democratization Processes. In R. Cordenillo & A. Ellis (Eds.), *The Integrity of Elections: The Role of Regional Organizations*. IDEA.

<sup>85</sup> Lee, D. (2012, July 25). *Election Observers from ASEAN and Partner States, as well as Media Members Arrive in Yangon – A Diary of the ASEAN Election Observation Mission to Myanmar*. ASEAN Secretariat. <https://asean.org/election-observers-from-asean-and-partner-states-as-well-as-media-members-arrive-in-yangon-a-diary-of-the-asean-election-observation-mission-to-myanmar/>.

<sup>86</sup> Seng, T. S. (2021, February 5). ASEAN can do better on Myanmar this time. *Channel News Asia*. <https://www.channelnewsasia.com/news/commentary/myanmar-coup-junta-military-aung-san-asean-14111926>.

<sup>87</sup> Mathur, S. (2021, February 3). Myanmar's coup d'etat: What role for asean? *The Diplomat*. <https://thediplomat.com/2021/02/myanmars-coup-detat-what-role-for-asean/>.

<sup>88</sup> Haacke, J. (2010). The Myanmar imbroglio and ASEAN: Heading towards the 2010 elections. *International Affairs*, 86(1), 153–174. <https://doi.org/10.1111/j.1468-2346.2010.00873.x>

<sup>89</sup> Renshaw, C. S. (2013). Democratic Transformation and Regional Institutions: The Case of Myanmar and ASEAN. *Journal of Current Southeast Asian Affairs*, 32(1), 29–54. <https://doi.org/10.1177/186810341303200102>.

to democracy. Firstly, the 2014 chairmanship of ASEAN awarded to Myanmar in 2011 provided its reformist government with credibility at a crucial time in the country's transition to democracy. Secondly, ASEAN acted as a reference group for Myanmar, aiding in its search for models of democratic institutions, as ASEAN is a group of states of proximity, which share geography, histories of colonialism, conflict and difficult (in some cases, incomplete) transitions to democracy<sup>90</sup>.

ASEAN must treat the situation in Myanmar as a matter of utmost urgency, in order to prevent the recurrence of the spill-over effects that political crisis could have on the neighbouring countries. Cross border repercussions would rise if a domestic crisis remained to be unresolved before it rises to unprecedented levels, as evident in the 1988 student protests (“8888 uprising”) and the May 1990 elections<sup>91</sup>. The ASEAN should play an active role in restoring order in Myanmar, and it cannot sit on the fence like it did during the 2014 Thai coup<sup>92</sup>. The ASEAN could constitute a commission to look into the alleged voter fraud, a commission composed of members elected by mutual consensus from both parties to the dispute. Unpopular views like the suspension of Myanmar from the ASEAN has been a part of the popular debate as well, and Bilahari Kausikan, a former senior diplomat from Singapore has even gone on record to suggest that membership in ASEAN should not be taken as a given but ought to be revoked if and when member states behave in ways detrimental to the collective values and interests of the organisation<sup>93</sup>. The military coup is a clear indicator that the ASEAN cannot stick to the non-intervention policy by avoiding punitive actions against member states, and avoid a damage to its reputation at an international level at the same time<sup>94</sup>.

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<sup>90</sup> Renshaw, C. S. (2013). Democratic Transformation and Regional Institutions: The Case of Myanmar and ASEAN. *Journal of Current Southeast Asian Affairs*, 32(1), 29–54. <https://doi.org/10.1177/186810341303200102>.

<sup>91</sup> Malindog-Uy, A. (2021, February 10). *Myanmar Crisis: What Is ASEAN Doing?* The ASEAN Post. <https://theaseanpost.com/article/myanmar-crisis-what-asean-doing>.

<sup>92</sup> Seah, S. (2021, February 4). *Coup in Myanmar—Asean is not without options*. Today Online. <https://www.todayonline.com/commentary/coup-myanmar-asean-not-without-options>.

<sup>93</sup> Seng, T. S. (2021, February 5). ASEAN can do better on Myanmar this time. *Channel News Asia*. <https://www.channelnewsasia.com/news/commentary/myanmar-coup-junta-military-aung-san-asean-1411926>.

<sup>94</sup> Siow, M. (2021, February 5). *Myanmar coup: Sitting on the fence shouldn't be an option for Asean*. South China Morning Post. <https://www.scmp.com/week-asia/opinion/article/3120554/myanmar-coup-asean-sitting-fence-shouldnt-be-option>.