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Illegal and Illegitimate: Examining the Myanmar military's claim as the Government of Myanmar and the international response

Conference room paper of the Special Rapporteur on the situation of human rights in Myanmar

Summary

Having failed to secure control of Myanmar and recognition by most Member States as legitimate, the military junta, or State Administrative Council (SAC), of Myanmar finds itself at a turning point two years after launching an illegal military coup. As widespread public opposition continues and attacks by its forces on villages intensify, the SAC will step up its efforts to advance its false claim to legitimacy in 2023, including by orchestrating a sham "election." Its goal is to reverse its international isolation abroad and portray as inevitable its claim as the government of Myanmar to audiences at home, rendering continued popular opposition both dangerous and futile.

Member States of the UN have an important responsibility and role to play in determining whether Myanmar's military junta will succeed in achieving its goal of being accepted as legitimate and gaining control of a nation in revolt. This conference room paper is presented to Member States as a resource to meeting this responsibility.

The paper addresses the claims of the SAC to be a legitimate government by both examining its claim that its coup was legal under a constitution that it drafted and put into place in 2008 and by applying international standards as established by two core doctrines that have informed the recognition of governments since World War II. The conclusion of this analysis is clear – the SAC's military coup was illegal and its claim as Myanmar's government is illegitimate.

The core leadership of the administrative and legislative elements of Myanmar's democratic government that the SAC prevented from forming have reconstituted in opposition to the SAC. The National Unity Government (NUG), the Committee Representing Pyidaungsu Hluttaw (CRPH), and the National Unity Consultative Council (NUCC) were created to represent the will of Myanmar's people, with the NUG forming the administrative side of government in this transitional period. The NUG provides the international community with a credible alternative to the SAC. Applying the same international standards of legitimacy used to examine the legitimacy claims of the SAC, this paper finds that the NUG has a far stronger claim to legitimacy.

The paper also examines in detail Member States' interactions with the SAC, highlighting those actions that have delegitimized or withheld recognition to the SAC, and those actions by Member States that have been used by the SAC to foster the appearance of legitimacy. The Special Rapporteur urges that Member States who support human rights, democracy, and the aspirations of the people of Myanmar publicly reject the SAC's false claim as a legitimate government and instead recognize the NUG as the legitimate

representative of the people of Myanmar. He also urges Member States to reject the sham elections the SAC is planning to hold by August 2023.

Finally, the Special Rapporteur reiterates his recommendation that Member States who stand with the people of Myanmar immediately form a working group of governments to develop and implement a coordinated strategy that can deny the SAC the weapons and resources that it requires, while supporting the people of Myanmar with humanitarian and other forms of non-lethal aid.

UNITED NATIONS HUMAN RIGHTS SPECIAL PROCEDURES
SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

Illegal and Illegitimate: Examining the Myanmar Military's Claim as the Government of Myanmar and the International Response

Special Rapporteur on the situation of human rights in Myanmar

January 2023

The Myanmar Junta Is Not the Legitimate Government of Myanmar

By any standard, **the junta (the State Administrative Council, SAC) is not a legitimate government and should not be recognized, or engaged with, as such.** The SAC lacks effective control of the country, has no democratic or constitutional legitimacy, and cannot stake a claim to being the legitimate representative of the people of Myanmar.

The Special Rapporteur urges Member States to deny the SAC opportunities to propagandize legitimacy at every opportunity; renounce the SAC's planned sham elections; create a working coalition of Member States to establish and enforce strategic, coordinated sanctions; provide robust humanitarian aid and support for the people of Myanmar; recognize the National Unity Government (NUG) as the legitimate representatives of the people of Myanmar; and provide aid and support to the NUG and Ethnic Resistance Organizations supporting the pro-democracy movement.

> ***"The SAC's military coup was illegal, and its claim as Myanmar's government is illegitimate."***

Photo: Supporters of the National Unity Government march with an anti-junta banner in Yangon, Aug. 20. © Radio Free Asia

Constitutional Legitimacy

The SAC's claim that "The legitimacy of the State Administration Council is unquestionable as it was formed in accordance with the State Constitution" is patently false.

The military failed to follow the 2008 constitution by unconstitutionally removing President Win Myint and appointing the unelected military-appointed Vice President as Acting President. The SAC's claim that the actions of legally appointed election officials and the duly elected Parliament "may cause the loss of sovereignty" by refusing to further investigate the military's unfounded claims of voter fraud is groundless.

Democratic Legitimacy

The SAC can make no claim to democratic legitimacy, i.e., representing the will of the people as expressed through elections. **The junta's leader, Min Aung Hlaing, has never run for public office, and the military's proxy party, the USDP won only 33 of the 476 contested seats in the Union Parliament.**

The SAC has been given no authority by the people of Myanmar, as expressed through elections, to govern the country.

EFFECTIVE CONTROL

The SAC has cannot meet the internationally accepted criteria of "effective control":

1. control over the greater part of Myanmar's territory,
2. habitual obedience of the mass of the population,
3. a reasonable prospect of permanence, and
4. compliance with obligations under international law.

The SAC lacks control over all or most of the territory of Myanmar. PDFs, many acting under NUG control, and EROs are effectively challenging the Myanmar military and expanding control.

The SAC has no claim to habitual obedience of the masses, evidenced by widespread armed resistance to its attempted rule, protests, strikes, and boycotts.

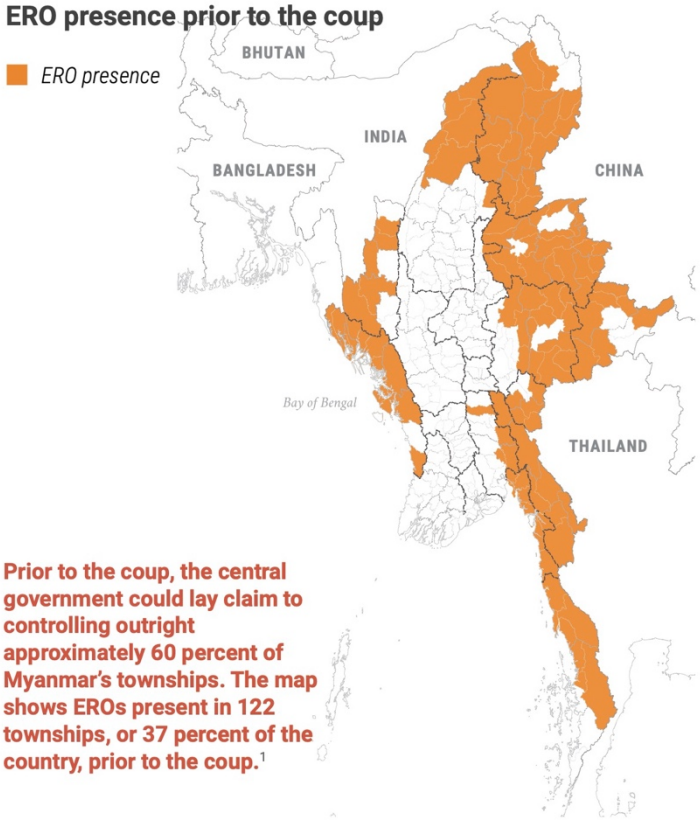
The SAC's sustainability and its permanence are gravely in doubt, due to the widespread conflicts and failure to administer the country.

Finally, it has manifestly failed to abide by its international obligations.

Illegal and Illegitimate: Examining the Myanmar Military's Claim as the Government of Myanmar and the International Response

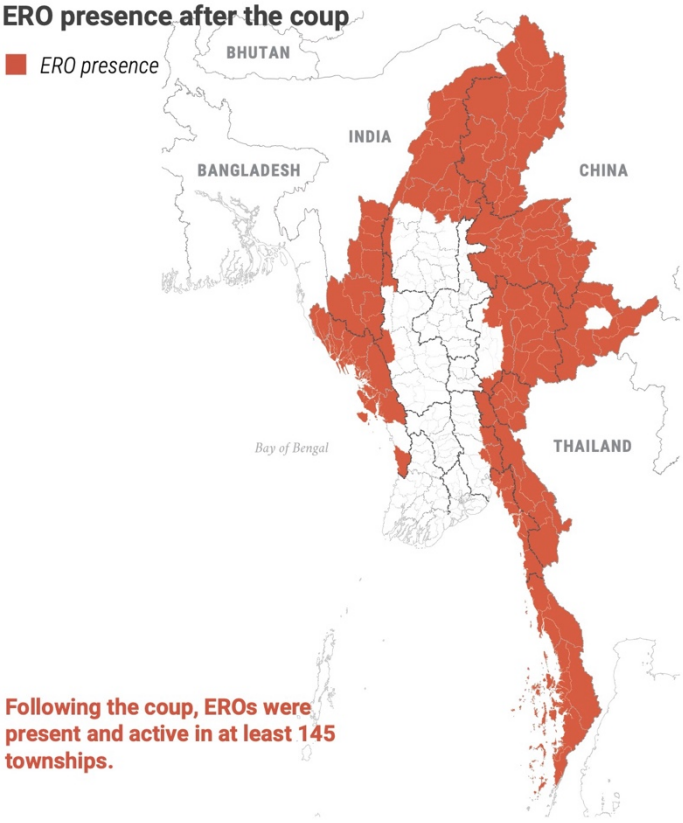
EFFECTIVE CONTROL

ERO presence prior to the coup



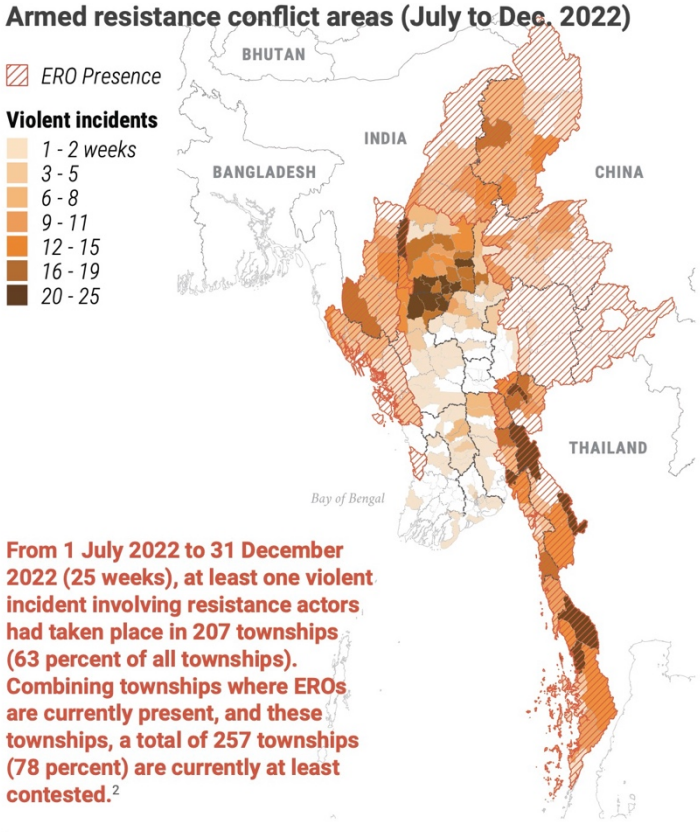
Prior to the coup, the central government could lay claim to controlling outright approximately 60 percent of Myanmar's townships. The map shows EROs present in 122 townships, or 37 percent of the country, prior to the coup.[1]

ERO presence after the coup



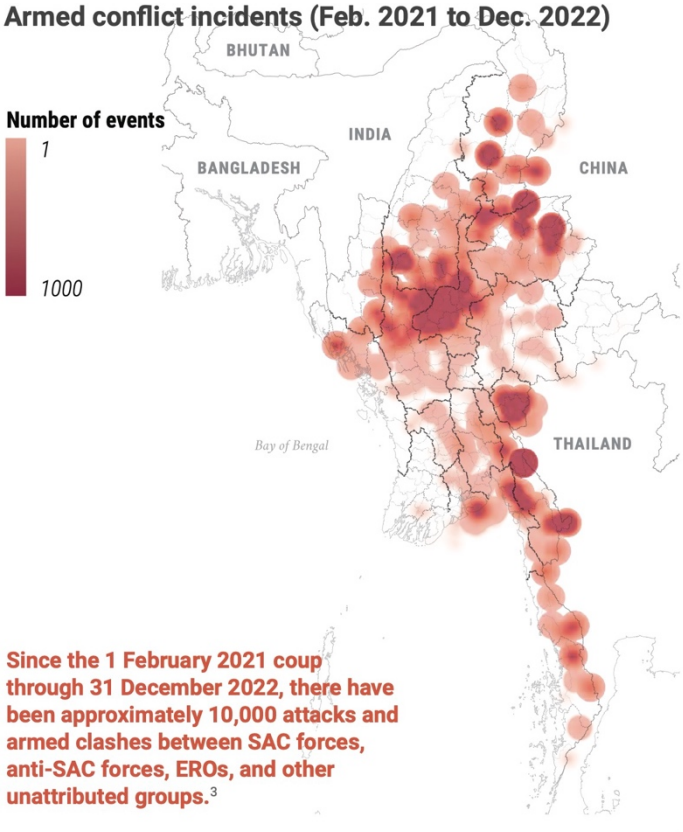
Following the coup, EROs were present and active in at least 145 townships.

Armed resistance conflict areas (July to Dec. 2022)



From 1 July 2022 to 31 December 2022 (25 weeks), at least one violent incident involving resistance actors had taken place in 207 townships (63 percent of all townships). Combining townships where EROs are currently present, and these townships, a total of 257 townships (78 percent) are currently at least contested.[2]

Armed conflict incidents (Feb. 2021 to Dec. 2022)



Since the 1 February 2021 coup through 31 December 2022, there have been approximately 10,000 attacks and armed clashes between SAC forces, anti-SAC forces, EROs, and other unattributed groups.[3]

Created: 27 January 2023 Sources: cited in A/HRC/52/CRP.2 Contact: ohchr-sr-myanmar@un.org

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SHAM ELECTIONS IN 2023

Lacking constitutional and democratic legitimacy, and effective control of the country, the SAC will attempt to seek legitimacy in 2023 by orchestrating what it claims will be an "election." **The Special Rapporteur strongly urges all Member States to refrain from wittingly or unwittingly providing the junta with the opportunity to manufacture the veneer of a legitimate election.**

Offering rhetorical or practical support for elections would have the effect of prolonging the instability and rights violations that are plaguing the country. **The international community must stand with the people of Myanmar and reject the junta's sham elections.**

SAC'S FAILURE TO ADMINISTER

The SAC has also proven itself incapable of effectively administering Myanmar in the face of widespread conflict and resistance, further demonstrating its lack of control and long-term viability.

More than **4.0 M** school-aged children (half of Myanmar's total) **have not accessed formal education** for two full academic years

Approximately **1.1 M** people **have been displaced** since the coup

Nearly **Half** of Myanmar's **population is now living below the poverty line**—a poverty rate Myanmar has not experienced in 15 years

Approximately **17.6 M** **are expected to be in need of humanitarian assistance in 2023**, a third of whom are children
A dramatic increase from the **1 million people** who were in need of humanitarian aid before the coup.

Among all large countries in the East Asia and Pacific region, Myanmar alone will likely fail to reach pre-pandemic GDP levels in 2023.

NATIONAL UNITY GOVERNMENT

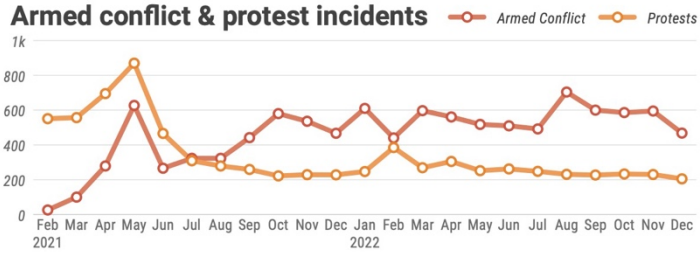
Democratic Legitimacy: The NUG represents the will of the people of Myanmar as expressed in the November 2020 elections. The NLD won 396 of the 498 contested seats in Parliament. The Committee Representing maybe the Pyidaungsu Hluttaw [Parliament], made up of lawmakers representing 80 percent of all elected parliamentarians, formed the National Unity Government in consultation with a nascent National Unity Consultative Counci.

Strong case for being the Legitimate Representative of the People of Myanmar: The National Unity Government has a strong claim to being the "legitimate representative of the people," four considerations of which are:

1. seeking to replace a government that has lost legitimacy,
2. being representative,
3. being broad, and
4. being sustainable.

DENIAL OF HABITUAL OBEDIENCE

The people of Myanmar have manifested their refusal to accept SAC rule not only through armed conflict, but through protests, labor strikes, refusal to pay utilities and taxes, and boycotts of military products. Protests and armed conflict remain high (see graph). Incidents of visible protests have declined relative to their peak due to the SAC's deadly crackdowns, but continue and opposition has been increasingly demonstrated through armed clashes against the military.



INTERNATIONAL COMMUNITY'S RESPONSE

General rejection: The international community has, by and large, refused to accept the SAC's claim to be the legitimate government of Myanmar. The UN Credentials Committee has prevented the junta from occupying Myanmar's seat at the General Assembly.[4] The UN General Assembly called upon **"the Myanmar armed forces to respect the will of the people as freely expressed by the results of the general election of 8 November 2020"** (Resolution 75/287). The Association of Southeast Asian Nations (ASEAN) has barred junta representatives from key ASEAN meetings, and Indonesia's Foreign Minister, representing the new ASEAN Chair, stated on 29 December 2022, **"ASEAN must not be dictated by the Myanmar military junta."**[5]

Actions taken that deny legitimacy: Most democratic States do not explicitly recognize, nor engage with the SAC, as the government of Myanmar. States that have taken actions to de-legitimize the SAC or deny it recognition include **Australia, Canada,** the twenty-seven Member States of the **European Union, Japan, Lichtenstein, New Zealand, Norway,** the **Republic of Korea, Switzerland,** the **United Kingdom,** and the **United States of America**.

Actions that confer the impression of legitimacy: A small minority of States, including **Belarus, China, India, Russia, Saudi Arabia,** and **Sri Lanka** have implicitly supported the junta's claim as the government of Myanmar by taking actions that are tantamount to recognition. These include presenting diplomatic credentials to SAC leadership, strengthening bilateral economic and military relations with the SAC, and—in the case of at least **Belarus** and **India**—publicly engaging with the SAC on its plans to hold sham elections. None of these States have publicly indicated having engaged with the National Unity Government. The limited engagement of some other States has been used by the SAC in an attempt to advance its claims of legitimacy. These include **Australia, Bangladesh, Japan,** the **Republic of Korea,** and **South Africa**.

ASEAN: ASEAN Member States appear divided over ASEAN policy vis-à-vis the SAC. **Brunei Darussalem, Indonesia, Malaysia,** the **Philippines,** and **Singapore** have reduced diplomatic engagement with the SAC and have rejected its claims of legitimacy. Some of these Member States have also engaged with the National Unity Government. **Cambodia, Lao People's Democratic Republic, Thailand and Viet Nam**—have engaged the SAC as if it were the government of Myanmar. Even some of the governments that have engaged the SAC, however, recognize the plain truth—the junta lacks legitimacy. **Viet Nam**, for example, stated, **"[C]ontact, exchange and cooperation activities with Myanmar within bilateral settings or ASEAN frameworks should not be interpreted as or equated with a recognition of the military government or the State Administration Council."** **Cambodia** meanwhile stated, **'[I]t is seriously misleading to equate such engagements with legitimizing them."**

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RECOMMENDATIONS

All UN Member States:

- Diplomatically isolate the SAC. Deny it opportunities to propagandize legitimacy at every opportunity
- Initiate a strategic approach to strengthen and coordinate economic sanctions and an arms embargo on the SAC. Prioritize sanctioning MOGE, aviation fuel, and key SAC-controlled financial channels, including the Myanmar Foreign Trade Bank
- Reject the SAC's attempt to hold sham elections, publicly call out the SAC for lacking the authority to hold credible elections, and refuse to engage or indicate support for the SAC
- Increase engagement with the National Unity Government. Provide recognition as the legitimate representative of Myanmar and begin providing appropriate support to help ensure its sustainability, including technical support in increasing trust between the NUG and EROs
- Engage directly with EROs supporting the pro-democracy movement and provide technical assistance and resources to them
- Refuse to provide financial or material support to the SAC

ASEAN Member States:

- Publicly distance themselves from the SAC and condemn its actions; call for the SAC to end human rights violations, release political prisoners, and allow the formation of a legitimate government reflecting the will of the people
- Support the enforcement of international sanctions in your jurisdictions and cooperate with international investigations into SAC finances
- Increase engagement with the National Unity Government. Welcome the NUG to regional meetings, seek its uniquely valuable perspective and expertise on meeting critical challenges including addressing the growing humanitarian catastrophe, provide recognition as the legitimate representative of Myanmar, and begin providing appropriate support to help ensure its sustainability. This includes technical support in increasing trust between the NUG and EROs
- Engage directly with EROs and provide technical assistance and resources

Australia, Japan, New Zealand, and the Republic of Korea, all of which have imposed sanctions in the context of the Russia-Ukraine conflict but not the Myanmar crisis, act immediately to impose sanctions on the SAC and its interests

Belarus, China, India, Russia, Saudi Arabia, and Sri Lanka:

- Reconsider and reverse policies and actions that are tantamount to recognizing or otherwise legitimizing the SAC
- For those countries with land or maritime borders with Myanmar, limit engagement strictly to security concerns involving territory controlled by the SAC and qualify it as such
- Do not provide financial or material support to the Myanmar military

The National Unity Government:

- Continue to broaden its base of support to demonstrate to the maximum extent possible that it is the legitimate representative of the people of Myanmar
- Promote additional ethnic minorities, including Rohingya, into meaningful positions of influence and power within the government
- Increase dialogue and advance negotiations with EROs, civil society, and other stakeholders concerning the political and constitutional framework for a future peaceful, democratic Myanmar

The UN Security Council, General Assembly, and Human Rights Council:

- Reject the SAC's so-called "elections" as illegitimate
- Confirm that the SAC is not recognized as the legitimate government of Myanmar
- Express support for the National Unity Government, including by urging Member States to engage and recognize the NUG

UN agencies:

- Conduct due diligence before inviting Member States to conferences to ensure that SAC representatives are excluded. UN Office of Legal Affairs: instruct all UN funds, agencies, programs, and affiliates that the SAC should not be invited to any UN conferences or meetings

Regional and global election monitoring and support organizations:

- Expressly disavow and reject the SAC's planned elections for 2023, publicly stating that free and fair elections are impossible under these extreme circumstances and committing not to support the elections in any way

Donors:

- Exercise flexibility with their recipients and, in particular, not require NGOs operating in Myanmar to register with the SAC as a condition for receiving funding and support

1 The data for the maps were prepared by independent analysts working with the Special Rapporteur, using primary sources, including maps and statements issued by ethnic organizations, as well as secondary sources, including academic and think-tank reports, combined with analysis of conflict records. Since 2014, they have tracked publicly reported conflict incidents in social media, news reporting, and other online sources in Burmese, English, Thai, and Chinese (Mandarin) as well as major ethnic languages spoken in Myanmar, including Jingphaw, Shan, S'gaw Karen, Po Karen, Karenni, Kayan, Arakan, Chin, Ahka, Lahu, Lisu, Wa, Ta'ang, and Hindi. Researchers often verify reported conflict incidents with ground sources. See also, The Asia Foundation, The Contested Areas of Myanmar: Subnational Conflict, Aid, and Development, 16 Oct 2017, https://asiafoundation.org/wp-content/uploads/2017/10/ContestedAreasMyanmarReport.pdf (a detailed study on contested areas of Myanmar, finding that "approximately 118 of Myanmar's 330 townships [or 36 percent] are affected to some extent by conflict and associated tensions between the government and ethnic armed organizations").

2 This does not necessarily mean that the SAC only has control in 22 percent of Myanmar, but rather gives an indication of the extent to which territorially, the SAC is being challenged.

3 Analysts working with the Special Rapporteur collected 9,999 instances of armed clashes from 1 February 2021 to 31 December 2022. The Special Rapporteur also considered data from ACLED, as presented and analyzed by The International Institute of Strategic Studies, available at The Myanmar Conflict Map, https://myanmar.iiss.org/, accessed 2 January 2023. At the time of writing, ACLED data from IISS was available through 31 October 2022 and included 9,833 instances of armed clashes.

4 A/77/600, Report of the Credentials Committee, 12 Dec 2022.

5 Tempo, Indonesian Foreign Minister: Myanmar Junta to Not Dictate ASEAN, 29 Dec 2022, https://en.tempo.co/read/1673692/indonesian-foreign-minister-myanmar-junta-to-not-dictate-asean

** The names shown and designations used on these maps do not imply official endorsement or acceptance by the United Nations.*

Created: **27 January 2023** Sources: cited in A/HRC/52/CRP.2 Contact: **ohchr-sr-myanmar@un.org**

Contents

I. Introduction

1. Since the day it launched an illegal coup on 1 February 2021, the military junta, or "State Administrative Council" (SAC), led by Senior General Min Aung Hlaing, has faced widespread opposition from the people of Myanmar. Desperate to eliminate this opposition, the SAC's police, military, and administrative forces have systematically violated the human rights of people throughout Myanmar, including by perpetrating atrocities that amount to crimes against humanity and war crimes. Since the coup, the military has killed thousands by shooting protesters dead in the streets, torturing activists to death in interrogation facilities, burning entire villages to the ground, and launching missiles and artillery shells into civilian encampments.

2. The military's attack on the people of Myanmar has led to an economic and humanitarian disaster, displacing over 1.1 million people since the coup.[1] 17.6 million people are expected to be in need of humanitarian assistance in 2023, a third of whom are children.[2] This is a dramatic increase from the 1 million people who were in need of humanitarian aid before the coup. The SAC has decimated the economy, with the World Bank reporting that "Myanmar last year [2021] experienced one of the worst economic contractions in the world . . . unwinding nearly a decade of progress on poverty reduction."[3] Nearly half of Myanmar's population is now living below the poverty line—a poverty rate Myanmar has not experienced in 15 years—and access to life saving medicines is increasingly restricted.[4]

3. The SAC claims to be the government of Myanmar. The coup leaders cited the 2008 constitution as the basis of its claim when launching the coup in February 2021: "In order to perform scrutiny of the voter lists and to take action, the authority of the nation's law making, governance and jurisdiction is handed over to the Commander in Chief in accordance with the 2008 constitution Article 418, Sub Article (a)." The junta-controlled media regularly refers to the SAC as "the government" and it represents itself to Member States of the United Nations and international and regional organizations as the government of Myanmar.

4. The international community has, by and large, refused to accept the SAC's claim to be the legitimate government of Myanmar. The UN Credentials Committee has prevented the junta from occupying Myanmar's seat at the General Assembly.[5] The UN General Assembly in Resolution 75/287 called upon "the Myanmar armed forces to respect the will of the people as freely expressed by the results of the general election of 8 November 2020[.]" The Association of Southeast Asian Nations (ASEAN) has barred junta representatives from key ASEAN meetings, and Indonesia's Foreign Minister, representing the new ASEAN Chair, stated on 29 December 2022, "ASEAN must not be dictated by the Myanmar military junta."[6]

5. The junta's execution of former parliamentarian Phyo Zeyar Thaw, longtime pro-democracy leader Kyaw Min Yu ("Ko Jimmy"), and two others in July 2022 sparked new condemnations from governments around the world. Notably, the United Nations Security Council issued a statement that condemned the executions and called for "the immediate release of all arbitrarily detained prisoners, including President Win Myint and State Counsellor Aung San Suu Kyi."[7] This was followed by Security Council Resolution 2669 in December 2022, which urged the Myanmar military to "immediately release all arbitrarily

[1] UN Office for the Coordination of Humanitarian Affairs, Myanmar Humanitarian Update No. 25, 30 December 2022, https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-25-30-december-2022.
[2] UN Office for the Coordination of Humanitarian Affairs, Myanmar Humanitarian Needs Overview, 15 January 2023, https://reliefweb.int/report/myanmar/myanmar-humanitarian-needs-overview-2023-january-2023.
[3] World Bank, "Myanmar economy remains fragile, with reform reversals weakening the outlook," 21 July 2022, https://www.worldbank.org/en/news/press-release/2022/07/21/myanmar-economy-remains-fragile-with-reform-reversals-further-weakening-the-outlook.
[4] OCHA, Humanitarian Response Plan Myanmar: 2023, 25 January 2023, https://reliefweb.int/report/myanmar/myanmar-humanitarian-response-plan-2023-january-2023; "Without a remedy: Junta policies spark medicine shortage," *Frontier Myanmar*, 26 August 2022, https://www.frontiermyanmar.net/en/without-a-remedy-junta-policies-spark-medicine-shortage/.
[5] Report of the Credentials Committee, U.N. Doc. A/77/600, 12 December 2022.
[6] "Indonesian Foreign Minister: Myanmar Junta to Not Dictate ASEAN," *Tempo*, 29 December 2022, https://en.tempo.co/read/1673692/indonesian-foreign-minister-myanmar-junta-to-not-dictate-asean.
[7] Security Council Press Statement on Situation in Myanmar, 27 July 2021, https://press.un.org/en/2022/sc14986.doc.htm.

detained prisoners, including President Win Myint and State Counsellor Aung San Suu Kyi" while also "reiterat[ing] its call to uphold democratic institutions and processes." The Special Rapporteur notes that the Security Council referred to the SAC as "the military" and not "the government" and referred to the prior democratically elected government's leaders as "President" and "State Counsellor" respectively.

6. A close examination of the SAC's claims, and international standards for the recognition of governments, makes clear that the SAC has no legitimate claim to be the government of Myanmar. The SAC has failed to meet two core doctrines that have informed the formal recognition of governments since World War II: (1) the effective control standard and (2) the legitimacy standard. The SAC has not met the three common criteria of "effective control": it does not (a) enjoy "with a reasonable prospect of permanence, the obedience of the mass of the population," (b) control the greater part of Myanmar's territory, or (c) comply with obligations under international law. As for the legitimacy standard, the SAC has attempted to overthrow the legitimate representatives of the people of Myanmar as expressed through democratic elections relying on baseless claims of widespread election fraud as justification. The SAC also failed to comply with its own standards of legitimacy by failing to adhere to the requirements of the 2008 constitution that it drafted, including criteria for the imposition of a state of emergency.

7. After documenting how and why the SAC has no legitimate claim as the government of Myanmar, this paper focuses on specific actions that States have taken that may support—or conversely deny—the SAC's claim of legitimacy through economic, diplomatic, or other means since their military coup on 1 February 2021. It focuses solely on the actions of Member States, and therefore does not address questions and concerns that have been raised about meetings with the SAC by non-state actors, including agencies and representatives of the United Nations.

8. Most democratic States, especially those that make promotion of democracy and human rights part of their foreign policy agenda, do not explicitly recognize, nor engage with, the SAC as the government of Myanmar. This report highlights the actions and statements of these Member States, including Australia, Canada, the twenty-seven Member States of the European Union, Japan, Lichtenstein, New Zealand, Norway, the Republic of Korea, Switzerland, the United Kingdom, and the United States.

9. Many States have opened engagement with the National Unity Government (NUG) which was formed to reflect the will of the people as expressed in the November 2020 elections. Engagement with UN Member States continues to be a high priority of the NUG.

10. A small minority of States, including Belarus, China, India, Russia, Saudi Arabia, and Sri Lanka have implicitly supported the junta's claim as the government of Myanmar by taking actions that are tantamount to recognition. These include presenting diplomatic credentials to SAC leadership, strengthening bilateral relations with the SAC economically and militarily, and—in the case of at least Belarus and India—publicly engaging with the SAC on its plans to hold sham elections. None of these States have publicly indicated having engaged with the National Unity Government. The limited engagement of some other States has been used by the SAC to advance its claims of legitimacy. These include Australia, Bangladesh, Japan, the Republic of Korea and South Africa, which based these engagements on specific foreign policy or national security concerns or the interests of their citizens within Myanmar.

11. The Special Rapporteur addresses ASEAN Member States separately, given the importance of ASEAN's engagement on Myanmar. In April 2021, ASEAN sought a path to resolve the crisis in Myanmar by convening an emergency meeting of ASEAN heads of state. The meeting generated a "Five-Point Consensus" as the foundation on which to resolve the crisis, starting with the cessation of violence in Myanmar. While the SAC's leader Senior General Min Aung Hlaing attended the meeting and committed to this consensus, his actual intent became clear upon his return to Myanmar. Referring to the five points as mere "suggestions," the Senior General soon accelerated his attacks against the Myanmar people. ASEAN Member States now appear divided over ASEAN policy vis-à-vis the SAC. Brunei, Indonesia, Malaysia, the Philippines, and Singapore have reduced diplomatic engagement with the SAC and have rejected its claims of legitimacy. Some of these Member States have also engaged with the National Unity Government. Cambodia, Laos, Thailand, and Vietnam have chosen to engage with the SAC. In communications with the Special Rapporteur,

Cambodia and Vietnam, however, stressed that their engagement with SAC officials does not equate to recognition of the SAC as the government of Myanmar.

12. States' engagement, and either implicit or explicit recognition of the SAC as the government of Myanmar, provides a veneer of legitimacy to the military's violent and autocratic rule. The junta-controlled media consistently seizes on foreign emissary meetings with SAC officials as propaganda opportunities. The SAC will often use these meetings to defend its atrocities, cast People's Defense Forces (PDFs) and the NUG as "terrorists," and seek to demoralize those opposing them by claiming that the SAC is internationally recognized as the Myanmar government. Public engagement with the SAC, even when done as part of larger meetings of Member States, allows the SAC to present its takeover of the government as a *fait accompli*.

13. SAC propaganda is increasingly focused on creating the false impression that there is international acceptance of its efforts to orchestrate what it describes as "elections" in 2023. This includes using state media to trumpet any interaction with a willing Member State on the topic of these so-called "elections," as it did when India's Ambassador to Myanmar met the SAC's Union Election Chairman.[8]

14. It is impossible to hold genuine elections when opposition leaders have been arrested, imprisoned, tortured, and executed; nor when it is illegal for journalists to do their job; nor when one can be arrested for criticizing the SAC. Furthermore, as this report documents, the SAC lacked the constitutional and electoral legitimacy to take over the government and therefore organize and hold national elections. All States should deny the SAC any opportunity to manufacture the false impression that the international community supports, recognizes, or is otherwise engaged in what will be a sham election process.

15. This report argues that States can most effectively address the crisis in Myanmar by not only avoiding actions or statements that can be used by the junta to foster a veneer of international acceptance and legitimacy, but by also formally engaging with the National Unity Government as the legitimate government of the people of Myanmar. It also urges Member States to engage directly, and provide support to, Ethnic Resistance Organizations (EROs) supporting the pro-democracy movement. States should work with the NUG to find solutions to the crisis, promote unity with and among EROs, provide humanitarian assistance, and seize other opportunities to support the people of Myanmar.

16. Issued on the eve of the second anniversary of the illegal military coup, this paper also urges States to recalibrate their approach to the crisis by establishing a more coordinated and strategic approach. This should begin with the formation of a working coalition of supportive States who recognize the need to take stronger, more effective action on behalf of the people of Myanmar.

II. Methodology and Mandate

17. The Special Rapporteur submits this conference room paper in accordance with his mandate as established by the Human Rights Council in Resolution 49/23. That resolution specifies that the Special Rapporteur should: "monitor the situation of human rights in Myanmar" and "make recommendations on additional steps necessary to address the ongoing crisis, including through thematic reports and conference room papers."[9]

18. The junta's question of legitimacy is directly tied to human rights. Per Human Rights Council resolution 49/23, the Myanmar military's coup and deposition of the elected civilian government constitute "an unacceptable attempt to forcibly overturn the results of the general elections of 8 November 2020, a halt in the democratic transition of Myanmar, and a serious threat against the respect for and protection of human rights, rule of law and good governance, and democratic principles."[10] The Myanmar military violated Article 21 of the Universal Declaration of Human Rights when it overthrew the results of the November 2020 election. Article 21(1) states, "Everyone has the right to take part in the government of his country,

[8] "UEC Chairman receives Indian Ambassador to Myanmar," *Global New Light of Myanmar*, 26 April 2022, https://www.gnlm.com.mm/uec-chairman-receives-indian-ambassador-to-myanmar/.
[9] Situation of human rights in Myanmar, Human Rights Council Resolution 49/23, U.N. Doc. A/HRC/RES/49/23, 8 April 2022.
[10] *Ibid.*

directly or through freely chosen representatives" while Article 21(3) holds that "[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."[11]

19. Recognition as a legitimate government may also enable the SAC to garner additional resources (including accessing foreign exchange reserves), allowing it to perpetuate its human rights abuses.

20. Since the 1 February 2021 military coup, the Special Rapporteur has consistently recommended that the international community support the cause of human rights in Myanmar by denying the military junta (1) financial support, (2) weapons, and (3) legitimacy. The Special Rapporteur focused on Member States' positions vis-à-vis the arms trade to the Myanmar military in his February 2022 conference room paper, "Enabling Atrocities: UN Member States' Arms Transfers to the Myanmar Military."[12] This report focuses on the Special Rapporteur's recommendations regarding denying the junta legitimacy.

21. In order to develop this paper, the Special Rapporteur conducted extensive outreach to Member States, carried out open-source research on engagement with the Myanmar military, reviewed reporting from Myanmar civil society and international non-government organizations, accessed conflict-tracking databases, and received inputs from Myanmar's National Unity Government.

22. In advance of the publication of this paper, the Special Rapporteur provided relevant extracts of his report to the Member States identified. He provided most States initial findings in early August 2022. He continually consulted with Member States, sending additional drafts and correspondence in October, November, December, and January 2022. Throughout this consultative process, he received substantive responses from Australia, Bangladesh, Brunei, Cambodia, India, Japan, New Zealand, Republic of Korea, Saudi Arabia, Switzerland, Vietnam, and the United Kingdom. This report includes the context and additional information that Member States provided him during this consolation process. He very much appreciates their engagement.

23. The examples of Member States' interactions with the State Administrative Council or National Unity Government included in this report are not exhaustive. The majority of the United Nation's 193 Member States have had no interaction with the Myanmar military or National Unity Government, and as such are not included in this report.

24. The Special Rapporteur cites extensively the *Global New Light of Myanmar*, an English language, SAC-controlled media outlet to demonstrate how the junta utilizes meetings with international actors for propaganda value, not as a credible source of truth.

III. International Law and Government Recognition Framework

25. Government recognition is rarely an issue internationally, except, as in the case of Myanmar, when there is a violent or unconstitutional attempt to change leadership. The issue of recognition will generally arise when multiple factions claim representation over a State. When this occurs, other members of the international community must decide which of these factions they will recognize as governing the State in question and what their relations with the other competing factions will look like.[13]

[11] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), 10 December 1948.
[12] Conference Room Paper of the Special Rapporteur, "Enabling Atrocities: UN Member States' Arms Transfers to the Myanmar Military," U.N. Doc. A/HRC/49/CRP.1, 22 February 2022, https://www.ohchr.org/en/documents/thematic-reports/ahrc49crp1-conference-room-paper-special-rapporteur-enabling-atrocities.
[13] Gleider I. Hernández, *International Law*, Oxford University Press, 2019, p. 134; Jochen A Frowein, "Recognition," *Max Planck Encyclopedia of Public International Law*, Oxford University Press, December 2010, para. 14. For more details, see: Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile*, Oxford Monographs in International Law, Oxford University Press, 2004, p. 7.

26. The majority of Member States profess, as a matter of policy, to not recognize other governments, but rather only States.[14] Many States will, however, expressly deny recognition to purported governments through statements, and even those States that have stated a policy of non-recognition have formally recognized governments.

27. Regardless of their polices and statements, Member State interactions with those purporting to be governments can imply recognition or rejection thereof.[15] For example, when an Ambassador-to-be presents their credentials to the purported government of another State, that act implies recognition of that government. Recognition may also be presupposed when a senior representative from a State meets with the leader of a putative government and discusses bilateral concerns between the two states, including trade, security, and development support—indicating a willingness to have the purported government legally bind its State. Conversely, Member States implicitly convey a denial of recognition of a purported government when they repeatedly refuse to engage diplomatically with it, downgrade diplomatic relations, or promote engagement with other political entities laying claim to the authority of government in that State.

28. Several critical legal and political ramifications flow from the formal recognition of a government, including (1) the right to appoint representatives of the State to bilateral and multilateral fora, (2) whether laws, statutes, decrees, and orders issued by a putative government are considered valid internationally, (3) the ability to enter into commercial contracts and treaty obligations on behalf of the State, and (4) the right to access and sell state property, including accessing foreign exchange reserves and natural resource leases and concessions. Recognition at multilateral organizations, such as the United Nations, accords further rights, including the ability to access funds and assistance provided through UN organizations and affiliates such as the World Bank and other international financial institutions.[16]

29. Given the implications for providing or withholding financial support, recognition can be extremely important during internal armed conflict. Receiving recognition also has implications for the receipt of military aid.

30. There are two prevailing doctrines that have guided Member States' decision-making on government recognition in recent history: effective control and legitimacy.[17] A third doctrine related to legitimacy is the practice since the 2010s of States recognizing opposition governments as "the legitimate representatives of the people," giving States

[14] *See* M.J. Peterson, "Recognition of governments", *Routledge Handbook of State Recognition*, Routledge, 2019, p. 210 ("The French and Belgian governments were early adopters (France 1965; Belgium 1973); the US government made some reference to the idea (USA 1977), but did not establish a consistent policy. The British government began a more consistent practice in 1980 (UK 1980) and by the end of the decade it had spread sufficiently beyond the Commonwealth (see Ando 1985) that the Solomon Islands Foreign Ministry could say that 'the practice of most states (70) to-date is to recognize States and not Governments' (Solomon Islands 1988). The Dutch (Siekmann 1991) and New Zealand (New Zealand 1992) governments and the European Union (EU 1999) followed.").

[15] Federica Paddeu and Niko Pavlopoulos, "Between Legitimacy and Control: The Taliban's Pursuit of Governmental Status," *Just Security*, 7 September 2021, https://www.justsecurity.org/78051/between-legitimacy-and-control-the-talibans-pursuit-of-governmental-status/.

[16] Marika Landau-Wells, "High Stakes and Low Bars: How International Recognition Shapes the Conduct of Civil Wars," *International Security*, Vol. 43, No. 1, Summer 2018, p. 100-137 at 108.

[17] *See e.g.,* Brad Roth, "Legal Legitimacy and Recognition of Governments: A Doctrinal Guide," *Governmental Illegitimacy in International Law*, Oxford University Press, 2000, p. 136 ("Throughout modern times, state practice regarding recognition of governments [] has been dominated by the application of one variant or another of the de facto or effective control test . . . Yet the de facto test, embodying as it does the morally troubling and legally disruptive principle that might makes right, has always faced challenges from one form or another of legitimism."); Anne Schuit, "Recognition of Governments in International Law and the Recent Conflict in Libya," *International Community Law Review*, Vol. 14, No. 4, p. 381-402 at 388-389 ("The criteria for granting recognition are thus not uncontroversial, and subject to change. As Kuyper observes '...no minimum criteria for the recognition of governments can be said to exist which are generally accepted by jurists and also consecrated by the practice of States'. There are nevertheless two main doctrines. These are the effective control doctrine and the legitimacy doctrine.").

flexibility in their engagement with opposition governments, which may be short of formal recognition, but can include substantial support.[18]

A. Effective control

31. Over much of the 20th century, the dominant theory in the recognition of purported governments was the so-called effective control doctrine. This doctrine assesses not how the putative government came to power, but rather whether that government effectively governs the State it purports to represent.

32. There are generally three criteria that must be met to establish effective control: (1) control of all or nearly all of the State's territory, (2) the habitual obedience of the mass of the population, and (3) a reasonable prospect of permanence.[19] In instances where the effective control doctrine is met, but a putative government is unwilling to carry out essential international law duties and obligations, recognition may be nonetheless withheld.[20]

33. In practice, implementing the effective control test can be challenging. For one thing, it may be very difficult to determine whether a given government controls a portion of territory, and to what extent.[21] Another challenge arises when attempting to ascertain whether a government effectively receives "habitual obedience" from the population. The notion is vague and open to interpretation, and the timeline for ascertaining habits of obedience varies.[22] Even if both criteria are met, it is not always feasible to realistically predict whether control and obedience will continue in the future, especially in post-conflict contexts that are typically volatile.

34. Nonetheless, the dominance of the effective control doctrine is linked to the interest of States not to make complex determinations with regard to other States' governments and political processes that could have highly detrimental diplomatic consequences.

1. Control of territory

35. To establish control, a putative government must have control of all or nearly all of a State. In practice, during ongoing conflict it is difficult to determine whether a given political entity controls a portion of territory, and to what extent, given information scarcity, contradictory reports, or multi-layered and obscure power dynamics.[23]

36. Precisely what activities constitute control are also debatable, but two key activities include the ability to maintain the monopoly on the use of force in a given location and to exercise administrative control in that territory.

2. Habitual obedience

37. Habitual obedience refers to a sense of 'acquiescence' in a political entity's rule – which can either be expressed or implied. Control will be evident by the "absence of

[18] Stefan Talmon, "Recognition of Opposition Groups as the Legitimate Representative of a People," *Chinese Journal of International Law*, Vol. 12, No. 2, 1 June 2013, p. 219-253; Matthias Edtmayer, "The Re-Emergence of the Legitimate Representative of a People: Libya, Syria, and Beyond," *LSE Law Review,* Vol. 3, 2018, p. 1–28; Dapo Akande, "Self Determination and the Syrian Conflict – Recognition of Syrian Opposition as Sole Legitimate Representative of the Syrian People: What Does This Mean and What Implications Does It Have?," *EJIL: Talk!* (blog), 6 December 2012, https://www.ejiltalk.org/self-determination-and-the-syrian-conflict-recognition-of-syrian-opposition-as-sole-legitimate-representative-of-the-syrian-people-what-does-this-mean-and-what-implications-does-it-have/.

[19] *See e.g.*, Hernández, *International Law*, p. 134-135 ("De jure recognition, a formal act, usually follows when the recognizing State is satisfied that the new government enjoys, 'with a reasonable prospect of permanence, the obedience of the mass of the population ... effective control of much of the greater part of the territory of the state concerned'")(citing, 'Morrison statement' of the then UK Under-Secretary of State for Foreign Affairs, 799 HC Deb, col 23, 6 April 1970); Frowein, "Recognition," para. 15-16 ("Effective control means control of at least the larger part of the territory with no real threat for development in the future. . . . Besides effectiveness, it is frequently stated by governments that two criteria may be taken into account for recognition: whether there is consent or at least acquiescence by the people; and whether the new government has indicated its willingness to comply with its obligations under international law.")

[20] *See e.g.,* M. J. Peterson, *Recognition of Governments: Legal Doctrine and State Practice*, 1815-1995, Palgrave and Macmillan, 1997, p. 68-69; Jochen A Frowein, "Recognition," para. 15-16; H. Lauterpacht, "Recognition of Governments: I," *Columbia Law Review,* 1945, p. 815 at 826.

[21] Roth, "Legal Legitimacy and Recognition of Governments," p. 142.

[22] *Ibid.*, p. 139–42.

[23] *Ibid.*, p. 142.

significant resistance to the . . . regime and its policies."[24] If the individuals that the political entity aims to regulate behave in conformity with that entity's authority, habitual obedience is obtained. It is thus not only the success of a coup d'état that matters, but the people's reaction towards the regime.[25] In other words, "it is not the success of the revolution, therefore that gives it legal vitality but the effectiveness it acquires by habitual submission to it from the citizens."[26] The extent to which those that a putative government seeks to regulate actually behave in accordance with the government's authority and proclamations will demonstrate habitual obedience.[27] In short, a successful coup is one where, "the people accept and obey the newly installed rulers."[28]

3. Reasonable prospect of permanence

38. For effective control to be established, a putative government must demonstrate that its territorial control and obedience from the governed have a reasonable prospect of permanence. Power must be sustainable to prevent a situation where government recognition shifts between competing parties every time one "gains the upper hand."[29] Member States would be loath to accord recognition to an entity that only momentarily holds control with no plausible outlook for maintaining it. When the UN considered articulating the effective control test as the means to resolve disputes at the credentials committee, a draft UN resolution described this prong as requiring "control, authority, and obedience appear[ing] to be of a permanent character."[30]

4. Willingness to comply with obligations under international law

39. A putative government that has established effective control may nonetheless be denied recognition on the grounds that it has failed to comply with its international legal obligations.[31] Some, thus, view compliance with international obligations as an extra test where effective control has been established, and others as a separate doctrine altogether.

40. The obligations under international law that a putative government must uphold include "both the duties prescribed by general and regional international law and the obligations contained in agreements with one or more states."[32] This includes both multilateral and bilateral treaties and legally binding contracts entered into by prior governments.

41. One scholar sums up this criteria as follows: "It says in effect: it is useless to recognize as representing the State a government which at the very threshold of its existence refuses to abide by rules of international law; it is futile to concede the enjoyment of international rights to a government which declines to be bound by the accepted duties of the law of nations; it is consistent with legal principle and it is beneficial to the rule of international law to deny recognition to a government exhibiting such disposition."[33]

B. Constitutional and democratic legitimacy

42. While the effective control doctrine is the dominant theory for government recognition—even for those States that purport to recognize States and not governments—it

[24] M. J. Peterson, *Recognition of Governments,* Palgrave, p. 54
[25] Schuit, "Recognition of Governments," p. 381–402.
[26] Roth, "Legal Legitimacy and Recognition of Governments: A Doctrinal Guide," p. 138, (citing *Asma Jilani* v. *The Government of Punjab*, 1972 PLD SC 139 (1972), 179 and 180).
[27] Brad R. Roth, "Secessions, Coups and The International Rule of Law: Assessing the Decline of the Effective Control Doctrine," *Melbourne Journal of International Law*, 2010, p. 423.
[28] *See* M.J. Peterson, "Recognition of Governments," *Routledge*, p. 207.
[29] Schuit, "Recognition of Governments," p. 389.
[30] U.N. General Assembly, Draft Resolution 396 (V), U.N. Doc A/AC.38/L.21/Rev.1, 14 December 1950, quoted in Brad R. Roth, "Secessions, Coups and The International Rule of Law: Assessing the Decline of the Effective Control Doctrine," *Melbourne Journal of International Law*, 2010, p. 423.
[31] *See e.g.,* Roth, "Legal Legitimacy and Recognition of Governments," p. 149 (describing the willingness to comply with obligations under international law as a test that effects recognition "even if the effective control doctrine governs)"; H Lauterpacht, 'Recognition of Governments: I' (listing willingness to comply with obligations under international law amongst the "the tests of recognition" along with effective control and legitimacy).
[32] M. J. Peterson, *Recognition of Governments,* Palgrave, p. 68-69.
[33] H. Lauterpacht, "Recognition of Governments: I," p. 826.

faces substantial criticism for its emphasis on 'might makes right.' It may result in situations where, as one expert puts it, "an insurgent faction successfully establish[es] itself as a government where it overthrows an existing constitutional structure and secures—even if at bayonet-point—widespread popular acquiescence."[34]

43. Unlike effective control, the legitimacy doctrine maintains that recognition should be tied to how a putative government came to power. There are two main types of legitimacy: (1) constitutional legitimacy and (2) democratic legitimacy.

44. Constitutional legitimacy suggests that recognition should only be granted when a government comes to power in accordance with the established rules set out in the state's constitution.[35] Resting recognition decisions on constitutional legitimacy presents certain challenges, however, since one constitution typically replaces another—and may have been drafted and promulgated in an undemocratic manner. Nonetheless, the constitutional aspect remains relevant, especially because it is the cornerstone upon which the Myanmar military has staked its claim to legitimacy.

45. Democratic legitimacy focuses on whether the putative government represents the free expression of the will of the people. The doctrine has often been employed when a democratically elected government has been overthrown.

46. In the 1990s, the international community fervently opposed the overthrow of the democratically elected governments in Haiti and Sierra Leone. While the militaries in each case had seized administrative control, the international reaction, which was catalyzed by forceful resolutions of the United Nations Security Council, supported the re-establishment of the prior democratically elected governments.

47. The language used in UN Security Council Resolutions 841 (1993) and 940 (1994) on Haiti clearly demonstrates the importance of democracy-based concerns regarding government recognition. In Resolution 841, the Council deplored "the fact that, despite the efforts of the international community, the legitimate Government of President Jean-Bertrand Aristide has not been reinstated." Resolution 940 referred to the military powers in Haiti as the "illegal de facto regime," described the ousted regime as the "the legitimate constitutional authorities of Haiti," and reaffirmed that "the goal of the international community remains the restoration of democracy in Haiti and the prompt return of the legitimately elected President, Jean-Bertrand Aristide."

48. In Sierra Leone, the Security Council in Resolution 1132 (1997) deplored "the fact that the military junta has not taken steps to allow the restoration of the democratically-elected Government and a return to constitutional order." The Resolution further "demand[ed] that the military junta take immediate steps to relinquish power in Sierra Leone and make way for the restoration of the democratically-elected Government and a return to constitutional order."

49. A leading scholar on government recognition highlighted that in both these cases the ousted governments had won a "landslide victory" in "very recent elections" that were internationally monitored.[36] These facts were contrasted against the "notorious brutality and demonstrable unpopularity of the forces involved in the coup."[37] These exact same factors are present in the case of Myanmar. In the case of Haiti and Sierra Leone, they led to "a vast diversity of international actors, cutting across the international system's plurality of interests and values, to perceive in common a population's manifest will to restore an ousted government."[38]

C. Legitimate representative of the people

50. States began articulating a new form of democratic legitimacy in the last decade, labelling political entities as the "legitimate representative of the people." This phrasing has been used to describe situations in which a government lost legitimacy in favor of a new

[34] Roth, "Secessions, Coups and The International Rule of Law," p. 429.
[35] *See e.g.,* Schuit, "Recognition of Governments," p. 392; Roth, "Legal Legitimacy and Recognition of Governments: A Doctrinal Guide," 136–37; 144.
[36] Roth, "Secessions, Coups and The International Rule of Law," p. 429.
[37] *Ibid*
[38] *Ibid.*

political entity because of the government's oppressive policies. In the 2010s, States recognized opposition movements in Libya, Syria, and Venezuela as the legitimate representatives of the people.

51. Recognizing opposition groups as legitimate representatives of the people enables members of the international community to grant support to them and, reciprocally, to limit interactions or sever ties with illegitimate governments altogether.[39] Such recognition of opposition movements implies an acceptance of the opposition-cum-putative government as being able to speak politically for its people. As articulated by a scholar studying the recognition of opposition groups in Libya and Syria, the intent of recognizing a group as the legitimate representative of the people is "usually to bolster the political position of the group recognised as the sole representative and to indicate that [it] is the umbrella group under which others should coalesce."[40]

52. Once recognized as legitimate representatives by the international community, opposition groups are meant to become, in the future, full-fledged governments such that they are frequently referred to as governments in waiting.[41] A recognizing State will typically allow the group to maintain representative offices in their country with personnel having frequent contact with high-level government officials and may begin offering more concrete forms of support, including financial and material.[42]

53. Libya's example helps illustrate the implications of recognizing a putative government as the "legitimate representative of the people."

54. By July 2011, over 30 countries had recognized the Libyan National Transitional Council (NTC) as the sole legitimate representative of the people of Libya, despite its lack of effective control over most of the country, including Tripoli. It is at least arguable that this intensity of recognition, backed with the Security Council's authorization of use of force, was a key element that contributed to the NTC's victory over the Qaddafi government.[43]

55. States do not recognize just any opposition group as the legitimate representative of the people. The United States for example, in stating its intent to recognize the Syrian opposition as the legitimate representatives of the people of Syria, laid out its decision as follows: "We've made a decision that the Syrian Opposition Coalition is now inclusive enough, is reflective and representative enough of the Syrian population that we consider them the legitimate representative of the Syrian people in opposition to the Assad regime and so we will provide them recognition and obviously, with that recognition comes responsibilities."[44] On the basis of statements like these, scholar Stefan Talmon has identified four normative criteria that States consider when making the determination that an opposition body is the legitimate representative of their people: (1) the incumbent government must have lost legitimacy, (2) the opposition group must be representative, (3) it must be broad, and (4) it must enjoy a reasonable prospect of permanence.[45]

56. Representativeness is a means to assess the qualitative diversity of the represented sections or segments of society. According to Talmon, "all, or at least the overwhelming majority of, ethnic, political, religious, minority and gender groups, and all geographic parts or regions of a country must be represented."[46] If the opposition group is not yet representative, "it must be open and inclusive and encourage participation of all sections of society."[47]

[39] *See* Edtmayer, "The Re-Emergence of the Legitimate Representative of a People," p. 5 ("The recognition of the NTC and the SOC as the legitimate representative respectively of the Libyan and Syrian people indicates the loss of legitimacy of the government in power.")
[40] Akande, "Self Determination and the Syrian Conflict."
[41] *Ibid.*
[42] Talmon, *Recognition of Governments in International Law,* p. 244.
[43] Hernández, *International Law*, p. 135.
[44] Adam Clark Estes, "Obama's Finally Recognized the Syrian Opposition Coalition, So What Now?," *The Atlantic*, 11 December 2011, https://www.theatlantic.com/international/archive/2012/12/obamas-finally-recognized-syrian-opposition-coalition-so-what-now/320590/.
[45] Talmon, *Recognition of Governments in International Law*, p. 237.
[46] *Ibid.*
[47] *Ibid.*

57. For the opposition group to be considered broad, it must "have enough members or the support of enough other groups to constitute a force to be reckoned with."[48] There must also be common values, interests, and aims (beyond removing the incumbent government) on which all can agree.

58. For an opposition group to have a reasonable prospect of permanence, it must be considered sustainable, both in terms of resources and institutional capacity. It must have "a certain political, organizational and institutional structure, both of the group's leadership and on the ground."[49]

IV. The State Administrative Council Lacks Constitutional and Democratic Legitimacy

A. The SAC's declaration of a state of emergency was unconstitutional

59. The State Administrative Council rests its claim of legitimacy squarely on constitutional legitimacy. The junta has expressly stated that it carried out its coup in accordance with Myanmar's constitution. As recently as June 2022, it asserted: "The legitimacy of the State Administration Council (SAC) is unquestionable as it was formed in accordance with the State Constitution (2008) . . . Myanmar once again calls the international community to abide by the principles enshrined in the United Nations Charter and internationally accepted Conventions on diplomatic relations and to treat Myanmar with the same courtesy due to any sovereign government."[50]

60. The military junta based its overthrow of the democratically elected government in February 2021 on allegations of fraud and voting irregularities during the November 2020 elections. Two days after the coup, Min Aung Hlaing argued, "relevant officials failed to resolve the issues related to more than 10 million possible fraudulent ballots in the 2020 general election, but they convened the Hluttaw and tried to form a government. These actions are 'acts to take over the sovereignty of the Union by wrongful forcible means' as mentioned in the Section 40(c) and 417 of the Constitution."[51]

61. It is clear from the analysis outlined below that the SAC does not have constitutional legitimacy because: (1) the military did not follow the constitutional requirements in declaring the state of emergency that initiated the coup; (2) the military's claims of a usurpation of sovereignty by wrongful means was unfounded, and (3) the military's claims of fraud remain unsubstantiated.

1. Background: The military junta's allegations of election fraud and subsequent annulment of results

62. Allegations of fraud against the civilian government led by the National League for Democracy (NLD) and the Union Election Commission (UEC) began even before the people of Myanmar cast votes in the 8 November 2020 general election. The office of Senior General Min Aung Hlaing issued a statement five days prior to the elections which said, "Based on the experiences of the 2010 and 2015 elections, the coming 2020 election should have greater freeness and fairness. But weakness and deficiencies which were never seen in the previous elections are appearing now. They can have adverse impacts on the image of the election."[52] In the statement, Min Aung Hlaing pointed to issues with voter lists, ballot envelopes, and compliance with election campaign rules by political parties, and said, "The government has the complete responsibility for all the intentional and unintentional mistakes of the

[48] *Ibid.*
[49] *Ibid.*
[50] [State Administrative Council] Ministry of Foreign Affairs, "The Foreign Ministry protests and objects in the strongest terms on the irresponsible and reckless statements . . .," 6 June 2022, https://www.mofa.gov.mm/the-foreign-ministry-protests-and-objects-in-the-strongest-terms-on-the-irresponsible-and-reckless-statements-and-remarks-made-by-the-ministry-for-europe-and-foreign-affairs-of-france-the-embassy-of/.
[51] "Announcement to Public: Office of the Commander-in-Chief of Defence Services Issued Announcement," *Myanmar iTV*, 3 February 2021, https://www.myanmaritv.com/news/announcement-public-office-commander-chief-defence-services-issued-announcement.
[52] "Myanmar Military Chief Hits Out at Election Mismanagement Ahead of Vote," *Radio Free Asia,* 3 November 2020, https://www.rfa.org/english/news/myanmar/election-mismanagement-11032020193400.html.

commission at its different levels."[53] These allegations were refuted by spokespeople from the NLD and the UEC.

63. In the national election that took place on 8 November 2020, the NLD won an outright majority, winning 396 out of elected 476 seats in the two chambers of the union legislature while the military-backed party, the Union Solidarity and Development Party (USDP), won 33 seats.

64. The USDP then alleged massive fraud and demanded that the UEC investigate allegations of voting irregularities. The Myanmar military alleged first 8.6 and then 10.5 million instances of irregularities in voter lists spread over 314 townships. The military argued these alleged irregularities could have changed the outcome of the election.[54]

65. On 28 January 2021 the UEC announced there was no evidence to support the claim of widespread fraud. It said it was investigating 287 complaints and acknowledged that duplication of names occurred on some lists but stressed that voters could not cast multiple ballots with fingers marked in indelible ink. This finding cleared the way for the new Parliament to be seated on 1 February.[55]

66. A video address broadcasted on the military-owned Myawaddy Television channel on 1 February 2021 announced that the Myanmar military had declared a state of emergency and had detained senior leaders, including State Counsellor Aung San Suu Kyi and President Win Myint, due to alleged fraud during the November election. The military claimed, "The voter lists which were used during the multi-party general election which was held on the 8th of November were found to have huge discrepancies and the Union Election Commission failed to settle this matter… Unless this problem is resolved, it will obstruct the path to democracy and it must therefore be resolved according to the law."[56]

2. The military failed to follow the procedural requirements of the constitution

67. The SAC's attempted seizure of power was procedurally unlawful under Myanmar's constitution, which was drafted by the previous military regime.[57] Under Article 417 of this military drafted constitution, (1) only the President of Myanmar can declare a state of emergency, and he may do so (2) only after coordinating with the National Defense and Security Council and (3) only after informing the Union Parliament. These three requirements were not met.

68. On 1 February 2021, the day of the coup, two military officers entered President Win Myint's residence and told him to resign the presidency on the grounds of ill health, according to President Win Myint's own testimony in a trial in October 2021.[58] Despite the officers' threats that refusal would cause him much harm, President Win Myint refused, saying he was in good health and would rather die.

69. With President Win Myint's refusal to declare a state of emergency or to resign, the military detained him and installed then-Vice President Myint Swe, an unelected military

[53] *Ibid.*
[54] *See, e.g.,* Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Doc. A/HRC/46/56, 4 March 2021, https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_56.pdf
[55] *Ibid.*
[56] "Statement from Myanmar military on state of emergency," *Reuters*, 31 January 2021, https://www.reuters.com/article/myanmar-politics-military-statement-idUSKBN2A11A8.
[57] The ruling junta at the time, the State Peace and Development Council, claimed the constitution was passed with "92.48 percent of the vote on a turnout of 98.1 percent" despite the carnage wrought by Cyclone Nargis. *See "*Myanmar's charter sails through referendum," *Reuters*, 26 May 2008, https://www.reuters.com/article/us-myanmar-referendum/myanmars-charter-sails-through-referendum-idUSSP33290120080526. The junta barred individual citizens and organizations from running public announcements encouraging voters to reject the draft constitution; under the 'Referendum Law for the Approval of the Draft Constitution' anybody who publicly criticized the referendum faced a fine and a three-year prison sentence; monitors reported that "the text of the constitution was not available in cities and towns where they were monitoring the referendum," while copies may have been available for purchase in Yangon. *See, e.g.,* The 88 Generation Students, "A Preliminary Report on the Referendum of May 10, 2008," 20 May 2008, https://anfrel.org/wp-content/uploads/2012/02/Preliminary-Report-on-the-Referendum-of-May-10-2008.pdf.
[58] *See, e.g.*, "Myanmar's Ousted President Told Army Officers He Would Rather Die Than Resign on Day of Coup," *The Irrawaddy*, 12 October 2021, https://www.irrawaddy.com/news/burma/myanmars-ousted-president-told-army-officers-he-would-rather-die-than-resign-on-day-of-coup.html.

appointee, as Acting President. Under Article 73(a) of the constitution, the Vice President who obtained the most votes in the prior election shall become Acting President if "the office of the President falls vacant due to his resignation, death, permanent disability or any other cause." President Win Myint did not resign or die, nor was he permanently disabled, leaving only "any other cause" as a possible explanation for the Presidency being vacant.

70. The SAC explained its contradictory legal theory for removing the President, citing the constitution's impeachment provisions in Article 71 for removing Win Myint.[59] Specifically, the SAC cited Article 71's provisions relating to breaching the constitution, misconduct, and "inefficient discharge of duties assigned by law." Under Article 71, however, the Union Parliament is the only institution competent to initiate impeachment procedures for the removal of the President and to ultimately decide whether impeachment charges are substantiated. Impeachment proceedings were of course never convened by the Parliament.

71. The SAC, however, maintains that it could legally and unilaterally impeach the President, explaining "there was no requirement for the Hluttaw to approve the impeachment or removal of the President . . . In fact, there was no Hluttaw from midnight 31 January 2021."[60] There was no Parliament because the military prevented it from forming. There was thus no constitutional basis for the military's claim that there was no requirement for the Parliament to approve impeachment.

72. The SAC explained that three omissions by President Win Myint led them to remove him from office: (1) Win Myint's refusal to convene the National Defence and Security Council (NDSC) to address the election fraud, (2) his general refusal to "resolve the problems arising from the findings of massive election fraud," and (3) his refusal to postpone the first session of the new Parliament so the Supreme Court could weigh in on the military's fraud claims.[61] The SAC stated that because President Win Myint was "unable or incompetent to enforce the Constitution [he] was replaced by the Vice President according to Article 73a of the 2008 Constitution."

73. President Win Myint was illegally removed from office. The office did not "become vacant" as required by the constitution. Instead, the military, by its own admission, determined President Win Myint should be impeached, despite the military having no authority under the constitution to do so. There was no provision in the constitution that would allow for the military to legally remove the president.

74. The refusal of President Win Myint to resign his position, or to sign the emergency declaration himself, destroys the military's claim of constitutional legitimacy. Because President Win Myint was illegally removed from office, Myint Swe was not legally the acting president and had no constitutional authority to declare a state of emergency.

75. Article 417 requires the President to meet with the National Defence and Security Council before declaring a state of emergency. Article 201 of the 2008 Constitution sets out that the NDSC is comprised of 11 members, 6 military and 5 civilian. While Article 417 does not expressly state that the full NDSC must be in attendance to declare a state of emergency under 417, Article 412(b), related to declaring a state of emergency in a region, state or administrative area expressly provides that the President can consult with four specific military members of the NDSC "if all the members are unable to attend." Article 417 does not include this provision, presumably because the drafters recognized that the declaration of a nationwide state of emergency under Article 417 has grave consequences and sought to set a higher bar for approval. Notwithstanding the fact that Myint Swe was not legally Acting President of the Union, he met with only the six military members of the NDSC prior to declaring the state of emergency under Article 417.

76. Article 421(a) requires the President to provide the parliament notice for the state of emergency ("submit the matter of transferring sovereign power") in a regular or emergency legislative session. This, of course, did not occur because the new parliament was not allowed to sit.

[59] [State Administrative Council] Ministry of Foreign Affairs, Submission to the United Nations Credentials Committee and Member States of the United Nations, Briefing Paper: Representation of the Republic of the Union of Myanmar at the United Nations, October 2021, https://www.mofa.gov.mm/briefing-paper-representation-of-the-republic-of-the-union-of-myanmar-at-the-united-nations/, p. 15.
[60] *Ibid.*
[61] *Ibid.*

3. The substantive grounds for a state of emergency were not met

77. In addition to the procedural failings, the military's reasoning for the coup was substantively deficient. Under Article 417, the president can declare a state of emergency utilizing the steps above only if there is a threat of the 'disintegration of the Union or national solidarity or the loss of national sovereignty' due 'to acts or attempts to take over the sovereignty of the Union by insurgency, violence and wrongful forcible means.'

78. The military has claimed that the state of emergency was required due to "acts to take over the sovereignty of the Union by wrongful forcible means."[62] Specifically, the military claimed that "relevant officials failed to resolve the issues related to 10,482,116 possible fraudulent ballots in the 2020 general election, but they convened the Hluttaw and tried to form a government."

79. Under the military-drafted Constitution and the Union Election Commission Law, the UEC is the only body with authority to investigate and adjudicate disputes relating to elections. The military has no constitutional authority as it relates to election disputes and the UEC was under no obligation to "resolve issues" related to unfounded claims of fraud by the military. In accordance with the constitution, the UEC formed electoral tribunals to investigate the 287 complaints it received concerning the 2020 elections.[63]

80. The military also claimed that the Speaker of the Union Parliament and President rejected the request put by 203 Members of Parliament (including 160 military-appointed Members and 36 USDP members) to convene a special session of the Union Parliament to address claims of electoral fraud. Under the constitution, the Speaker shall convene an emergency session if one-fourth of the Members call for it. However, according to Article 81 of the constitution, parliamentary sessions shall be called for issues "that require resolutions, consents and approvals of the Pyidaungsu Hluttaw [Parliament]." In a statement dated 12 January 2021, the Speaker declined to convene a session stating that parliament has no remit over elections:

> The main reason given by the letter calling for a special session is not the matters that require resolutions, consents and approvals of the Pyidaungsu Hluttaw as mentioned in section 81 of the Constitution. Moreover, section 402 of the Constitution and section 11 of the Union Election Commission Law say that the decisions and functions made by the Union Election Commission shall be final and conclusive, so the issue pointed out by the letter is not the matter to be decided collectively in a Pyidaungsu Hluttaw session. The electoral complaints are matters that must be addressed just by the Union Election Commission under relevant laws and rules. So, we would like to reply that it is unnecessary to convene a special session of the second Pyidaungsu Hluttaw. Therefore, it is announced that no special session will be convened.[64]

81. The military had no constitutional grounds to involve itself in the management of the election or to call the UEC and Parliament's actions in response to their claims "acts to take over the sovereignty of the Union by wrongful forcible means." This is made all the clearer when examining the veracity of the fraud claims.

82. In his September 2020 report to the UN General Assembly, the Special Rapporteur highlighted numerous issues with the upcoming November elections.[65] Chief among his concerns were the wholesale disenfranchisement of the Rohingya; restrictions on the freedom of expression of candidates; the inability of eligible voters to vote in conflict zones in Rakhine, Kachin, and Shan State; and the use of social media to post dangerous speech and hate speech targeting candidates.

[62] "Announcement to Public: Office of the Commander-in-chief issued announcement," *Myanmar iTV*, 3 February 2021, https://www.myanmaritv.com/news/announcement-public-office-commander-chief-defence-services-issued-announcement.
[63] Announcement of Union Election Commission to Voters, 28 January 2021, in *Global New Light of Myanmar*, 29 January 2021, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/GNLM2021-01-29-red.pdf, p. 2.
[64] Pyidaungsu Hluttaw Office Announcement (1/2021), 12 January 2021, in *Global New Light of Myanmar*, 13 January 2021, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/GNLM2021-01-13-red.pdf, p. 2.
[65] Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Doc. A/75/335, 1 September 2020.

83. These concerns notwithstanding, the military has presented no evidence to support its allegations of massive fraud in the casting of ballots. The fraud that it has routinely cited centers on "irregularities" in the voter lists released ahead of the election. Flaws in voter lists do not equate to actual voting irregularities. The junta has not provided evidence showing widespread fraud in actual voting or tabulation.

84. On 26 July 2021, the new, military-appointed UEC—which illegally replaced the Commission that oversaw the 2020 elections—announced its decision to invalidate the results of the 2020 election on the grounds that its inspectors had found 11,305,390 voter list irregularities across the country, representing nearly one-third of the country's registered voters. The announcement also alleged the duplication of voter lists, the mass inclusion of voters without national identification cards, and a misuse of administrative power on the part of the NLD, among other issues.[66]

85. Voter lists were prepared by ward/village tract sub-commissions on the basis of data provided by the General Administration Department and local branches of the Ministry of Labour Immigration and Population. Sources of data included household registers as well as door-to-door checking.

86. For the 2020 elections, voter lists were twice subject to public scrutiny (with one extension) for inspection and modifications prior to the election. Voter lists were first displayed for voter verification on 25 July 2020 for two weeks and extended until 14 August 2020.[67] As inaccuracies in the lists became apparent, State Counsellor Aung San Suu Kyi urged the UEC to address the situation.[68] 210,000 additions, 150,000 corrections, and 66,000 removals of deceased voters were requested during the display period. The UEC instructed sub-commissions to carry out corrective actions, scrutinize voter lists and correct mistakes by using data from the 2015 voter lists and conducting door-to-door checks. The voter lists were publicly displayed a second time from 1 to 14 October 2020.[69]

87. Voter lists were distributed to candidates and parties at the township level.[70] Over 80 percent of the 479 party and candidate representatives interviewed by the Carter Center found that the quality of the voter rolls was either good or adequate.[71] Observer reports did not find significant issues with the voter rolls in polling stations.

88. The Special Rapporteur has spoken with multiple UEC election officials at the regional and township level who oversaw the 2020 election, including those who have had to go into hiding due to fears of arrest. One UEC official who oversaw the election for their township told the Special Rapporteur, "Yes, there were some minor errors in the voter list. The election commissions verified it, and there were three times we made it public so that people could come and check. The people came enthusiastically [to check]." Another, who had fled his home and spoke with the Special Rapporteur from a hideout in the jungle told him, "Some of the irregularities were from computer errors. For example, the wrong date of birth or the wrong name spellings."

89. UEC officials also reported to the Special Rapporteur that they knew of cases where officials from the military-controlled General Administration Department who collected the voter registration data confided in them that the junta's claims of fraud, "were a joke."

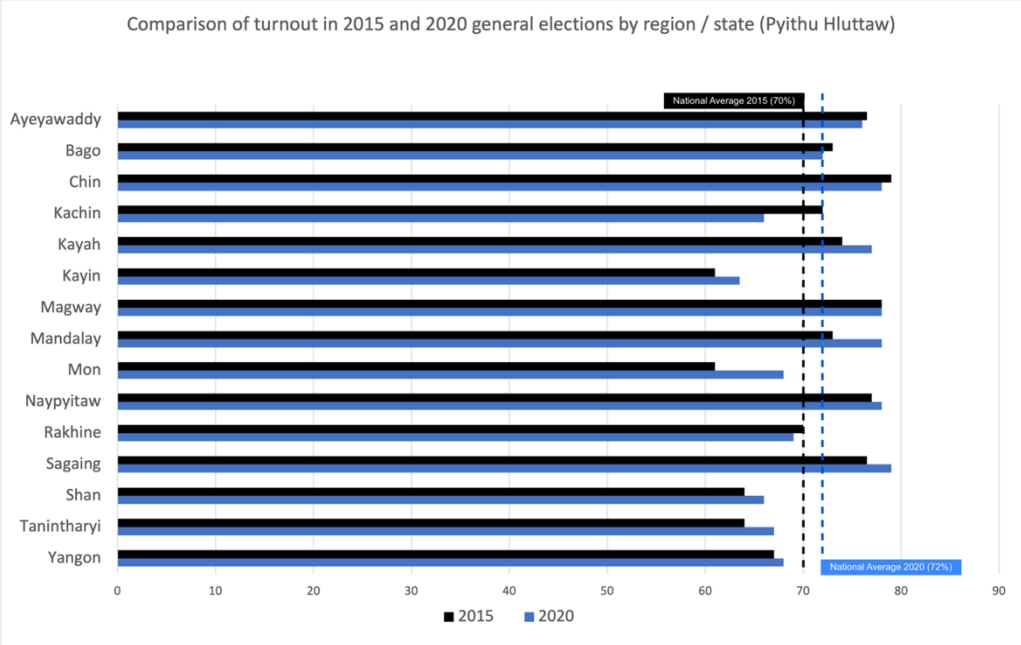
90. Two days after the election, one of the independent international election observers, the Carter Center, found that while "important aspects of the electoral process were impacted by restrictions" related to the pandemic, "voters were enthusiastic and able to freely express

[66] Announcement on annulment of Nov 8 Multiparty General Election results, 26 July 2021, in *Global New Light of Myanmar,* 27 July 2021, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/GNLM2021-07-27-red.pdf, p. 6.
[67] Announcement of Union Election Commission to Voters, 28 January 2021, in *Global New Light of Myanmar*, 29 January 2021, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/GNLM2021-01-29-red.pdf, p. 1.
[68] "Myanmar Races to Fix Outdated, Erroneous Voter Lists Ahead of November Poll," *Radio Free Asia*, 7 August 2020, https://www.rfa.org/english/news/myanmar/voter-lists-08072020183039.html.
[69] The Carter Center, "Carter Center Interim Statement on Myanmar General Elections," 13 October 2020, https://www.cartercenter.org/news/pr/2020/myanmar-2020-preelection-statement.pdf, p. 9.
[70] Announcement of Union Election Commission to Voters, 28 January 2021, in *Global New Light of Myanmar*, 29 January 2021, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/GNLM2021-01-29-red.pdf, p. 1.
[71] The Carter Center, "Election Observation Mission Preliminary Statement," 10 November 2020, https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/myanmar-preliminary-statement-112020.pdf.

their will at the polls and choose their elected representatives" and "election day itself occurred without significant incidents or major irregularities being reported by mission observers."[72] The Carter Center, which sent over 40 observers to polling stations on election day, also added that "election procedures were widely adhered to, with the conduct of voting assessed positively in 94% of polling stations visited."[73] Regarding the voter registration rolls, the Carter Center reported: "the mission did not find significant issues with the voter rolls in polling stations visited, although the media reported that voters were missing from voter rolls for the ethnic affairs minister races in Mandalay and Yangon."

91. Three months after the coup, the Asia Network for Free Elections (ANFREL) released its comprehensive election assessment, which found that "the results of the 2020 general elections were, by and large, representative of the will of the people of Myanmar."[74] ANFREL highlighted that "27.5 million people voted thanks to the hard work of polling staff and election or health officials; their voices cannot be silenced."[75] ANFREL's assessment was based on data collected by ANFREL's International Election Observation Mission to the 2020 elections, comprised of 13 long-term observers deployed for 24 days, eight short-term observers deployed for 8 days, three additional Election Day observers, a core team based in Yangon, and four electoral analysts, one in Yangon and the rest working remotely. ANFREL was able to deploy international election observers to 13 out of 14 states and regions in Myanmar.

92. Voter turnout averages between 2015 and 2020 show no significant differences, as demonstrated in the chart below. The data available at region/state level indicates that in 10 of 15 regions and states, including Naypyitaw, the turnout variations between 2015 and 2020 were within +/- 2 percentage points. National voter turnout was 69.7 percent in 2015 and 71.9 percent in 2020, for an increase of 2.2 percent.[76] Notably, Min Aung Hlaing himself highlighted on 3 February 2021 that the 2015 election had been "organized successfully."[77]



[72] *Ibid.*
[73] *Ibid.*
[74] Asia Network for Free Elections, "The 2020 Myanmar General Elections: Democracy Under Attack: ANFREL International Election Observation Mission Report," 10 May 2021, https://anfrel.org/wp-content/uploads/2021/05/ANFREL_Democracy-Under-Attack-F.pdf.
[75] *Ibid.*
[76] International IDEA, Voter Turnout Database, Country: Myanmar, https://www.idea.int/data-tools/country-view/209/40.
[77] "Announcement to Public: Office of the Commander-in-Chief of Defense Services," *Myanmar iTV*, 3 February 2021, https://www.myanmaritv.com/news/announcement-public-office-commander-chief-defence-services-issued-announcement.

93. Despite election fraud being the sole rationale for upending the democratic transition in Myanmar, the military failed to show compelling evidence that it occurred at a scale that would have altered the election outcome.

94. Notwithstanding this fact, the military pushed forward its election fraud narrative and targeted election officials following the coup. Many were interrogated and pressured to push the fraud narrative. One UEC official told the Special Rapporteur, "Following the coup, UEC Secretaries were ordered by the military to lodge complaints against UEC sub-commissioners related to election interference in court and the UEC sub-commissioners were charged with crimes related to election interference across the country." A UEC official who was charged told the Special Rapporteur that a judge presiding over his case said that if he contested the charges, he would be sentenced to six months in jail and a 60,000 kyat fine. If he accepted the charges, he would receive a fine of 10,000 kyat and receive no jail time. The official decided to pay the fine.

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95. The SAC's claim that "The legitimacy of the State Administration Council (SAC) is unquestionable as it was formed in accordance with the State Constitution" is patently false. Procedurally, the military failed to follow the constitution by unconstitutionally removing President Win Myint and unconstitutionally appointing Myint Swe as Acting President. Substantively, it had no grounds to claim that election officials and the Parliament were using "wrongful means" that "may cause the loss of sovereignty" by refusing to further investigate the military's unfounded claims of voter fraud.

B. The SAC has no democratic legitimacy and is not the legitimate representative of the people

96. The SAC can make no claim to democratic legitimacy, i.e., representing the will of the people as expressed through elections. The junta's leader, Min Aung Hlaing, has never run for public office, and its proxy party, the USDP won only 33 of the 476 contested seats in the Union Parliament. The SAC has zero remit from the people of Myanmar, as expressed through elections, to govern the country.

97. The SAC can also make no claims to being the sole legitimate representative of the people of Myanmar, as claimed by opposition groups in Libya and Syria and recognized by many governments. It meets none of the criteria scholars have pointed to for recognition of such a claim: it does not seek to replace a government that lost legitimacy, it is neither broad nor representative, and it does not enjoy a reasonable prospect of permanence.

98. The incumbent NLD-led government that it overthrew did not lose legitimacy in the eyes of the people. Indeed, the NLD government had a stronger mandate to lead following the 2020 election than it did after the 2015 election. The NLD gained 9 seats from 2015 to 2020 for a total of 396 of the 498 contested seats in Parliament.

99. The SAC is not broad, inclusive, nor representative of the people of Myanmar. Its primary goal is to perpetuate the military's place as the single most dominant institution in the country and to entrench an ethnic Burman supremacy entwined with conservative Buddhism. The widespread protests and armed rebellion against the SAC throughout 2021, with at least 223 of the 330 townships participating in demonstrations demanding the SAC step down, demonstrate its limited popular support. At least 7,700 protests have occurred since the coup.[78] While mass protests have declined due to well-founded fears of facing lethal force, protest leaders have shifted to smaller "flash" demonstrations, which continue to this day. The SAC's violent attacks on civilians have driven opposition militancy to unprecedent levels, as apparent in the attacks against SAC forces throughout Myanmar by People's Defense Forces and EROs. In areas that have not experienced fighting since World War II, citizens have formed brigades and taken up arms, sometimes with direct engagement and sometimes using guerrilla tactics against junta forces.

100. As discussed in detail in section V below, given the large scale of resistance against the SAC in all regions of Myanmar, combined with its abject failure to administer Myanmar, the SAC does not enjoy a reasonable prospect of permanence.

[78] 7,800 protests according to ACLED Data, https://acleddata.com/data-export-tool/ (accessed 6 December 2022), and 7,759 according to data collected and analyzed by the Special Rapporteur's independent analysts.

V. The SAC Lacks Effective Control

101. The SAC meets none of the three criteria required to demonstrate effective control over Myanmar: (1) it does not control all or nearly all of the greater part of the Myanmar's territory, (2) it does not command the habitual obedience of the mass of the population, and (3) it does not have a reasonable prospect of permanence. Additionally, it does not carry out Myanmar's obligations under international law as expressed in treaties and multilateral obligations.

A. Territorial control

102. Attempting to categorically assess control over territory is extremely fraught in Myanmar given internet blackouts, fluid armed conflict, and changing dynamics in alliances and negotiations. An analysis of the current scope of the conflict, however, combined with an assessment of major EROs areas of influence and authority shows that the SAC does not have effective control over all or even most of Myanmar.

103. In a submission to the United Nations Credentials Committee in October 2021, the SAC advanced four arguments to demonstrate its territorial control of Myanmar.[79] First, it argued that PDF forces were little more than "dispersed and undisciplined groups of terrorists who are unable to deal directly with Myanmar's security forces." The SAC maintained that the fight against PDFs was an "issue of law enforcement, not territorial control." Second, according to the SAC, administrative and governance structures "in cities and towns in every township across Myanmar" remained operational. The SAC cited, in particular, the continued functioning of administrative offices, public health and education facilities, police outposts and stations, and military outposts and garrisons in townships throughout Myanmar. Highlighting Sagaing Region, the SAC stated that "all its 37 townships are under government control with government machinery and processes operating, down to vaccination campaigns . . . ." Third, the SAC stated that its Ministry of Home Affairs opens criminal proceedings with the police and "investigates every attack across the country by the PDF, whether the attack is against security forces, civilians, public facilities, or infrastructure, even in the most remote locations." Fourth, the SAC maintained that territory belonging to EROs that have signed the National Ceasefire Agreement should count as government-controlled, i.e., SAC territory. The SAC explained that it "will not take over the headquarters of an EAO," and would not attack these groups "unless the country's territorial integrity and sovereignty are under threat."

104. Presumably the SAC highlighted these four points to show that the SAC's forces maintain a monopoly over the lawful use of force throughout Myanmar and continue to have administrative control over the country, the two key components to territorial control. The reality on the ground, however, demonstrates that the SAC lacks outright control over much of the country and that the PDFs, many acting under NUG control, and EROs are effectively challenging the Myanmar military. The Myanmar military is increasingly confined to bases and police stations, relying on air strikes to hold terrain. The Special Rapporteur has received information that SAC officials are refusing to travel into certain regions by vehicle due to security concerns, instead demanding to be flown in by helicopter.

105. The precise amount of SAC control of Myanmar in comparison to ERO/PDF/NUG control is difficult to determine.[80] The Special Rapporteur is, however, confident, that the

[79] [State Administrative Council] Ministry of Foreign Affairs, Submission to the United Nations Credentials Committee and Member States of the United Nations, Briefing Paper: Representation of the Republic of the Union of Myanmar at the United Nations, October 2021, https://www.mofa.gov.mm/briefing-paper-representation-of-the-republic-of-the-union-of-myanmar-at-the-united-nations/, pp. 22-24.

[80] The Special Rapporteur takes note of the Special Advisory Council for Myanmar's "Briefing Paper: Effective Control in Myanmar" of 5 September 2022, at p. 13 (assessing that the junta maintained stable control over 17 percent of land area in Myanmar (22 percent of townships), while junta proxies maintained control over another eight percent of land (six percent of townships)). The Special Rapporteur cannot make such definitive statements of control based on his research, but notes that Map 3 of his infographic (Armed Resistance Conflict Areas) shows that from 1 July 2022 to 31 December 2022, at least one violent incident involving resistance actors against SAC or SAC-allied forces has taken place in 207 townships (63 percent of townships). Combining townships where EROs are currently present (Map 2), and these townships, a total of 257 townships (78 percent) are currently at least contested. This does not necessarily mean that the SAC only has control in 22 percent of Myanmar, but rather gives an indication of the extent to which territorially, the SAC is being challenged.

SAC outright controls substantially less than half of Myanmar. Prior to the coup, the central government could lay claim to controlling approximately 60 percent of Myanmar's territory.[81] Today, the SAC has substantially less control than previous Yangon/Naypyitaw-based governments. Myanmar's territory is currently controlled by a mix of (1) EROs fighting against the SAC and aligned with the pro-democracy movement, (2) SAC forces, (3) EROs and local militias aligned with or that have ceasefires with the SAC, (4) by PDFs, or (5) contested and the site of substantial fighting. Analysis of conflict data showing ERO locations strongly indicates that since the coup, many EROs have expanded their area of operations.[82] By its own internal reporting that the Special Rapporteur has authenticated, the SAC now has limited access in Chin State, receding ability to exercise much control in Kayin and Kayah States, and severe limitations in Rakhine State given terrain and the Arakan Army presence.[83] The SAC also reports that weapons produced in Kachin State by the KIO freely flow to central and upper Burma.[84] Meanwhile, as described further below, PDFs have substantially challenged SAC control in Sagaing, Magway, and portions of Mandalay Regions, and the SAC expects the PDFs' capabilities and operational strength to only grow in 2023.[85]

106. From the 1 February 2021 coup through 31 December 2022, there have been approximately 10,000 attacks and armed clashes between SAC forces, anti-SAC forces, EROs, and other unattributed groups, according to independent data analysts the Special Rapporteur worked with for this report and the Armed Conflict Location & Event Data Project (ACLED) as analyzed by the International Institute of Strategic Studies (IISS).[86] Additionally, there have been 4,176 reported incidents involving the use of remote explosives and improved explosive devices (IEDs), and at least 670 airstrikes against civilians, resistance groups, and EROs.[87] Conflict stretches across almost all parts of Myanmar, varying in intensity and scale.

107. The **Dry Zone** or Anyar Region, refers to the central plains of Upper Myanmar, consisting of parts of the Sagaing, Magway, and Mandalay Regions. This area is home to a majority Buddhist-Bamar population that has been spared from violent fighting and armed insurgencies for the past few decades. However, seen by many as the historic heartland of the country, the Dry Zone has emerged as a critical battleground and represents the center of the resistance movement.[88] Since the coup, there have been at least 2,200 armed clashes in this

[81] *See* Map 1 of the infographic, detailing townships in which EAOs were active pre-coup. The map shows EAOs present in 122 townships, or 37 percent of the country, prior to the coup. The map was prepared by independent analysts working with the Special Rapporteur, using primary sources, including maps and statements issued by ethnic organizations, as well as secondary sources, including academic and think-tank reports, combined with analysis of conflict reporting. Since 2014, they have track publicly reported conflict incidents in social media, news reporting, and other online sources in Burmese, English, Thai, and Chinese (Mandarin) as well as major ethnic languages spoken in Myanmar, including Jingphaw, Shan, S'gaw Karen, Po Karen, Karenni, Kayan, Arakan, Chin, Ahka, Lahu, Lisu, Wa, Ta'ang, and Hindi. Researchers often verify reported conflict incidents with ground sources. *See also,* The Asia Foundation, "The Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," 16 October 2017, https://asiafoundation.org/wp-content/uploads/2017/10/ContestedAreasMyanmarReport.pdf (a detailed study on contested areas of Myanmar, finding that "approximately 118 of Myanmar's 330 townships [or 36 percent] are affected to some extent by conflict and associated tensions between the government and ethnic armed organizations").

[82] *See* Map 2 of the infographic, prepared using similar methodology as Map 1. The map shows EROs present and operating in 23 more townships post-coup.

[83] SAC meeting minutes of Central Committee for Anti-terrorism led by Home Affairs Minister Lieutenant-General Soe Htut, 10 January 2022, on file with the Special Rapporteur in original Burmese and English translation.

[84] *Ibid.*

[85] *Ibid.*

[86] The Special Rapporteur worked with an independent organization for this report that analyses conflict data. Data received by the Special Rapporteur listed 9,999 armed clashes from 1 February 2021 to 31 December 2022. The Special Rapporteur also considered data from ACLED, as presented as analyzed by The International Institute of Strategic Studies, available at The Myanmar Conflict Map, https://myanmar.iiss.org/, accessed 2 January 2023. According to the Myanmar Conflict Map "Methodology" section, the data dashboard utilizes reports of violent incidents as collected in the Armed Conflict Location & Event Data Project, which collects data on a weekly basis from international and local media sources that is then subject to a review process. The IISS research team then further reviewed ACLED data and adapted it to the Myanmar context. At the time of writing, ACLED data from IISS was available through 31 October 2022 and included 9,833 instances of armed clashes.

[87] *Ibid.*

[88] Ye Myo Hein, "One Year On: The Momentum of Myanmar's Armed Rebellion," Wilson Center, May 2022, https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/ASIA_220519_1YearOn-

region between PDFs and SAC forces/allied Pyu Saw Htee groups.[89] In addition, there have been approximately 1,500 incidents involving the use of remote explosives/IEDs, a tactic overwhelmingly deployed by PDFs in Myanmar.[90]

108. The SAC has failed to solidify and extend its authority in the Dry Zone since the coup, despite employing varied tactics like arson, airstrikes, infrastructure destruction, internet and telephone blackouts, and scorched-earth campaigns to combat anti-regime forces.[91] PDFs have continued to exert tremendous pressure against the junta.

109. The SAC itself seems to acknowledge, at least internally, that PDFs have momentum in Anyar. According to a leaked document summarizing a high-level meeting of the SAC's "Anti-terrorism Central Committee" on 10 January 2022 that the Special Rapporteur has authenticated and had translated, the Security and Border Affairs Minister of Sagaing Region stated that, "In 2023, terrorist groups [i.e., PDFs] are likely to grow and transform into a big organisation and they can mobilize community and recruit new members by disseminating new ideas on social media."[92] The Security and Border Affairs Minister in Mandalay stated that 50 PDFs were active adjacent to Sagaing, Magway, and Shan State, and that they were seeing more PDF drone attacks. The Security and Border Affairs Minister in Magway predicted that, "More urban attacks with excessive human resources will happen in 2023," and "[t]he state security team is weak in information collection and the terrorist groups will come back to control the areas after military operations are finished."[93]

110. **In Northern/Northeast Myanmar**, encompassing Kachin State and northern sections of Shan State and Mandalay Region, where the Kachin Independence Army and various Shan State EROs operate and had significantly contested the control of the central government prior to the coup, the military coup has led to new conflict between the SAC and EROs as well as exacerbated existing tensions among EROs vying for control over the same territories.[94] Since the coup, there have been at least 2,300 clashes involving SAC forces.[95] Major EROs in this area are either opposed to the SAC or neutral. The Kachin Independence Organization has fought with SAC forces in Kachin and northern Shan State. It also has command over nearly 5,000 local PDF fighters in Kachin State and has worked with the NUG to establish administrative and governance structures.[96] At the SAC security meeting of 10 January 2022, the SAC Security and Borer Affairs Minister of Kachin State highlighted that "PDFs are receiving trainings at KIA headquarters" and that "Weapons from the weapon factory in Laiza [Kachin Independence Organization headquarters] can be freely purchased and transported to central and upper Myanmar."[97] The Ta'ang National Liberation Army (TNLA) has engaged in direct clashes with SAC forces in northern Shan State but does not appear to be coordinating operations with PDFs or the NUG. The TNLA has stated, "One of our ultimate goals is also to overthrow the military regime. But we are doing it our own way."[98] The United Wa State Army, on the other hand, has not attacked SAC forces or aligned

BRIEF_V1r2.pdf; *see also,* Michael Aung-Thwin and Maitrii Aung-Thwin, "Return to the 'Heartland," *A History of Myanmar since Ancient Times*, Reaktion Books, 2012.

[89] 2,195 armed clashes involving SAC and Pyu Saw Htee forces, according to data analyzed by the Special Rapporteur's sources, and 2,283 SAC-involved clashes according to ACLED/IISS data.

[90] 1,534 incidents involving the use of remote explosives/IED, according to data analyzed by the Special Rapporteur's sources, and 1,347 through October 2022 according to ACLED/IISS data.

[91] Ye Myo Hein, "One Year On."

[92] SAC meeting minutes of Central Committee for Anti-terrorism led by Home Affairs Minister Lieutenant-General Soe Htut, 10 January 2022, on file with the Special Rapporteur in original Burmese and English translation.

[93] *Ibid.*

[94] Shona Loong, "Northeast Myanmar: three axes of conflict," The International Institute of Strategic Studies, 16 August 2022, https://myanmar.iiss.org/analysis/northeast.

[95] At least 2,071 armed clashes in total in Northern/Northeastern Myanmar, and 1,844 of these clashes involved SAC forces according to ACLED/IISS data, and 2,393 clashes involving SAC forces, according to data analyzed by the Special Rapporteur's sources.

[96] Ye Myo Hein, "One Year On."

[97] SAC meeting minutes, 10 January 2022.

[98] *See e.g., "*Myanmar Junta Invasion Force Under Siege: Ta'ang Army," *The Irrawaddy*, 8 December 2022, https://www.irrawaddy.com/news/war-against-the-junta/myanmar-junta-invasion-force-under-siege-taang-army.html; "Rising dragon: TNLA declares 'victory' in northern Shan," *Frontier Myanmar*, 4 February 2022, https://www.frontiermyanmar.net/en/rising-dragon-tnla-declares-victory-in-northern-shan/.

with the pro-democracy movement, using post-coup chaos to build up its strength and extend its autonomous territorial control.[99]

111. In **Southeast Myanmar**, which is comprised of southern Shan, Kayah, Kayin, Mon, and Tanintharyi States, EROs are aligned with the goals of the wider public resistance movement and are closely coordinating their attacks against the SAC. Since the coup, there have been approximately 3,400 clashes.[100] This region became a key target of the regime following the coup with data also pointing to a high intensity of air/drone strikes, crackdowns, and other destructive tactics like arson being used by SAC forces.[101]

112. Southeast Myanmar has a long history of protests against military rule and allied resistance between pro-democracy activists and EROs, dating back to the 1988 pro-democracy uprising that resulted in the mass exodus of protesters to areas controlled by the Karen National Union and the Karenni National Progressive Party.[102] It was thus unsurprising that these ethnic groups were among the first to denounce the military coup and support non-violent protests and later ally themselves with the NUG.[103] Both the KNU and KNPP have additionally trained and supplied arms to PDFs, and the KNU has also incorporated PDFs into its command structure.[104] This alliance has helped the combined anti-junta forces capture numerous military bases, and both the KNU and KNPP have successfully expanded their de-facto governing and administrative structures in this region. The strength of the aligned anti-junta actors in this area has led the SAC to employ violent tactics, like scorched earth campaigns, further strengthening public support for the opposition.[105]

113. According to the leaked security memo, the SAC Security and Border Affairs Minister in Kayah State assessed, "In 2023, the terrorist groups will increase attacks and it is difficult to control them as a result of geographical constraints of Kayah State where there are a lot of mountains and transportation is very difficult. Since transportation in Kayah is much relying on air transport, there are a lot of limitation to control them."[106] In Kayin State, the SAC Security and Border Affairs provided a similar assessment, stating: "there were a lot of PDF attacks on government buildings, schools, banks and security posts. We have the following difficulties to control the terrorists: Frequent ambushes by terrorist groups in remote areas and hard to reach areas. Due to geographical constraints, they can retreat easily after attacks. Language barriers of security forces. Despite ceasefire agreement with EAOs, it is hard for security forces to check and control the movement of EAOs." The SAC Minister of Security and Border Affairs assessed that in Mon State there would be "[m]ore attacks on the 2023 elections in 2023."

114. In the areas of **Lower Myanmar** surrounding urban hub Yangon, the capital Naypyitaw, as well as Bago and Ayeyarwady Regions, there have been at least 522 armed clashes since the coup.[107] In the aftermath of the coup, the junta acted quickly to consolidate control in urban areas through curfews, checkpoints, internet blackouts, and a strong surveillance system. Urban resistance groups have undermined the junta's security infrastructure and successfully infiltrated these major urban hubs. The SAC has countered with raids and arrests, but has struggled to contain the attacks.[108] In fact, according to ACLED

[99] Ye Myo Hein, "One Year On."
[100] ACLED (as reported by IISS) reported 2,332 armed clashes in total in this area, and 2,195 of these incidents involved the SAC. Data collected by the Special Rapporteur's independent analysts showed considerably more: 3,403 total clashes. The higher number may be a result of better collection in ethnic languages spoken in Southeastern Myanmar by the Special Rapporteur's team.
[101] *Ibid.*
[102] Shona Loong, "Southeast Myanmar: a shared struggle for federal democracy," The International Institute of Strategic Studies, 23 September 2022, https://myanmar.iiss.org/analysis/southeast.
[103] "Rebel groups see opportunity in post-coup Myanmar," *Agence France-Presse*, 16 April 2021, https://www.france24.com/en/live-news/20210416-rebel-groups-see-opportunity-in-post-coup-myanmar.
[104] Ye Myo Hein, "One Year On."
[105] *Ibid.*
[106] SAC meeting minutes, 10 January 2022.
[107] ACLED (as reported by IISS) reported 937 armed clashes since the coup in Lower Myanmar, of which 862 involved SAC forces. Data collected by the Special Rapporteur's independent analysts showed less, at 522 armed clashes.
[108] Ye Myo Hein, "One Year On"; *see also,* United States Institute for Peace, "Myanmar Study Group: Anatomy of the Military Coup and Recommendations for the US Response," February 2022, https://www.usip.org/sites/default/files/2022-04/myanmar-study-group-final-report.pdf.

data, this area has seen at least 1,064 violent incidents involving the use of remote explosives or IEDs, which are overwhelmingly used by PDFs to target SAC assets – one of the highest records across Myanmar despite the SAC's strategic advantage over the area.[109] Also, continued conflict in lower Myanmar and offensives launched by the resistance have helped diminish the junta's capacity to deploy troops to more rural parts of the country and outer areas controlled by EROs.[110]

115. According to the leaked security memo, the SAC Security and Border Affairs Minister in Bago cited PDF and Karen National Liberation Army collaboration, lamenting that, "The security forces and Tatmadaw are trying to control them."[111] In Ayeyarwady, the SAC expected more attacks surrounding the 2023 elections, and in Yangon the SAC noted that "Information collection is still weak."

116. **Rakhine State** saw very little conflict between SAC forces and anti-SAC forces up until the end of July 2022, when the fragile ceasefire between the Myanmar military and the Arakan Army (AA) fell apart. Since the coup, there have been about 220 armed clashes in this state in total, with the majority representing conflict between SAC forces and the AA, which is associated with the Rakhine ethnic group.[112] Most of these clashes have occurred after the end of the ceasefire. While the junta and the AA negotiated a new ceasefire at the end of November 2022, pausing intense conflict, AA spokesperson Khine Thu Kha indicated that the AA would not withdraw from its current position nor make changes to its political objectives of autonomy.[113] In addition, the AA has reportedly provided training or arms for at least 11 resistance groups, and sources in Kachin State have suggested that AA troops were supporting its allies—including the TNLA and Myanmar National Democratic Alliance Army— to fight the SAC's forces.[114] Also, because the junta has been occupied with fighting the resistance in other parts of the country, the AA has taken advantage of the opportunity to increase its authority and de-facto governance in the state.[115] And though fighting between the junta and AA has slowed for the time being, any break from the ceasefire would threaten the SAC's position and force it to direct limited resources to Rakhine State.

117. The SAC has very limited control in Rakhine State. According to the leaked security memo, the SAC Security and Border Affairs Minister in Rakhine State reported, "A lot of rivers and hard to reach areas in Rakhine so terrorists from Chin, Bago and Magway Region can easily come and operate in Rakhine. As AA is active, there is limitation for security forces to manage terrorist attacks in some areas."[116]

118. Finally, **Northwest Myanmar**, consisting of Chin State and parts of western Sagaing Region and northern Magway Region, has seen both well-organized, effective resistance from PDFs and the Chin National Front (CNF) and some of the most horrific examples of military crackdowns and violence against civilians. Since the coup, there have been at least 1,600 clashes involving the SAC.[117] As other regions, Northwest Myanmar favored the NLD in the 2015 and 2020 elections and widespread anti-junta protests took place early on in this region. In Kale, a township in Sagaing that borders Chin State and a strategic site given the airport's access to the rest of the region, PDFs formed shortly after the coup and have repeatedly targeted SAC forces. Kale continues to experience high intensity conflict,

[109] ACLED (as reported by IISS) reported 1,064 violent incidents involving the use of remote explosives or IEDs. Data collected by the Special Rapporteur's independent analysts showed 1,696.
[110] Ye Myo Hein, "One Year On."
[111] SAC meeting minutes, 10 January 2022.
[112] ACLED (as reported by IISS) reported 223 armed clashes since the coup in Rakhine State. Data collected by the Special Rapporteur's independent analysts showed 222 armed clashes.
[113] "Myanmar military, Arakan Army halt hostilities on humanitarian grounds," *Radio Free Asia*, 28 November 2022, https://www.rfa.org/english/news/myanmar/ceasefire-11282022182711.html.
[114] Kyaw Hsan Hlaing, "In Myanmar's Rakhine State, a Fraying Truce May Hold Key to Anti-Regime Fight," United States Institute of Peace, 21 July 2022, https://www.usip.org/publications/2022/07/myanmars-rakhine-state-fraying-truce-may-hold-key-anti-regime-fight.
[115] Shona Loong, "Rakhine: a precarious ceasefire hangs in the balance," The International Institute of Strategic Studies, 26 July 2022, https://myanmar.iiss.org/analysis/rakhine.
[116] SAC meeting minutes, 10 January 2022.
[117] ACLED (as reported by IISS) reported 1,857 armed clashes in total in this region, and 1,806 of these attacks have involved SAC forces. Data collected by the Special Rapporteur's independent analysts showed 1,673 armed clashes involving the SAC.

along with the Yaw Valley which is another priority area for the SAC.[118] In these areas of Northwestern Myanmar, PDFs have successfully aligned with the NUG and CNF to not only coordinate effective attacks against the SAC but also establish autonomous governance structures.[119] In response to the resistance's effective tactics and threat to their authority, the SAC has resorted to killing civilians and burning villages, leading to massive internal displacement and movement towards the Indian border.[120]

119. In Chin State, the SAC had a bleak assessment of its control: "We cannot go to villages to gather terrorist information. Telecommunication is not good. Nobody wants to come and being as witness in criminal cases."[121]

B. The junta's permanence is in doubt

120. In March 2022, Min Aung Hlaing promised to "annihilate" the resistance. SAC offensives in 2022 failed, however, to defeat anti-junta resistance forces. Instead, the SAC's counterinsurgency campaign, which has included the wholesale razing of villages, galvanized resistance.[122] The military is using all of its considerable military capacity to fight the resistance, and it is not winning. Far from being "an issue of law enforcement," as the SAC argued in October 2021, the SAC's response to PDFs and EROs employs battle-hardened troops on the ground, murderous local militias, and air support in the form of helicopter gunships and jet fighters.

121. Local defense forces (LDFs) began organically as junta commanded forces unleashed widespread, systematic attacks on protesters throughout Myanmar. Calls intensified throughout Myanmar for an armed resistance that would topple the SAC and protect people under siege. On 14 March 2021, the National Unity Government declared that the people of Myanmar have the right to self-defense in the face of junta attacks. On 5 May, the NUG announced the official formation of the People's Defence Force. And on 7 September 2021, the NUG declared a "people's defensive war against the military junta."

122. By the time the NUG announced the formation of PDFs, multiple local defense forces had already been established, including the Chinland Defense Force, Kalay Civil Army, and Karenni National Defense Force. Young activists who witnessed their friends being murdered in the streets while peacefully protesting fled to ERO territory seeking training, eager to join or form PDFs. As of 30 June 2021, approximately 40 PDF/LDFs were actively engaged in fighting against junta forces. As of November 2021, analysts had recorded between 300-400 PDFs/LDFs.[123] Today, analysts estimate there are over 500 PDFs/LDFs. Pro-democracy forces, and PDFs specifically, have defied predictions that they would lose steam and be crushed by one of the largest militaries in the region. Instead, they have become stronger and more organized over time. Today, PDFs are conducting a variety of operations, including ambushes, skirmishes, bombings, the sabotage of military-related facilities and businesses, and targeted assassinations.[124] Initially armed with primitive weapons, PDFs have been attacking SAC forces with rocket-propelled grenades, grenade launchers, and light mortars.[125]

123. As they engage in armed conflict in nearly every region of the country, the SAC's military forces have lost or are losing control of areas that were once under stable central government control.

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[118] Ye Myo Hein, One Year On; *see also,* Shona Loong, "Northwest Myanmar: a quiet corner transformed by resistance," The Institute of Strategic Studies, 15 November 2022, https://myanmar.iiss.org/analysis/northwest.
[119] Shona Loong, "Northwest Myanmar"; *see also,* "Mindat PAF reopens primary schools in the shadow of conflict," *Democratic Voice of Burma*, 27 October 2021, https://burmese.dvb.no/archives/496592.
[120] Meg Kelly, Shibani Mahtani, and Joyce Sohyun Lee, "Burn it all down: How Myanmar's military razed villages to crush a growing resistance," *Washington Post*, 23 December 2021, https://www.washingtonpost.com/world/interactive/2021/myanmar-military-burn-villages-tatmadaw/.
[121] SAC meeting minutes, 10 January 2022.
[122] Anthony Davis, "Is Myanmar's military starting to lose the war?," *Asia Times*, 30 May 2022, https://asiatimes.com/2022/05/is-myanmars-military-starting-to-lose-the-war/.
[123] *See e.g.,* Ye Myo Hein, "One Year On."
[124] Ye Myo Hein and Lucas Myers, "Seizing the State: The Emergence of a Distinct Security Actor in Myanmar," Wilson Center, November 2021, p. 4.
[125] *See e.g.,* Anthony Davis, "Is Myanmar's military starting to lose the war?"

124. The SAC has also proven itself incapable of effectively administering Myanmar in the face of widespread conflict and resistance, further demonstrating its lack of control and long-term viability. For example, half of Myanmar's school-aged children—more than 4 million in total—have not accessed formal education for two full academic years.[126] The military's campaign of violence has displaced 1.1 million people since the coup, depriving large populations of food and shelter and cutting people off from their livelihoods. The collapse of government institutions and public services has denied millions access to medical care, public health initiatives, and poverty alleviation programs.

125. The SAC has severely damaged an already faltering economy. The household income of families in Myanmar has fallen by roughly half since the coup, according to a recent survey.[127] As of December 2022, an estimated 15.2 million people now face moderate or severe food insecurity, an increase of 2 million from December 2021.[128] According to the World Bank, policies by the SAC, including "burdensome" trade license requirements, abandoning the managed float exchange rate, and the imposition of foreign currency surrender rules have resulted in shortages of key imported goods.[129] These "policy shifts are likely to have longer-term effects: inhibiting potential growth, worsening macroeconomic instability, and impairing the efficient allocation of resources."[130] The World Bank projects that, among all large countries in the East Asia and Pacific region, Myanmar alone will likely fail to reach pre-pandemic GDP levels this year.[131]

126. While the SAC may be a long way from defeat, its failure to administer the country, combined with its overstretched military and growing, persistent resistance forces with momentum, puts its future in considerable doubt.

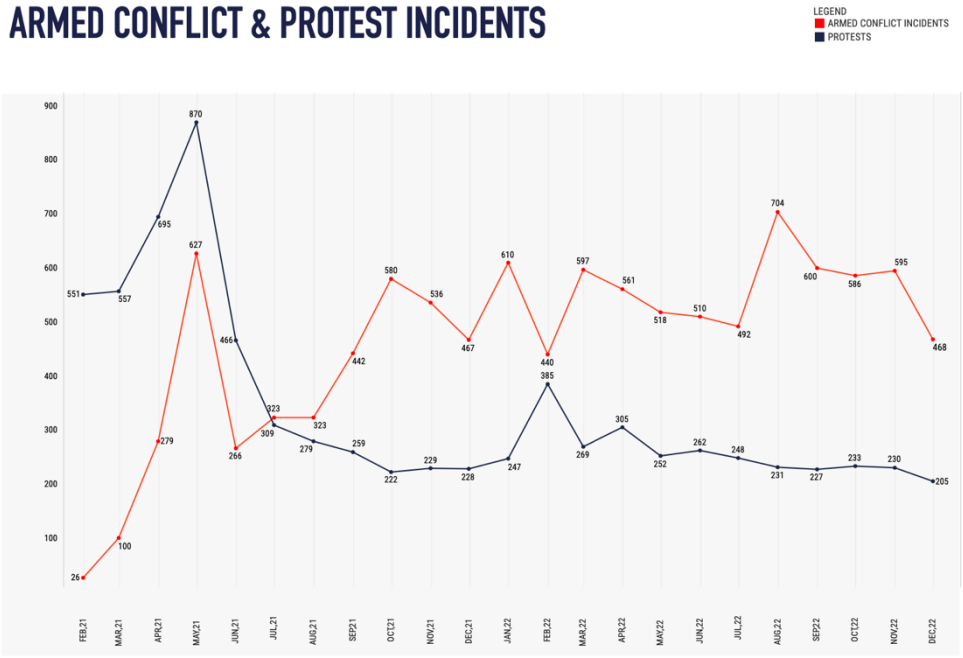
C. The people of Myanmar deny the SAC habitual obedience

127. Since the coup, Myanmar's people have rejected the SAC's authority and proclamations, and have thus not given the SAC habitual obedience. By any discernible measure, as the preceding section demonstrates, the people of Myanmar are firmly opposed to the SAC. They have manifested their refusal to accept SAC rule not only through armed conflict, but through protests, labor strikes, refusal to pay utilities and taxes, and boycotts of military products.

128. Anti-coup protesters have staged at least 7,700 protests throughout the country since the coup.[132] Protests have occurred in at least 223 of the country's 330 townships—representing 67 percent of the country.[133] In the first two months following the coup, protests were massive and countrywide. Those demonstrating against the attempted takeover included Buddhist monks and Muslim clergy, civil servants from various sectors, doctors and nurses, workers and trade unions, bankers and educators, many of the country's ethnic groups, students and youth.

[126] UN OCHA, Myanmar Humanitarian Response Plan, https://humanitarianaction.info/article/myanmar-0.
[127] Save the Children, "Families in Myanmar Lose More than Half Their Income in Year of Conflict, Says Save the Children," 28 July 2022, https://www.savethechildren.net/news/families-myanmar-lose-more-half-their-income-year-conflict-says-save-children#.
[128] OCHA, Humanitarian Update No. 25.
[129] World Bank, "Myanmar economy remains fragile, with reform reversals weakening the outlook," 21 July 2022, https://www.worldbank.org/en/news/press-release/2022/07/21/myanmar-economy-remains-fragile-with-reform-reversals-further-weakening-the-outlook.
[130] *Ibid.*
[131] *Ibid.*
[132] 7,800 protests according to ACLED Data, https://acleddata.com/data-export-tool/ (accessed 6 December 2022), and 7,759 according to data collected and analyzed by the Special Rapporteur's independent analysts.
[133] According to ACLED Data, protests have occurred in at least 263 townships, representing 80 percent of the country, and according to data collected by the Special Rapporteur's independent analysts, protests have occurred in at least 223 of the country's townships.

129. The graph directly below shows that while incidents of visible protests have declined, opposition has been increasingly demonstrated through armed clashes against the military.[134] The graph also shows that protests remain high.



130. While protests were at their peak prior to the SAC's violent crackdown, anti-junta protests continue. Between June and December 2022, anti-coup protesters staged at least 1,400 protests in 12 of Myanmar's 14 states and regions. [135]

131. Strikes by Myanmar's civil servants also illustrate how the people of Myanmar have rejected the SAC. The Special Rapporteur received reports that public sector workers from at least 245 townships representing 21 ministries went on strike following the coup. The strike spread from healthcare workers to public-sector employees across numerous ministries, including Railway, Customs, Commerce, Electricity and Energy, Transport and Communications, and Agriculture, Livestock and Irrigation. Teachers, central bank employees, and other government officials joined. In the private sector, trade unions called on their members to strike and bank tellers, cooks, grocery workers, and others joined the CDM.

132. The precise number of striking civil servants is difficult to ascertain, but the National Unity Government estimated approximately 200,000 state employees remained in the Civil Disobedience Movement as of April 2022.[136]

133. Another way the people of Myanmar are rejecting the SAC is through boycotting goods and services owned by the SAC. By some estimates the boycotting of electricity payments could cost the SAC $1 billion USD annually.[137] The people's mass boycott of

[134] This chart draws from work done for the Special Rapporteur by independent analysts that collect and analyze conflict and protest data. See Footnote 81 for source description.
[135] Analysts that the Special Rapporteur worked with for this report that collect and analyze conflict and protest data tracked 1,374 protests between June and December 2022 in 12 out of Myanmar's 14 regions. ACLED data accessed 6 December 2022 showed 832 protests in 10 of Myanmar's 14 states and regions.
[136] "Myanmar Civil Disobedience Movement 'losing steam' amid junta crackdowns," *Radio Free Asia*, 26 April 2022, https://www.rfa.org/english/news/myanmar/cdm-04262022211343.html.
[137] Gwen Robinson, "Myanmar's lights go out as bill boycott fuels cash crunch," *Nikkei Asia*, 25 July 2021, https://asia.nikkei.com/Spotlight/Myanmar-Crisis/Myanmar-s-lights-go-out-as-bill-boycott-fuels-cash-crunch ("A recent government document seen by Nikkei and verified by former MOEE officials, shows that monthly collection rates in Yangon and Mandalay, the country's two largest cities, have fallen to just 2% and 3% respectively of pre-coup levels. If the bill boycott continues, the ministry's combined losses in the electricity sector could reach 2-2.5 trillion kyats ($1.2-$1.5 billion) this year."); *see also* "Myanmar's Electricity Sector After the Coup," Independent Economists for Myanmar (IEM), 14 July 2021.

paying electric bills became such a threat to the SAC's finances that it deployed soldiers along with electricity workers to collect payments. Soldiers directly threatened people's lives if they refused to make their payments.[138] Boycotts have extended to products produced by military conglomerates, including military owned beer, cigarettes, and mobile phone service from the military owned MyTel telecommunications company. A merchant selling goods in a small town in Myanmar told the Special Rapporteur:

> "Since the coup took place, we learned that MyTel is associated with the military. The military is benefiting so much from MyTel, so since the coup, I don't sell any MyTel top-up or SIM cards. Another thing, when we learned that popular cigarettes such as Red Ruby were produced by the military, we no longer sell those too. As long as we use their products, they will be benefiting from taxes, so it is the same as providing cashflow to them. We hope that this will help ensure that the dictators will disappear for good. As long as they get cash supplied via these products, they have access to murderous weapons and ammunition. That's why, we can say we the people boycotting products relating to them is one of the most important steps."[139]

D. The junta does not comply with Myanmar's international obligations

134. A component of international recognition is both the ability and will of a putative government to comply with its country's international legal obligations. These obligations include bilateral and multilateral treaties and agreements. The SAC has shown that it lacks the will to comply with Myanmar's obligations under international treaties to which the country is bound as well as multilateral agreements.

135. The SAC has violated the country's commitments under the Geneva Conventions, including Common Article 3 regarding prohibited conduct in situations of non-international armed conflict.[140] Since the coup, SAC forces have committed probable war crimes including willful killing, destruction of property, torture and inhumane treatment, pillaging, rape, and displacement of civilians, among other crimes.[141] These acts are in direct violation of the Geneva Conventions that Myanmar ratified in 1992, as well as customary international humanitarian law.

136. The SAC has failed to uphold Myanmar's obligations related to two International Labour Organization (ILO) conventions that Myanmar has ratified: the Freedom of Association and Protection of the Right to Organize Convention of 1948 (Convention 87) and the Forced Labour Convention of 1930 (Convention No. 29). The ILO has established a Commission of Inquiry to investigate "the non-observance by Myanmar" of these conventions due to reports of forced labor by the military and violence, arbitrary arrest, and detention of labor and union activists.[142]

137. The SAC has failed to comply with Myanmar's obligations under numerous United Nations treaties the country has bound itself to, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the

[138] Zaw Ye Thwe, "Guerrillas attack Naypyitaw electricity office with grenade after staff help soldiers coerce people into paying their bills," *Myanmar Now*, 8 November 2021, https://myanmar-now.org/en/news/guerrillas-attack-naypyitaw-electricity-office-with-grenade-after-staff-help-soldiers-coerce.
[139] Special Rapporteur interview, 18 January 2022.
[140] The existence of non-international armed conflicts in Myanmar is widely accepted, including by the IIMM. Report of the Independent International Investigative Mechanism for Myanmar, U.N. Doc. A/HRC/51/4, 12 July 2022 ("The information collected by the Mechanism this past year indicates that several armed conflicts are ongoing and intensifying on the territory of Myanmar. This triggers the application of international humanitarian law and obligates all parties to the conflicts to ensure that their forces comply with the applicable laws of war.").
[141] For assessments that the Myanmar military has committed probable war crimes, *see e.g.,* Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Doc. A/HRC/49/76, 13 June 2022, paras. 9-34; A/HRC/51/4, para. 10; Fortify Rights, "Ongoing War Crimes in Karenni (Kayah) State, Myanmar, May 2021 to January 2022," 15 February 2022, https://www.fortifyrights.org/mya-inv-rep-2022-02-15/; Independent International Investigative Mechanism for Myanmar, "School attack in Let Yet Kone village may be considered a war crime with commanders criminally liable – Independent Investigative Mechanism for Myanmar," 27 September 2022, https://iimm.un.org/school-attack-in-let-yet-kone-village-may-be-considered-a-war-crime-with-commanders-criminally-liable-independent-investigative-mechanism-for-myanmar/.
[142] International Labour Organization, "Commission of Inquiry for Myanmar holds its first session," press release, 2 September 2022, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_854807/lang--en/index.htm.

Convention on the Elimination of All Forms of Discrimination against Women, and Convention on the Rights of Persons with Disabilities.[143]

138. The SAC can also not be trusted to abide by international commitments it has made since the coup. Two months after the coup, on 26 April 2021, ASEAN leaders, including Min Aung Hlaing, collectively agreed to a "Five Point Consensus," a framework for addressing the crisis in Myanmar. Points one and two of the consensus called for the "immediate cessation of violence" and "constructive dialogue among all parties concerned to seek a peaceful solution." When Min Aung Hlaing returned to Myanmar he referred to the five points that were agreed upon as mere "suggestions," stressing that the SAC would "give careful consideration" to them when "the situation returns to stability in the country."[144]

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139. The analysis above demonstrates how the SAC lacks effective control over all or most of the territory of Myanmar. In fact, it arguably lacks control over the majority of what was traditionally held by successive Myanmar central governments. The SAC has no claim to habitual obedience of the masses, evidenced by widespread armed resistance to its attempted rule, protests, strikes, and boycotts. Due to the widespread conflicts and failure to administer the country, the SAC's sustainability and its permanence are gravely in doubt. All of these factors combined demonstrate that the SAC does not have effective control over Myanmar. Finally, the SAC has manifestly failed to abide by its international obligations.

VI. The NUG Has Democratic Legitimacy and a Strong Case for Being the Legitimate Representative of the People

140. Unlike the State Administrative Council, the National Unity Government has democratic legitimacy and a strong case for being the legitimate representative of the people of Myanmar.

A. Formation of key interim democratic institutions following the coup

141. Four days following the military's illegal coup attempt, elected representatives and officials from the NLD-led government began reconstituting governing bodies to reflect the will of the Myanmar people. On 5 February 2021, a group of elected parliamentarians from the NLD—later joined by elected parliamentarians from Ta'ang National Party and the Kayah State Democratic Party—formed the Committee Representing the Pyidaungsu Hluttaw (CRPH) with the declared support of 80 percent of the lawmakers elected in November 2020. Meanwhile, civil society organizations, civil servants, and vast numbers of the Myanmar people initiated a nationwide general strike and civil disobedience movement (CDM). In addition, numerous EROs resumed fighting against the military amid growing violence against the people of Myanmar.

142. As distinct anti-junta forces organized themselves in the weeks following the coup, leaders from some EROs began calling for the establishment of an inclusive, multilateral platform that would facilitate dialogue and cooperation toward advancing the goals of the opposition movement. In particular, the Karen National Union (KNU) advocated that the CRPH form this shared platform, which came to be known as the National Unity Consultative Council (NUCC), to bring together different stakeholders, including representatives from EROs, CDM, civil society, and women's groups. Members of civil society echoed these

[143] See prior reporting from the Special Rapporteur, including Conference Room Paper of the Special Rapporteur, "Losing a Generation: How the military junta is attacking Myanmar's children and stealing their future," U.N. Doc. A/HRC/50/CRP.1, https://www.ohchr.org/en/documents/thematic-reports/ahrc50crp1-conference-room-paper-special-rapporteur-losing-generation; Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, to the Human Rights Council, U.N. Doc. A/HRC/49/76, 16 March 2022, https://www.ohchr.org/en/documents/country-reports/ahrc4976-report-special-rapporteur-situation-human-rights-myanmar-thomas; Report of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly, U.N. Doc. A/77/494, 3 October 2022, ohchr.org/en/documents/country-reports/a77494-report-special-rapporteur-situation-human-right-myanmar.

[144] Press Release on ASEAN Leaders' Meeting, 26 April 2021, *Global New Light of Myanmar*, 27 April 2021, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/GNLM2021-04-27-red.pdf.

demands, emphasizing that the opposition movement would need a space where Bamar and non-Bamar groups could freely outline their goals for a future union.

143. On 5 March 2021, the CRPH declared its commitment to end the military dictatorship and restore democracy.[145] It announced that it would rescind the military-drafted 2008 Constitution and replace it with a new federal Constitution. The CRPH promised to work with all ethnic minority groups to realize this political vision.

144. Soon after on 17 March 2021, a nine-member committee was formed that consisted of the CRPH, Chin National Front (CNF), Karenni National Progressive Party (KNPP), KNU, Kachin Political Interim Coordination Team (KPICT), NLD, Restoration Council of Shan State (RCSS) (which subsequently left the committee), and Shan National League for Democracy (SNLD). This group prepared a new Federal Democracy Charter (FDC). Ethnic groups in the nine-member committee proposed the formation of the NUCC as a platform to foster inclusivity and feedback on the draft FDC from a wider set of revolutionary forces, including civil society organizations, women's and minority groups, and strike committees. On 26 March 2021, the CRPH proceeded to invite these groups to review the Charter.

145. Five days later, the CRPH formally announced that it no longer considered the 2008 Constitution valid and regarded the FDC as an interim constitutional framework and roadmap that aims to end Myanmar's history of military dictatorships and that represents the demands of ethnic minority groups to see greater autonomy over their regions. The CRPH's 31 March 2021 announcement surprised ethnic minority groups, civil society organizations, strike committees and other groups that had been invited to provide feedback on the draft Charter but had not yet had the opportunity to do so. Adoption of the FDC was thus delayed, and the NUCC successfully convened the first People's Assembly from 27-29 January 2022 with 388 delegates from diverse political groups. The Assembly ratified the revised FDC that more comprehensively represented the diverse interests of the anti-junta movement, outlined a roadmap for the formation of a federal democratic union, and settled various conflicts related to the interim governing processes apparent in the 2021 version of Charter. The new FDC also strengthened the leadership function of the NUCC and outlined tenets to increase coordination with the National Unity Government. The FDC also confirmed the validity of the 2020 elections and the existence of the elected legislature.

146. Although the FDC revision process and disputes among anti-junta groups presented barriers for the pro-democracy movement, the revised Charter and emergence of the NUCC as a strategic decision-making body is unprecedented in Myanmar's political history and provides a foundation for future inclusive decision-making.

147. The CRPH formed the National Unity Government in consultation with a nascent NUCC on 16 April 2021.[146] The NUG is the executive or administrative body of Myanmar's interim democratic institutions. It drives and implements the policies of Myanmar's pro-democracy movement. The NUG includes President Win Myint, State Counsellor Aung San Suu Kyi, a Vice President serving as Acting President, a Prime Minister, and seventeen ministers.

B. The NUG enjoys democratic legitimacy

148. The NUG has a strong claim to representing the will of the people of Myanmar as expressed in the November 2020 elections. As highlighted above, the NLD won 396 of the 498 contested seats in Parliament. The CRPH, made up of NLD lawmakers representing 80 percent of all elected parliamentarians, formed the National Unity Government.

149. The operative language from the June 2021 UN General Assembly Resolution bears stressing:

> [The General Assembly] *calls upon* the Myanmar armed forces to respect the will of the people as freely expressed by the results of the general election of 8 November 2020, to

[145] CRPH Myanmar (@CrphMyanmar), Twitter, 5 March 2021, https://twitter.com/CrphMyanmar/status/1368200912632639490/photo/1.

[146] *See* CRPH Announcement 23/2021, "Formation of National Unity Government," 16 April 2021, https://twitter.com/CrphMyanmar/status/1382960142463897602?s=20&t=k5UkZAlROnLe8uEBJaSsiQ; Announcement of the National Unity Consultative Council (NUCC), 16 November 2021, www.womenofburma.org/sites/default/files/2021-11/NUCC-Statement-En.pdf.

> end the state of emergency, to respect all human rights of all the people of Myanmar and to allow the sustained democratic transition of Myanmar, including the opening of the democratically elected parliament and by working towards bringing all national institutions, including the armed forces, under a fully inclusive civilian Government that is representative of the will of the people.[147]

150. The CRPH and NUG are the only political entities in Myanmar that can claim democratic legitimacy as expressed in the most recent elections.

C. The NUG has a strong claim as the legitimate representative of the people

151. The National Unity Government has a strong claim to being the "legitimate representative of the people," four considerations of which are (1) seeking to replace a government that has lost legitimacy, (2) being representative, (3) being broad, and (4) being sustainable.

152. The NUG is seeking to wrest back control of the state apparatus from the SAC, an entity that does not have legitimacy. This distinguishes it from other opposition movements that have been recognized as legitimate representatives of the people in that it is opposing not an entity that has lost legitimacy, but one that never had it to begin with. Talmon suggested that a government may lose legitimacy when it, "turns against its own people . . . uses heavy weapons, fighter aircraft and tanks to fire on its people[.]"[148] In describing the Ghaddafi regime's loss of legitimacy in Libya, the Republic of Maldives stated, "through its actions including gross and systemic human rights violations, which appear to amount to war crimes and crimes against humanity, the government of Muammar Gaddafi has lost its legitimacy and its right to govern."[149] The Russian Federation stated, "Colonel Gaddafi has forfeited legitimacy due to his actions . . . indeed we need to help him go."[150] The SAC has likewise engaged in criminal acts against the people of Myanmar in an effort to try and suppress a popular uprising against its claim to rule. Notwithstanding the fact that the SAC has never had legitimacy, it has engaged in the same criminal acts against its own people that resulted in regimes losing legitimacy in the eyes of the international community.

153. As highlighted above, to be considered representative, the entity must "reflect the make-up of a people as a whole. If it does not yet fully do so, it must be open and inclusive and encourage participation of all sections of society." The ministers of the NUG represent a diversity never seen in Myanmar's history: half of the 26 cabinet members belong to ethnic minority groups, eight are women, and one identifies as gay. In the new government, President U Win Myint and State Counsellor Aung San Suu Kyi retain their positions, and the vice president / acting president is a Kachin leader, Duwa Lashi La. An ethnic Karen and former Speaker of the House, Mahn Win Khaing Than, is the country's Prime Minister. The NUG has committed to becoming even more diverse, and the Special Rapporteur strongly encourages it to do so, including by appointing a Rohingya as a government minister.

154. The pro-democracy movement that the NUG leads is broad-based. It has the support of millions of people within Myanmar, and it reflects values, interests, and aims upon which all can agree. These shared goals must be greater than simply removing the SAC, however. The NUG has publicly committed to the position of establishing a true federal democracy following the defeat of the SAC, something major ethnic minority groups have been demanding since independence in 1948. The Special Rapporteur encourages the NUG to continue earnest engagement with the EROs and the NUCC for the creation of an interim constitution to help define current aims in the present and goals for a post-SAC Myanmar.

155. The NUG is working to build a sustainable political, organizational, and institutional structure. Documents shared with the Special Rapporteur on behalf of the NUG's ministries of health, education, humanitarian affairs and disaster management, and women, youth and children demonstrate the government's efforts to develop an administrative function across

[147] U.N. General Assembly Resolution 75/287, The Situation in Myanmar, U.N. Doc. A/RES/75/287, adopted 18 June 2021, p. 1.
[148] Talmon, "Recognition of Opposition Groups," p. 238.
[149] The President's Office, Republic of Maldives, Press Statement, "Maldives Recognises Libyan National Council as sole representative of the Libyan people," 3 April 2011, https://presidencymaldives.gov.mv/Press/Article/5071.
[150] "Russia calls for Gaddafi to step down," *RTE*, 27 May 2021, https://www.rte.ie/news/2011/0527/301609-libya/.

Myanmar as it seeks to establish control.[151] Although in nascent form, these efforts show that the NUG is serious about delivering services and establishing administrative structures.

156. In particular, the NUG provided data that demonstrate its commitment to shore up the battered healthcare infrastructure across Myanmar. As of August 2022, the NUG claimed to have deployed 3,772 health care workers to 12 states and regions. These health workers consisted of doctors, specialists, nurses, volunteers, and basic health staff. Additionally, the NUG claimed to be operating hundreds of healthcare facilities, ranging from frontier healthcare facilities, temporary hospitals (secondary care), and mobile clinics. Nearly 60 percent of townships in Myanmar were cited as having "Township Health Administrative Teams" reporting to the NUG's Ministry of Health.

157. With this growing healthcare infrastructure, the NUG's Ministry of Health claimed to have provided health services to approximately 35,000 people from April 2021 to July 2022. The NUG also launched the telemedicine TeleKyanmar clinic in June 2021, which supported almost 88,000 patient visits from June 2021 to July 2022.

158. According to the NUG, it has also collaborated with ethnic health organizations (EHOs) in Shan, Karenni, Karen, Mon, and Chin States to administer thousands of COVID-19 vaccinations and boosters. The NUG Ministry of Health also reported that it was working with the Karenni State Consultative Council (KSCC) to run a "Mobile Operation Theater" that provides health services to individuals and refugees living in IDP camps across the state.

159. In addition to the provision of healthcare services, the NUG claimed to be providing education, humanitarian assistance, and pregnancy and lactation monetary support to people in Myanmar. For instance, the NUG stated that it was operating physical schools in 75 townships and serving over 201,000 students as of August 2022. The NUG is also providing educational services to an estimated 200,000 students via its network of 61 online schools.

160. The NUG has highlighted its established administrative function in both Sagaing Region and Magway Region. As of August 2022, the NUG asserted to the Special Rapporteur that it controls approximately 75 percent of Sagaing Region and has established NUG-controlled district level "Administrative Command Structures"—referring to non-military administrative structures—in eight of the districts. In Magway Region, the NUG claims to control between 30 and 40 percent of the territory and has similarly established Administrative Command Structures in eight districts, with plans to expand its district administration. The Special Rapporteur cannot independently verify this information, though the degree and extent of conflict in Sagaing and Magway Regions indicate that the junta has substantially reduced control there.

161. The NUG has additionally made progress in setting up a justice system in Sagaing and Magway Regions, citing established courts in 24 townships as well as assigned legal teams in those townships. On this topic, the NUG added, "The judiciary provided by the interim constitutional arrangements in the Federal Democracy Charter include both those courts established by the NUG and the judicial systems existing under ethnic administrations, which are present in many additional states and regions."

162. The NUG has also increased military collaboration with EROs, setting up bodies to streamline communication and clarify command chains.[152] The NUG, KIA, KNPP, CNF and All Burma Students' Democratic Front formed the Central Command and Coordination Committee (C3C) in October 2021. The NUG and KNU formed the Joint Command and Coordination (J2C) in January 2022.

163. Of course, the NUG faces considerable obstacles. Chief among these are resources. The NUG is fundraising from a poor donor base within Myanmar and the Myanmar diaspora. It has received very limited support from Member States or international organizations. Moreover, its military infrastructure is poorly resourced, with estimates indicating that only

[151] The Special Rapporteur is unable to verify the figures provided by the NUG.

[152] Special Rapporteur Communications with EROs and NUG. *See also* Ye Myo Hein, "Greater Military Cooperation is Needed in the Burmese Resistance Movement," Stimson Center, 18 January 2018, https://www.stimson.org/2023/greater-military-cooperation-is-needed-in-the-burmese-resistance-movement/; Myo Hein, "Understanding the People's Defense Forces in Myanmar," United States Institute of Peace, 3 November 2022, https://www.usip.org/publications/2022/11/understanding-peoples-defense-forces-myanmar.

between 40-60 percent of PDFs fighters are armed, and that they rely on homemade and aging weapons, limited purchases off the black market and assistance from EROs. [153]

164. Nonetheless, the NUG has a strong argument to be considered the legitimate representatives of the people of Myanmar. To make the strongest argument possible, the NUG must continue to build and deepen trust with EROs and ethnic groups not represented by EROs, including the Rohingya.

VII. The SAC to Seek Legitimacy by Staging a 2023 "Election"

165. Lacking constitutional and democratic legitimacy, and effective control of the country, the SAC will seek legitimacy in 2023 by orchestrating what it has claimed will be an "election."

166. The junta's brutal oppression of the political opposition, the media, and the general public are among the factors that make genuine elections under the SAC impossible. The junta has banned the NLD and placed restrictions on other political parties.[154] Former lawmakers, leaders of the NUG, activists, celebrities, and members of independent media outlets have been forced into hiding or exile abroad.[155] In May 2022, the NLD stated that 917 members from the party, including elected leaders, had been arrested by the regime since the coup. 701 NLD members were still detained at that time, including State Counsellor Aung San Suu Kyi and President Win Myint.[156] The junta has sentenced numerous lawmakers to life in prison on arbitrary charges of terrorism and election fraud. One former NLD lawmaker who participated in anti-SAC protests was sentenced to 148 years in prison in October 2022.[157] In July 2022, the junta executed Phyo Zeya Thaw, a former NLD lawmaker, along with three other political opponents, Ko Jimmy, Hla Myo Aung, and Aung Thura Zaw.[158] These conditions, combined with ongoing fighting and safety concerns that impact voters, make democratic elections completely implausible. Instead, the junta will exploit the electoral process to try and cement military rule and establish an appearance of legitimacy.

167. Holding new elections on its own terms has been at the forefront of the junta's plans since the first days of the coup. After seizing power and declaring a nationwide state of emergency on 1 February 2021, the Myanmar military quickly announced plans to hold a "free and fair multiparty general election" after reconstituting the Union Election Commission and resolving alleged issues with voter lists.[159] The junta promised, too, that these elections would meet the "norms and standards of democracy."[160]

168. Six months after the coup, the military extended the one-year timeline for holding new elections to August 2023.[161] Min Aung Hlaing highlighted that the SAC was working to establish the "conditions" necessary for democratic elections and declared, "The basic requirements for a free and fair election are stability and the rule of law." [162]

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[153] *See e.g.,* Ye Myo Hein and Lucas Myers, "Seizing the State," p. 4.
[154] "Myanmar junta seeks to prolong rule with Suu Kyi party ban – unity govt," *Reuters*, 21 May 2021, https://www.reuters.com/world/asia-pacific/myanmar-junta-seeks-prolong-rule-with-suu-kyi-party-ban-unity-govt-2021-05-21/.
[155] Freedom House, Freedom in the World 2022, "Myanmar," https://freedomhouse.org/country/myanmar/freedom-world/2022.
[156] Democratic Voice of Burma (@DVB_English), Twitter, 11 May 2022, https://twitter.com/DVB_English/status/1524381935904387072.
[157] Assistance Association for Political Prisoners, "Daily Briefing in Relation to the Military Coup," 2 November 2022, https://aappb.org/?p=23328.
[158] David Rising, "Myanmar executes ex-lawmaker, 3 other political prisoners," *Associated Press*, 25 July 2022, https://apnews.com/article/myanmar-terrorism-democracy-aung-san-suu-kyi-government-and-politics-ca87f032cb6c7407b1d776574f15c5a8.
[159] [SAC] Office of the Commander-in-Chief of Defence Services, Notification No. 1/2021, 1 February 2021, in *Global New Light of Myanmar*, 2 February 2021, https://www.gnlm.com.mm/republic-of-the-union-of-myanmar-office-of-the-commander-in-chief-of-defence-services-notification-no-1-2021/.
[160] *Ibid.*
[161] "The Speech made by State Administrative Council Chairman . . .," *Global New Light of Myanmar,* 2 August 2021, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/GNLM2021-08-02-red.pdf.
[162] *Ibid.*

169. Over the next year, the junta continued to highlight progress towards its promised election in state-run media. A 7 July 2022 article in the *Global New Light of Myanmar* reported that thousands of election commission staff, government officials, military representatives, and volunteers had "scrutinized" identification cards and created a database of 51 million people that would be compiled into voter lists after cross-checking the information.[163] This so-called "scrutinization" process was overseen by the junta's replacement UEC Chair, U Thein Soe. This same individual was in 2010 mired in election controversy for manipulating balloting rules to ensure the military's political proxy, the USDP, won a majority and for barring international media coverage and foreign election observers.[164]

170. On 1 August 2022, following news that the junta extended the state of emergency once again, Min Aung Hlaing further elaborated on his proposed changes to Myanmar's electoral system. In a televised speech entitled "Keep Moving Forward to Achieve Our Goal," he announced that the military would seek to implement a new proportional representation system, whereby parties receive the number of parliamentary seats proportional to their percentage of votes. This would represent a shift from Myanmar's current first-past-the-post (FPTP) system, in which candidates who win a plurality of votes are elected. He added that with the FPTP system, "there is less chance for these minority representatives to be elected, and less chance for their voices to be heard on the official political platform of the Hluttaw."[165] However, the Asian Network for Free Elections found that this proposal would unfairly benefit only the junta: "The Myanmar military regime's plan to switch to a proportional representation system for their planned election next year will not bring more representation due to the existence of the 2008 Constitution [i.e., the continued share of 25 percent of seats in the elected bodies by the military] and [is] a move to increase their winning chance."[166]

171. In August 2022, the SAC-controlled UEC placed further restrictions on the electoral process. A notice issued on 11 August 2022 established a new requirement that political parties seek the UEC's approval before meeting foreign organizations and individuals and that parties would have their registrations revoked if they received any assistance from a foreign organization or individual. The UEC had announced the week prior to the notification that foreign organizations would be required to report to the junta's foreign ministry before meeting any political parties.[167]

172. Junta spokesperson Major-General Zaw Min Tun told a news conference in Nay Pyi Taw on 18 November 2022 that "operations would be escalated" to suppress "terrorism" so that voting will take place in as many townships as voted in the 2020 election.[168]

173. The SAC continued preparations for its election into 2023 by imposing rules that would make a genuinely competitive election impossible. On 9 January, the SAC began a household census set to last 23 days in order to compile a voter list for its "election."[169] On 26 January 2022, the SAC declared a new Political Parties Registration Law imposing

[163] "Only when the scrutiny has been completed over the ground survey . . .," *Global New Light of Myanmar,* 7 July 2022, https://cdn.myanmarseo.com/file/client-cdn/gnlm/wp-content/uploads/2022/07/7_July_22_gnlm.pdf.
[164] "Myanmar's Coup Leaders Name a New Union Election Commission," *The Irrawaddy*, 3 February 2021, https://www.irrawaddy.com/elections/myanmars-coup-leaders-name-new-union-election-commission.html.
[165] "Speech delivered by Chairman of the State Administration Council Prime Minister . . .," *Global New Light of Myanmar*, 2 August 2022, https://cdn.myanmarseo.com/file/client-cdn/gnlm/wp-content/uploads/2022/08/2_August_22_gnlm.pdf.
[166] ANFREL, "Myanmar's junta switch to PR system beneficial only to them," 11 March 2022, https://anfrel.org/myanmars-junta-switch-to-pr-system-beneficial-only-to-them/; *See also* International IDEA, "Elections at A Crossing Point: Considerations For Electoral Design In Post-Coup Myanmar," International IDEA Policy Paper No. 26, October 2022, https://www.idea.int/publications/catalogue/elections-crossing-point-considerations-electoral-design-post-coup-myanmar.
[167] "Myanmar Junta Imposes New Restrictions on Political Parties," *The Irrawaddy*, 30 August 2022, https://www.irrawaddy.com/news/burma/myanmar-junta-imposes-new-restrictions-on-political-parties.html.
[168] "Junta steps up military operations throughout the country to hold election next year, say PDFs," *Than Lwin Times*, 8 December 2022, https://thanlwintimes.com/2022/12/08/junta-steps-up-military-operations-to-hold-elections-nationwide/.
[169] "Myanmar Regime Begins Compiling Voter Lists for Planned Election," *The Irrawaddy*, 11 January 2023, https://www.irrawaddy.com/news/burma/myanmar-regime-begins-compiling-voter-lists-for-planned-election.html.

substantial restrictions on political parties seeking to participate in the election.[170] The law further weakens meaningful participation in the sham elections. Political parties seeking to compete nationwide are required to reach a membership of at least 100,000 after being registered and must deposit nearly 100 million Kyat (~45,500 USD) in a SAC-controlled bank—100 times higher than the minimum level set in the law used in the 2020 election. Within six months, nationwide parties also must open offices in at least half of Myanmar's 330 townships and must be able to contest in at least half of all constituencies. The law prohibits the participation of political parties that are associated with who the SAC determines are "terrorists," virtually denying the NLD's right to participate. The NLD rejected the law, stating, "we do not accept and acknowledge it, because all the actions of the military council are illegal."[171]

174. In an interview with the Special Rapporteur, a former UEC official raised additional concerns with elections controlled by the military junta and the new military-appointed election commission, including waning public trust in the electoral process and potential voter coercion issues.

175. "The people have a complete lack of trust in the election. It might be something like what happened in 2010, when people still voted because of fear…It will be very hard to create the conditions for an election…The military junta's people will vote. If there is one vote, they will count ten votes. The people will not go out and vote. There would be an election that is not free and not fair. In the 2020 election, we really tried to encourage the people that they can choose to vote, or they can choose not to vote – that it is their right. But the fear of the military is quite entrenched…I'm worried that the junta will change the system and change the law. What if they force people to go out and vote? Because of the entrenched fear, people will react to that." The Special Rapporteur strongly urges all Member States to refrain from wittingly or unwittingly providing the junta with the chance to manufacture the mirage of a legitimate election. Offering rhetorical or practical support for elections would have the effect of prolonging the instability and rights violations that are plaguing the country. Those few Member States—namely India and Belarus (highlighted below)—that have publicly engaged the junta on its planned elections should reverse course immediately. The international community must stand with the people of Myanmar and reject the junta's sham elections.

VIII. The Role of Member States in Legitimizing or Delegitimizing the Junta

176. States play a critical role in creating or denying a veneer of legitimacy to the SAC. The following section details known instances in which Member States have acted to either deny recognition or otherwise delegitimize the SAC or, conversely, to recognize the military junta as Myanmar's government or to confer the impression of legitimacy through statements or actions.

177. The Special Rapporteur has found that the majority of the States that engage with the State of Myanmar have refused to recognize the SAC as the government of Myanmar and thereby have denied it legitimacy. These actions include diplomatic condemnation and disengagement, the imposition of sanctions, and engagement with the National Unity Government. Australia, Canada, the 27 countries of the European Union, Japan, Lichtenstein, New Zealand, Norway, the Republic of Korea, Switzerland, the United Kingdom, and the United States have taken these types of positive actions.

178. A small minority of Member States, however, have acted in ways that effectively support the SAC's claim to be the government of Myanmar or have expressly recognized the junta. These actions include diplomatic recognition, support for junta-run elections, and the strengthening of bilateral relations. Belarus, China, India, Russia, Saudi Arabia, and Sri Lanka have repeatedly acted in a manner that is tantamount to recognition of the SAC. The

[170] SAC Political Parties Registration Law, SAC Law No 15/2023, 26 January 2023, published in the *Global New Light of Myanmar*, p. 5, https://cdn.myanmarseo.com/file/client-cdn/gnlm/wp-content/uploads/2023/01/27_Jan_23_gnlm.pdf.

[171] Grant Peck, "Myanmar's military government enacts new political party law," *Associated Press*, 27 January 2023, https://www.washingtonpost.com/politics/myanmars-military-government-enacts-new-political-party-law/2023/01/27/3c9e9a54-9e5d-11ed-93e0-38551e88239c_story.html.

Special Rapporteur acknowledges that those countries with land or maritime borders with Myanmar may need limited engagement related to security concerns involving territory controlled by the SAC. However, the actions by most countries bordering Myanmar, namely China, Thailand, and India, have gone beyond this. More isolated actions by Australia, Bangladesh, Japan, the Republic of Korea, and South Africa have been used by the SAC to create the veneer of legitimacy.

179. The inconsistent response of ASEAN Member States to the crisis in Myanmar reflects the growing divisions between ASEAN Member States with regard to their Myanmar policy. Since the coup, Myanmar's proximate neighbors in mainland Southeast Asia—Cambodia, Laos, Thailand and Vietnam—have engaged the SAC as if it were the government of Myanmar. The remaining ASEAN States—Brunei, Indonesia, Malaysia, the Philippines, and Singapore—have increasingly distanced themselves from the SAC as it has become more evident that the military is losing effective control and is unwilling to live up to Myanmar's international obligations. These countries have condemned the military's human rights violations, reduced diplomatic engagement with the SAC, and, in some cases, opened dialogue with the NUG.

180. While the Special Rapporteur conducted extensive research in preparing this paper, the facts and analysis below are illustrative and not an exhaustive account of all Member States' interactions with the Myanmar military.

A. Actions by Member States that deny the SAC recognition and legitimacy as the government of Myanmar

181. From the outset of the coup, some Member States immediately rejected the junta's claim of legitimacy and condemned its overthrow of the democratic government and detention of elected leaders including Myanmar's President and State Counsellor. Over time, many have increasingly taken action to sever ties with the junta and obstruct its ability to suppress the democratic aspirations of the Myanmar people, including by implementing travel bans, arms embargos, sanctions, and control of foreign assets. Finally, many of these countries have also engaged with the National Unity Government or allowed it to open representative offices in their countries. These actions have helped to isolate the SAC.

1. Diplomatic condemnation and disengagement

182. On or soon after the coup was initiated on 1 February 2021, numerous countries released strong statements that denounced the coup and condemned the actions of the military junta.[172]

183. On 1 February 2021, Japanese Foreign Minister Motegi Toshimitsu issued an unequivocal public statement: "[Japan] strongly supported the process of democratization in Myanmar and opposes any action which goes against such process…[Japan] strongly urges

[172] Australia: Minister for Foreign Affairs, Statement on Myanmar, 1 February 2021, https://www.foreignminister.gov.au/minister/marise-payne/media-release/statement-myanmar; Canada: Minister for Foreign Affairs, Statement on Myanmar, 1 February 2021, https://www.canada.ca/en/global-affairs/news/2021/02/statement-by-minister-of-foreign-affairs-on-myanmar.html?fbclid=IwAR25z9cpbJQoWL8B4377Qm4ssI5ODiuSU_qfkJZMKxW25kUzm-ihM8r02vk; Czech Republic: Czech MFA (@CzechMFA), Twitter, 1 February 2021, https://twitter.com/czechmfa/status/1356166518116151296; EU: Council of the EU Press Statement: Myanmar: Declaration by the High Representative on behalf of the European Union, 2 February 2021, https://www.consilium.europa.eu/en/press/press-releases/2021/02/02/myanmar-declaration-by-the-high-representative-on-behalf-of-the-european-union/; Norway: Hilde Solbakken (@norwayinmyanmar), Twitter, 9 February 2021, https://twitter.com/norwayinmyanmar/status/1359081824190935042/photo/2; UK: Oral Statement to Parliament: Myanmar military coup: Minister Adams' statement, 2 February 2021, https://www.gov.uk/government/speeches/myanmar-military-coup-minister-adams-statement-2-february-2021; US: White House Press Statement, Statement by President Joseph R. Biden, Jr. on the Situation in Burma, 1 February 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/01/statement-by-president-joseph-r-biden-jr-on-the-situation-in-burma/.

the Myanmar military to swiftly restore Myanmar's democratic political system."[173] Japan also joined the G7 Foreign Ministers' statement that condemned the coup on 23 February 2021.[174]

184. A statement by US President Joe Biden on 1 February 2021 called the military's seizure of power a "direct assault on the country's transition to democracy and the rule of law" and committed to "hold accountable those responsible for overturning Burma's democratic transition."[175] Then Prime-Minister Boris Johnson of the UK asserted that, "The vote of the people must be respected and civilian leaders released."[176]

185. New Zealand addressed the issue of legitimacy directly in a statement by Foreign Affairs Minister Nanaia Mahuta on 9 February 2021: "Aotearoa New Zealand is deeply concerned at the coup in Myanmar. We do not recognise the legitimacy of the military-led government and we call on the military to immediately release all detained political leaders and restore civilian rule."[177] Regarding the 9 February statement, New Zealand communicated to the Special Rapporteur, "New Zealand has a long-standing policy of not making formal statements of recognition of governments but this does not preclude our ability to comment on the democratic legitimacy of a government, as we did in this case; New Zealand's recognition or non-recognition should be inferred from the nature and level of our engagement in any particular case."

186. Following the military coup, the Republic of Korea immediately called for the release of political prisoners and the need to respect the November 2020 elections.[178] In late February 2021, the National Assembly of South Korea passed a parliamentary resolution that explicitly denounced the coup, labeling it as a "serious defiance of democracy."[179]

187. In the weeks following the coup, several countries suspended assistance and funding programs. The European Union put on hold development assistance programs that send funds directly to the military-controlled government, including the controversial Mypol program, which used tens of millions of euros to train and equip the Myanmar Police Force—an entity that was complicit in both the genocide of the Rohingya and the February 2021 coup.[180] Norway also froze bilateral aid aimed at public institutions in renewable energy, environmental, and marine sectors in Myanmar due to the coup.[181] Immediately following the coup, Switzerland temporarily suspended all payments related to development cooperation projects in Myanmar.[182] In late February 2021, Japan decided to pause all new non-humanitarian Official Development Assistance (ODA) projects in Myanmar and provide humanitarian support only through international agencies and non-governmental organizations.[183] On 12 March 2021, the Korean government outlined the measures it would take in response to the coup. These actions included the suspension of all "new exchanges

[173] Japan Ministry of Foreign Affairs, Press Release, The internal situation in Myanmar, 1 February 2021, https://www.mofa.go.jp/press/release/press3e_000161.html.
[174] Press Release, G7 Foreign Ministers' Statement on Myanmar, 23 February 2021, https://www.mofa.go.jp/press/release/press6e_000273.html.
[175] Statement by President Joseph R. Biden, 1 February 2021.
[176] Boris Johnson (@BorisJohnson), Twitter, 1 February 2021, https://twitter.com/BorisJohnson/status/1356143343600885761? .
[177] Nanaia Mahuta, Press Release, "New Zealand takes measures against Myanmar following military coup," 9 February 2021, https://www.beehive.govt.nz/release/new-zealand-takes-measures-against-myanmar-following-military-coup.
[178] Ministry of Foreign Affairs, Republic of Korea, Spokesperson's Statement on Situation in Myanmar, 2 February 2021, https://www.mofa.go.kr/eng/brd/m_5674/view.do?seq=320567&page=1.
[179] "S. Korean parliament passes resolution condemning military coup in Myanmar," *Yonhap*, 27 February 2021, https://en.yna.co.kr/view/AEN20210226007100315.
[180] Burma Campaign UK, "EU Suspends Training of Military Controlled Myanmar Police Force," 7 February 2021, https://burmacampaign.org.uk/eu-suspends-training-of-military-controlled-myanmar-police-force/.
[181] "Norway Freezes Aid To Myanmar After Coup," *Malay Mail*, 18 February 2021, https://www.malaymail.com/news/world/2021/02/18/norway-freezes-aid-to-myanmar-after-coup/1950941.
[182] Correspondence between Switzerland and the Special Rapporteur; *see also* "Switzerland suspends development aid to Myanmar," *Swiss Info*, 8 March 2021, https://www.swissinfo.ch/eng/politics/switzerland-suspends-development-aid-to-myanmar/46429536.
[183] "Japan to suspend new Myanmar ODA projects but says not sanction," *The Asahi Shumbun*, 25 February 2021, https://www.asahi.com/ajw/articles/14219640.

and cooperation in the field of defense and security with Myanmar," a ban on the export of military supplies, and a review of development assistance to Myanmar.[184]

188. In the immediate aftermath of the coup, Lichtenstein began calling for the UN General Assembly to hold a discussion on Myanmar and spearheaded the drafting of what became General Assembly Resolution 75/287 adopted 18 June 2021. The resolution "Calls upon the Myanmar armed forces to respect the will of the people as freely expressed by the results of the general election of 8 November 2020, to end the state of emergency, to respect all human rights of all the people of Myanmar and to allow the sustained democratic transition of Myanmar."

189. On the one-year anniversary of the coup, many countries released strong statements reiterating their condemnation of the coup and the violent actions of the military.[185]

190. Some countries, including Australia, the UK, and the US downgraded diplomatic relations with Myanmar by replacing their ambassadors with "chargé d'affaires."[186] According to reporting, New Zealand indicated that it would not appoint a new ambassador to Myanmar after the previous ambassador finished his term.[187]

191. Member states have also sought to reduce diplomatic engagement with the SAC by withdrawing from multilateral fora that are attended by SAC officials. One example of such disengagement is Australia, New Zealand, and the US's coordinated withdrawal from the July 2022 ASEAN Defence Ministers' Meeting Plus (ADMM-Plus) Experts' Working Group on Counterterrorism co-chaired by the Myanmar junta and Russia.[188] In a statement regarding the United States' withdrawal from the meeting, a US Department of Defense spokesperson stated: "Russia and the Myanmar military regime have consistently used their co-chairmanship . . . to propagandize and justify the atrocities they are continuing to commit against innocent people, and to imply support for these atrocities by the ADMM Plus and its members."[189]

192. Australia, New Zealand, and the United States' withdrawals from the ADMM Plus meeting followed several instances in which the junta's media outlet, the *Global New Light of Myanmar*, used these countries' attendance at meetings with junta members as propaganda opportunities. For example, a New Zealand defense official was present at the virtual ADMM-Plus Experts Working Group on Counter Terrorism meeting on 21-22 December 2021, that included Myanmar military junta representatives. The National Party foreign affairs spokesman Gerry Brownlee defended New Zealand's attendance, saying that the meetings were "official-to-official" and did not involve "political counterparts." A Ministry of Defence official also stated that New Zealand will "continue to participate in this process in order to

[184] Ministry of Foreign Affairs, Republic of Korea, "Korean Government's Measures on Situation in Myanmar," (23 March 2021, https://mofa.go.kr/eng/brd/m_5676/view.do?seq=321574.

[185] New Zealand: Nanaia Mahuta, "New Zealand imposes further travel bans on Myanmar," 1 February 2022, https://www.beehive.govt.nz/release/new-zealand-imposes-further-travel-bans-myanmar; Canada, EU, UK, and US: Council of the EU, Press Statement, "Myanmar/Burma: Declaration by the High Representative on behalf of the European Union," 31 January 2022, https://www.consilium.europa.eu/en/press/press-releases/2022/01/31/myanmar-burma-declaration-by-the-high-representative-on-behalf-of-the-european-union/; Joint statement, "One year anniversary of the military coup in Myanmar," EU, Albania, Australia, Canada, New Zealand, Norway, Republic of Korea, Norway, Switzerland, UK, and US, 1 February 2022, https://reliefweb.int/report/myanmar/one-year-anniversary-military-coup-myanmar-joint-statement.

[186] UK Foreign, Commonwealth & Development Office, Press Release, "Change of Her Majesty's Ambassador to Myanmar," 23 July 2021, https://www.gov.uk/government/news/change-of-her-majestys-ambassador-to-myanmar; "Australia not appointing ambassador to Myanmar amid moves to downgrade diplomatic ties," *ABC News*, 16 May 2022, https://www.abc.net.au/news/2022-05-16/australia-not-sending-ambassador-to-myanmar-diplomacy-junta/101070892; "Source to VOA: US to Downgrade Relations with Myanmar," *Voice of America,* 8 December 2022, https://www.voanews.com/a/source-to-voa-us-to-downgrade-relations-with-myanmar-/6868177.html.

[187] Gwen Robinson, "Diplomatic snubs isolate Myanmar's military regime," *Nikkei Asia*, 9 May 2022, https://asia.nikkei.com/Spotlight/Myanmar-Crisis/Diplomatic-snubs-isolate-Myanmar-s-military-regime.

[188] "Australia pulls out of ASEAN counter-terrorism meeting co-chaired by Myanmar military and Russia," *Myanmar Now,* 22 June 2022, https://www.myanmar-now.org/en/news/australia-pulls-out-of-asean-counter-terrorism-meeting-co-chaired-by-myanmar-military-and; "NZ to boycott counter-terrorism meeting over Russia, Myanmar roles," *Newsroom*, 4 July 2022, https://www.newsroom.co.nz/nz-to-boycott-counter-terrorism-meeting-over-russia-myanmar-roles.

[189] "US withdraws from ASEAN counter terrorism meeting," *Myanmar Now*, 20 July 2022, https://www.myanmar-now.org/en/news/us-withdraws-from-asean-counter-terrorism-meeting.

speak directly on these issues of concern to New Zealanders."[190] The junta seized the meeting as an opportunity to attack Myanmar's democratic opposition. The *Global New Light of Myanmar* reported on the meeting, describing the NUG, CRPH, and People's Defense Force as terrorists and using an image that prominently displayed a representative from New Zealand alongside other ADMM-Plus country participants attending the meeting.[191] New Zealand, Australia, and the US's withdrawal from ADMM-Plus suggests that governments may be giving more consideration to the impact of their attendance at such meetings.

Myanmar, Russia jointly organize 12th ADMM-Plus experts' working group on counter-terrorism meeting online

2021 and only then did security forces maintain the situation with minimum force, the official continued.

He added the formation of CRPH, NUG and PDF terrorist groups which targeted civilians, brutal killings perpetrated by their members after accusing innocent civilians as "traitors" under the opinion of "You are the enemy if you are different". They especially killed dutiful civil servants such as school teachers and township medical officers who were conducting COVID-19 prevention, control and treatment activities, he clarified with evidence of the involvement by PDF terrorists and extremist NLD supporters.

The anti-government media has biased in covering terrorist acts of PDFs to keep the international community out of the public eye and to draw

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193. Member States have found that notifications of events must be carefully worded, or clarified, to avoid the unwelcome presence of SAC representatives. Last year, Switzerland invited governments to the Swiss-hosted Global Partnership for Effective Development Co-operation (GPEDC), a network that includes representatives of development provider and recipient governments, bilateral and multilateral organizations, civil society, the private sector, and representatives from parliaments and trade unions. Switzerland informed the Special Rapporteur that Myanmar was not sent an invitation at that stage. Switzerland then sent what it described as "blanket information" to all Permanent Missions to the UN in Geneva regarding the Swiss-hosted GPEDC. When the investigative group Justice for Myanmar informed Switzerland that the SAC controls Myanmar's UN mission in Geneva and would therefore be authorized to send its representatives to the summit, Switzerland initially stated, "Heads of missions accredited to the United Nations Office in Geneva can participate in the Summit."[192] Switzerland then made an important clarification as to who would be able to attend:

> "As host of Development Cooperation Summit Geneva 12-14 Dec, Swiss Development and Cooperation has informed all Permanent Missions in Geneva

[190] Emanuel Stoakes and Sam Sachdeva, "NZ 'legitimising' abusive regimes through defence ties," *Newsroom*, 24 May 2022, https://www.newsroom.co.nz/nz-legitimising-abusive-regimes-through-defence-ties.

[191] "Myanmar, Russia jointly organize 12th ADMM-Plus experts' working group on counter-terrorism meeting online," *Global New Light of Myanmar*, 24 December 2021, https://www.gnlm.com.mm/myanmar-russia-jointly-organize-12th-admm-plus-experts-working-group-on-counter-terrorism-meeting-online/.

[192] Justice for Myanmar, "Switzerland legitimising illegal Myanmar junta with meeting & invite to development summit," 7 December 2022, https://www.justiceformyanmar.org/press-releases/switzerland-legitimising-illegal-myanmar-junta-with-meeting-invite-to-development-summit (Quoting a statement from Ambassador Thomas Gass, the Assistant Director General of the Swiss Agency for Development and Cooperation (SDC) to Justice for Myanmar).

> [that] [t]he Summit will be open to representatives of governments accredited by the UNGA, which is not yet the case for Myanmar."[193]

This clarification of criteria, in light of decisions made or pending by the UN Credentials Committee of the General Assembly, effectively excluded the SAC from the summit.

2. Sanctions

194. Several countries—namely Canada, the 27 members of the European Union, Switzerland, the United Kingdom, and the United States—imposed sanctions against the junta following the coup. After an initial round of sanctions, additional announcements would often follow the appearance of grim news stories of junta atrocities or the passing of certain anniversaries such as the day the coup was initiated. Some nations occasionally coordinated the imposition of sanctions with others. Calls for more strategic, coordinated sanctions by human rights defenders and advocates inside and outside of Myanmar that follow the model of those imposed after the Russian military invasion of Ukraine, have largely been ignored. The Special Rapporteur has called for sanctions to be imposed on a coordinated basis to target the SAC's key sources and avenues of revenue. He urges countries that have formally condemned the coup but have not yet imposed sanctions on the Myanmar military, such as the Republic of Korea, Japan, and Australia, to do so.

195. On 11 February 2021, the United States enacted its first post-coup sanctions against the junta when it designated ten military officers deemed responsible for the coup, including Senior General Min Aung Hlaing and Deputy Commander-in-Chief Soe Win.[194] The United States also announced a freeze on USD 1 billion of Myanmar government funds held in US accounts.[195] On 18 February 2021, in coordination with the UK and aligned with the US, Canada expanded its Myanmar sanctions regime to include nine senior officials in the Myanmar military that were either members of the SAC or the National Defense and Security Council.[196] By late February 2021, Canada, the UK, and the US had targeted most of the members of the SAC.[197] The EU followed suit the next month with sanctions and a travel ban targeting 11 individuals directly responsible for the coup.[198]

196. In March 2021, several countries began targeting the economic interests of the military, including military-owned or affiliated conglomerates—notably Myanmar Economic Holdings Limited and Myanmar Economic Corporation.[199] Myanmar Gems Enterprise, Myanmar Timber Enterprise, and Myanmar Pearl Enterprise, all key sources of wealth for the junta, were also designated in the sanctions regime of some countries.[200] Additionally, on 29 March 2021, the US announced that all trade under the 2013 Trade and Investment

[193] Justice for Myanmar, "JFM welcomes Switzerland disinviting junta from development summit," 8 December 2022, https://www.justiceformyanmar.org/press-releases/jfm-welcomes-switzerland-disinviting-junta-from-development-summit.

[194] Department of the Treasury, Press Statement, "United States Targets Leaders of Burma's Military Coup Under New Executive Order," 11 February 2021, https://home.treasury.gov/news/press-releases/jy0024.

[195] US White House, Press Statement, "Biden-Harris Administration Actions in Response to the Coup in Burma," 11 February 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/11/fact-sheet-biden-harris-administration-actions-in-response-to-the-coup-in-burma/.

[196] Government of Canada, Regulations Amending the Special Economic Measures (Burma) Regulations: SOR/2021-18, entered into force 18 February 2021, https://gazette.gc.ca/rp-pr/p2/2021/2021-03-03/html/sor-dors18-eng.html.

[197] Department of the Treasury, Press Statement, "United States Targets Leaders of Burma's Military Coup Under New Executive Order," 11 February 2021, https://home.treasury.gov/news/press-releases/jy0031; Foreign Commonwealth & Development Office, Press Release, "UK sanctions further Myanmar military figures for role in coup," 25 February 2021, https://www.gov.uk/government/news/uk-sanctions-further-myanmar-military-figures-for-role-in-coup-february-25-2021.

[198] Council of the EU, Press Release, "Myanmar/Burma: EU sanctions 11 people over the recent military coup and ensuing repression," 22 March 2021, https://www.consilium.europa.eu/en/press/press-releases/2021/03/22/myanmar-burma-eu-sanctions-11-people-over-the-recent-military-coup-and-ensuing-repression/.

[199] US Department of the Treasury, Press Release, "Treasury Sanctions Military Holding Companies in Burma," 25 March 2021, https://home.treasury.gov/news/press-releases/jy0078.

[200] Foreign, Commonwealth & Development Office, Press Release, "UK announces sanctions on gemstone company linked to the military regime in Myanmar," 17 May 2021, https://www.gov.uk/government/news/uk-announces-sanctions-on-gemstone-company-linked-to-the-military-regime-in-myanmar; US Department of the Treasury, Press Release, "Treasury Sanctions Key Timber and Pearl Enterprises in Burma," 21 April 2021, https://home.treasury.gov/news/press-releases/jy0138.

Framework Agreement would be suspended until the democratically elected government is restored.[201] The EU soon imposed its own sanctions on military-controlled or affiliated economic entities, with Switzerland also aligning with the EU measures.[202] Several months after the imposition of sanctions on the economic interests of the junta, the US, UK, and Canada released another tranche of sanctions on 10 December 2021, International Human Rights Day, designating the Directorate of Defense Industries, the Quartermaster General Office, and the Myanmar War Veterans Organization, in addition to other military-affiliated officials.[203] Additional sanctions were announced on 31 January 2022, the eve of the anniversary of the coup, targeting individuals who have been "instrumental in suppressing democracy and stifling opposition voices," including the Chair of the Union Election Commission Thein Soe.[204]

197. Three weeks later, on 21 February 2022, the EU announced new sanctions against 22 junta-linked individuals and four entities, including the Myanmar Oil and Gas Enterprise (MOGE).[205] As of the time of writing, neither Canada, Switzerland, the UK, the US, nor any other countries have imposed sanctions on MOGE.

198. On the day before Myanmar's Armed Forces Day 2022, the UK, US, and Canada, sanctioned arms dealers Dr. Aung Moe Myint, Aung Hlaing Oo, General Htun Aung, and companies responsible for supplying arms to the junta, including Dynasty International Company Ltd, Myanmar Chemical and Machinery Company Ltd, and Miya Win International Ltd.[206] On 16 June 2022, the UK announced additional sanctions targeting Russian aircraft part vendors supplying the junta and Myanmar arms brokers: JSC Gorizont (Russia),

[201] Office of the United States Trade Representative, Press Release, "USTR Suspends Trade Engagement with Burma following Military Coup and Violence against Civilians," 29 March 2021, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/march/ustr-suspends-trade-engagement-burma-following-military-coup-and-violence-against-civilians; UK Foreign, Commonwealth & Development Office, Press Statement, "UK sanctions major military business interests in further measures against Myanmar military regime," 25 February 2021, https://www.gov.uk/government/news/uk-sanctions-major-military-business-interests-in-further-measures-against-myanmar-military-regime; Government of Canada, Regulations Amending the Special Economic Measures (Burma) Regulations: SOR/2021-106, 14 May 2021, https://gazette.gc.ca/rp-pr/p2/2021/2021-05-26/html/sor-dors106-eng.html.

[202] Council of the EU, Press Release, "Myanmar/Burma: EU imposes sanctions on 10 individuals and two military-controlled companies over the February military coup and subsequent repression" 19 April 2021, https://www.consilium.europa.eu/en/press/press-releases/2021/04/19/myanmar-burma-eu-imposes-sanctions-on-10-individuals-and-two-military-controlled-companies-over-the-february-military-coup-and-subsequent-repression/; Swiss State Secretariat for Economic Affairs, SECO Bilateral Economic Relations Sanctions, Modification of 29 April 2021, https://www.seco.admin.ch/dam/seco/de/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/Exportkontrollen/Sanktionen/Verordnungen/Myanmar/myanmar_delta_2021-04-29.pdf.download.pdf/Myanmar_Delta_2021-04-29.pdf.

[203] US Department of the Treasury, Press Release, "Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day," 10 December 2021, https://home.treasury.gov/news/press-releases/jy0526; Canada Ministry of Foreign Affairs, News Release, "Canada imposes additional sanctions on entities affiliated with Myanmar military regime," 10 December 2021, https://www.canada.ca/en/global-affairs/news/2021/12/canada-imposes-additional-sanctions-on-entities-affiliated-with-myanmar-military-regime.html; UK Foreign, Commonwealth & Development Office, Press Release, "New UK sanctions target human rights violations and abuses in Myanmar and Pakistan," 10 December 2021, https://www.gov.uk/government/news/new-uk-sanctions-target-human-rights-violations-and-abuses-in-myanmar-and-pakistan.

[204] Government of Canada, Regulations Amending the Special Economic Measures (Burma) Regulations: SOR/2022-8, 28 January 2022, https://gazette.gc.ca/rp-pr/p2/2022/2022-02-16/html/sor-dors8-eng.html; UK Foreign, Commonwealth & Development Office, Press Release, "UK announces new sanctions against Myanmar ahead of 1-year anniversary of coup," 31 January 2022, https://www.gov.uk/government/news/uk-announces-new-sanctions-against-myanmar-ahead-of-one-year-anniversary-of-coup.

[205] Council of the EU, Press Release, "Myanmar/Burma: EU imposes restrictive measures on 22 individuals and 4 entities in fourth round of sanctions," 21 February 2022, https://www.consilium.europa.eu/en/press/press-releases/2022/02/21/myanmar-burma-eu-imposes-restrictive-measures-on-22-individuals-and-4-entities-in-fourth-round-of-sanctions/.

[206] UK Foreign, Commonwealth & Development Office, Press Release, "UK announces new sanctions against Myanmar military ahead of Myanmar Armed Forces Day," 25 March 2022, https://www.gov.uk/government/news/uk-announces-new-sanctions-against-myanmar-military-ahead-of-myanmar-armed-forces-day.

Myanmar New Era Trading Company Limited, Sins Avia Trading House LLC (Russia), Sky Aviator Company LTD, Synpex Shwe Company LTD, and Ural Avia LLC (Russia).[207]

199. Several months later, on 25 August 2022, the UK announced another round of sanctions targeting military-linked businesses in Myanmar, including Star Sapphire Group of Companies, International Gateways Group of Companies Limited (IGG), and Sky One Construction Company Ltd.[208] On 6 October 2022, the US announced that it would further sanction three individuals and one entity responsible for providing arms and other material support to the military regime.[209] On 8 November 2022, the US designated a major arms broker for the junta, Kyaw Min Oo, and his company Sky Aviator Company Limited.[210] On the same day, the EU adopted new restrictions that target an additional 19 individuals and the State Administrative Council.[211] Switzerland followed suit on 22 November 2022, likewise sanctioning the State Administrative Council as an entity and the same 19 individuals.[212]

200. On 7 December 2022, Canada became the first country to impose sanctions on the military's jet fuel suppliers when it designated Asia Sun Group, which imports aviation fuel and plays a critical role in the regime's supply chain.[213] Canada also sanctioned arms brokers Dynasty International Company Limited and International Gateways Group.[214]

201. In September 2022 the Australian government communicated the following to the Special Rapporteur: "Australia's Foreign Minister, Senator the Hon Penny Wong, has made clear that sanctions against members of the military regime are under active consideration. Consistent with the approach we take on all sanctions regimes, it would not be appropriate to discuss specific persons or entities that may be under consideration for sanctions."

3. Engagement with the NUG

202. The UK and Canada began to publicly engage with the National Unity Government in April 2021.[215] The next month, the Czech Republic's Deputy Foreign Minister, Martin Tlapa, sent a letter of recognition to U Lin Thant, the liaison officer appointed by the NUG to serve in the Czech Republic. His letter highlighted, "Our position is clear: not to recognize the new regime as the government of Myanmar…We support the Committee Representing Pyidaungsu Hluttaw (CRPH) and we welcome the formation of the National Unity Government (NUG). We have all our communication channels with the NUG open and we

[207] UK Foreign, Commonwealth & Development Office, Press Release, "UK sanctions Russian linked to forced transfers and adoptions" 16 June 2022, https://www.gov.uk/government/news/uk-sanctions-russian-linked-to-forced-transfers-and-adoptions.
[208] HM Treasury Notice, Myanmar, 24 August 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1100161/Notice_Myanmar_240822.pdf.
[209] US Department of Treasury, Press Release, "Treasury Sanctions Arms Dealers for Providing Support to Burma's Military Regime," 6 October 2022, https://home.treasury.gov/news/press-releases/jy0996.
[210] US Department of Treasury, Press Release, "Treasury Targets Major Arms Broker for Burma's Military Regime," 8 November 2022, https://home.treasury.gov/news/press-releases/jy1086.
[211] Council of EU, Press Release, "EU imposes further restrictive measures on 19 individuals and one entity," 8 November 2022, https://www.consilium.europa.eu/en/press/press-releases/2022/11/08/myanmar-burma-eu-imposes-further-restrictive-measures-on-19-individuals-and-one-entity/.
[212] Swiss State Secretariat for Economic Affairs, SECO Bilateral Economic Relations Sanctions, Amendment from 11/21/2022 with entry into force on 11/22/2022 at 6:00 p.m (Consolidated Version), https://www.seco.admin.ch/dam/seco/de/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/Exportkontrollen/Sanktionen/Verordnungen/Myanmar/myanmar_2022-11-22.pdf.download.pdf/Myanmar_2022-11-22.pdf. Since February 2021, the government of Switzerland has imposed sanctions on a total of 70 individuals and 10 entities.
[213] Amnesty International, "Deadly Cargo: The supply chain that fuels war crimes in Myanmar," 3 November 2022, https://www.amnesty.org/en/latest/news/2022/11/myanmar-amnesty-aviation-fuel/.
[214] Government of Canada, Regulations Amending the Special Economic Measures (Burma) Regulations: SOR/2022-263, 7 December 2022, https://canadagazette.gc.ca/rp-pr/p2/2022/2022-12-21/html/sor-dors263-eng.html.
[215] UK in Myanmar (@ukinmyanmar), Twitter, 20 April 2021, https://twitter.com/ukinmyanmar/status/1384534119309316096 ("The GB supports the important work of @CrphMyanmar and the National Unity Government in standing up for democracy and the people of #Myanmar." (Apr. 20, 2021); Dr. Sasa (@DrSasa22222), Twitter, 30 April 2021, https://twitter.com/drsasa22222/status/1388115779581796352.

are determined to further collaborate."[216] On the same day, the Czech Minister of Foreign Affairs met with his counterpart in the NUG, Zin Mar Aung.[217]

203. The US began high-level interactions with the NUG in August 2021 when US Deputy Secretary of State Wendy Sherman met with NUG acting Foreign Minister Zin Mar Aung.[218] Over the next year, Australia, Canada, the Czech Republic, the EU, the UK, and the US would continue meeting with the NUG at a regular cadence.

204. According to *The Korea Herald*, in August 2021, the Office of the President of the Republic of Korea announced that it would be in "constant communication" with major stakeholders, including the NUG. The statement added, "The [Republic of Korea] government will continue to make contributions, going forward, so that the Myanmar situation can be resolved in a direction to meet the aspirations of its people."[219] Soon after, *Nikkei Asia* reported that the NUG established its first representative office in Asia in South Korea in September 2021.[220] The Special Rapporteur has learned that while ROK has accepted the opening of the NUG office, government officials have not formally engaged with NUG officials in Seoul.

205. On 5 October 2021, the European Parliament became the first foreign parliament to recognize the NUG and CRPH after adopting a resolution that refers to the bodies as "the only legitimate representatives of the democratic wishes of the people of Myanmar."[221]

206. The NUG now maintains official representative offices in at least Australia, the United States, the United Kingdom, Norway, Czechia, France, Japan, and the Republic of Korea.

B. Actions by Member States that project legitimacy on the SAC

207. Since the 1 February 2021 coup, some Member States have taken actions that project legitimacy and bolster the SAC's claim to be Myanmar's government, including extending diplomatic recognition to the SAC, providing support to or discussing the junta's planned "elections" in 2023, or otherwise deepening bilateral cooperation.

1. Diplomatic Recognition

208. Several of these Member States provided recognition to the military junta in the aftermath of the coup by presenting the credentials of new ambassadors to the junta.

209. On 15 November 2021, India's Ministry of External Affairs announced that the Indian government had appointed Shri Vinay Kumar to serve as the country's next ambassador to Myanmar.[222] The junta's Ministry of Information reported that Ambassador Kumar presented his credentials to coup leader Min Aung Hlaing on 6 April 2022. According to the Myanmar government, the pair discussed "enhancement of friendship, stability, peace

[216] H.E. Mr. Martin Tlapa, Deputy Foreign Minister of the Czech Republic, sent a letter of recognition to U Lin Thant as a Liaison Officer of the NUG to the Czech Republic, NUG Ministry of Foreign Affairs, 24 May 2021, https://mofa.nugmyanmar.org/2021/05/24/h-e-mr-martin-tlapa-deputy-foreign-minister-of-the-czech-republic-sent-a-letter-of-recognition-and-congratulation-to-u-lin-thant-as-a-liaison-officer-of-myanmar-to-the-czech-republic-from-the-nation/.

[217] H.E. Mr. Jakub Kulhanek, the Foreign Minister of the Czech Republic, stated his recognition to the National Unity Government and CRPH in the discussion with H.E. Daw Zin Mar Aung, the Union Minister of Foreign Affairs of the National Unity Government, NUG Ministry of Foreign Affairs, 24 May 2021, https://mofa.nugmyanmar.org/2021/05/24/czech-foreign-minister-said-his-recognition-to-the-national-unity-government-crph-in-the-discussion-with-daw-zin-mar-aungunion-minister-of-foreign-affairs/.

[218] US Department of the State, Readout: Deputy Secretary Sherman's Call with Zin Mar Aung, 4 August 2021, https://www.state.gov/deputy-secretary-shermans-call-with-zin-mar-aung/.

[219] "Cheong Wa Dae vows continued support for political stability in Myanmar," *The Korea Herald*, 26 August 2021, http://www.koreaherald.com/view.php?ud=20210826000587.

[220] "Myanmar shadow government sets up office in South Korea," *Nikkei Asia*, 18 September 2021, https://asia.nikkei.com/Spotlight/Myanmar-Crisis/Myanmar-shadow-government-sets-up-office-in-South-Korea.

[221] European Parliament, Motion for a Resolution - B9-0504/2021, 5 October 2021, https://www.europarl.europa.eu/doceo/document/B-9-2021-0504_EN.html.

[222] India Ministry of External Affairs, Press Release, "Shri Vinay Kumar appointed as the next Ambassador of India to the Republic of the Union of Myanmar," 15 November 2021, https://www.mea.gov.in/press-releases.htm?dtl/34504/Shri_Vinay_Kumar_appointed_as_the_next_Ambassador_of_India_to_the_Republic_of_the_Union_of_Myanmar.

and development of border areas, trade promotion, further cooperation in various sectors of both countries and political changes in Myanmar."[223] In conversations with the Special Rapporteur, India explained that the presentation of credentials was not intended to legitimize the regime. India clarified that its policy is to remain engaged with all countries in India's neighborhood "irrespective of the ruling establishment." India's representative told the Special Rapporteur that the presentation of credentials was to create the diplomatic space whereby India can remain engaged with and influence the SAC. India further explained that because of its 1,600 km land border and shared maritime space, India must engage in the interest of its foreign policy and security concerns.

210. On 18 March 2022, Saudi Arabia's Ambassador Saud bin Abdullah Al-Subaie presented his diplomatic credentials to Senior General Min Aung Hlaing, who accepted his letters of credentials (see image of *Global New Light of Myanmar* below). [224] The Saudi Foreign Ministry also tweeted out a picture of the ambassador meeting with Min Aung Hlaing, identifying him as "Prime Minister of the Republic of the Union of Myanmar."[225] In written communications with the Special Rapporteur in response to this information, Saudi Arabia did not address the question of recognition, but stressed, "its position as one of the leading countries to support the Rohingya Muslim minority in Myanmar."

211. Sri Lanka initially did not take a position on the SAC's legitimacy. In fact, after Sri Lanka extended an invitation to the junta-appointed Minister for Foreign Affairs, U Wunna Maung Lwin, to attend the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) in Colombo in March 2021, Jayanath Colombage, Secretary to Sri Lanka's Ministry of Foreign Affairs, told *Reuters*, "That doesn't mean we have accepted the Myanmar military government…We have not taken a position on that."[226] Sri Lanka then invited U Wunna Maung Lwin once again to participate in the virtual BIMSTEC Summit held 28-30 March 2022, but Secretary Colombage told *The Hindu,* "Inviting Myanmar to join the summit virtually does not amount to Sri Lanka recognising what is happening in Myanmar. At the same time, rather than isolating a country, it is better to have them in your fold, and talk to them, discuss, engage."[227] On 7 June 2022, Sri Lanka's Ambassador to Myanmar Mr. J M Sri Janaka Priyantha Bandara presented his credentials to Min Aung Hlaing. According to the *Global New Light of Myanmar,* "At the ceremony, they frankly discussed diplomatic relations and friendly relations between the two countries, the enhancement of tourism services, assistance from Myanmar to Sri Lanka, business affairs, cooperation in the agriculture sector and political changes in the two countries."[228] Sri Lanka did not respond to the Special Rapporteur's request for additional context or information.

[223] [State Administrative Council] Ministry of Information, "State Administration Council Chairman Prime Minister Senior General Min Aung Hlaing accepts credentials of Indian Ambassador to Myanmar," 7 April 2022, https://myanmar.gov.mm/news-media/news/latest-news/-/asset_publisher/idasset354/content/state-administration-council-chairman-prime-minister-senior-general-min-aung-hlaing-accepts-credentials-of-indian-ambassador-to-myanmar.

[224] [State Administrative Council] Ministry of Information, "State Administration Council Chairman Prime Minister of the Republic of the Union of Myanmar accepts Letters of Credence of Ambassador of the Kingdom of Saudi Arabia," 18 March 2022, https://myanmar.gov.mm/news-media/news/latest-news/-/asset_publisher/idasset354/content/state-administration-council-chairman-prime-minister-of-the-republic-of-the-union-of-myanmar-accepts-letters-of-credence-of-ambassador-of-the-kingdom-.

[225] Saudi Foreign Ministry (@KSAmofaEN), Twitter, 20 March 2022 , https://twitter.com/KSAmofaEN/status/1505513763134398470 ("#Saudi Ambassador to the Republic of the Union of #Myanmar Mr. Saud bin Abdullah Al-Subaie presents his credentials to the Chairman of State Administration Council, Prime Minister Senior General Min Aung Hlaing").

[226] "Sri Lanka invites Myanmar junta rep to meeting, denies endorsing coup," *Reuters*, 10 March 2021, https://www.reuters.com/article/myanmar-politics-sri-lanka/sri-lanka-invites-myanmar-junta-rep-to-meeting-denies-endorsing-coup-idUSL1N2L81EM.

[227] Meera Srinivasan and Suhasini Haidar, "With invite to Myanmar FM, BIMSTEC steps out of shadows, out of line with ASEAN," The Hindu, 27 March 2022, https://www.thehindu.com/news/international/with-invite-to-myanmar-fm-bimstec-steps-out-of-shadows-out-of-line-with-asean/article65264517.ece.

[228] "SAC Chairman Prime Minister Senior General Min Aung Hlaing accepts Credentials of Sri Lankan Ambassador to Myanmar," *Global New Light of Myanmar*, 8 June 2022, https://cdn.myanmarseo.com/file/client-cdn/2022/06/8_June_22_gnlm.pdf.

State Administration Council Chairman Prime Minister of the Republic of the Union of Myanmar accepts Letters of Credence of Ambassador of the Kingdom of Saudi Arabia

State Administration Council Chairman Prime Minister Senior General Min Aung Hlaing receives the Ambassador of the Kingdom of Saudi Arabia to the Republic of the Union of Myanmar in Nay Pyi Taw on 17 March 2022.

SENIOR General Min Aung Hlaing, Chairman of the State Administration Council and Prime Minister of the Republic of the Union of Myanmar, accepted the Letters of Credence of Mr Saud Bin Abdullah Al-Subaie, the newly-accredited Ambassador of the Kingdom of Saudi Arabia to the Republic of the Union of Myanmar, at the Credentials Hall of the Office of the State Administration Council Chairman, Nay Pyi Taw at 10:00 am yesterday.

Then, they frankly discussed matters pertaining to diplomatic relations and friendship between the two countries, trade promotion and political developments in Myanmar.

After the meeting, the Chairman of the State Administration Council Prime Minister and the Ambassador of the Kingdom of Saudi Arabia posed for the documentary photo.

Present on the occasion were U Wunna Maung Lwin, Union Minister for Foreign Affairs and U Wunna Han, Director-General of the Protocol Department of the Ministry of Foreign Affairs. — MNA

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212. On 9 August 2022, the junta's ambassador to Belarus presented his credentials to Belarus' First Deputy Minister of Foreign Affairs of the Republic of Belarus Sergei Aleinik.[229] Belarus' Ministry of Foreign Affairs posted the information to its website as a press release showing a picture of Lwin Oo and Sergei Aleinik. The release noted: "The parties discussed the current state and prospects of the development of the Belarusian-Myanmar relations, as well as interactions in international organizations."[230]

213. While China and Russia have not formally presented credentials to the military junta, they have nonetheless taken actions and issued statements that are tantamount to recognizing the SAC as the government of Myanmar. On 6 June 2021, China explicitly referred to Min Aung Hlaing as "the leader of Myanmar" when describing a 5 June 2021 meeting with Chinese Ambassador H.E. Mr. Chen Hai in Naypyitaw.[231] Thereafter, high-ranking Chinese representatives have been holding regular meetings with junta officials, highlighted in greater detail below.

214. The Russian Federation has regularly engaged the junta as the official government. On 3 August 2022, Russian Minister of Foreign Affairs Sergey Lavrov travelled to Myanmar and met with Min Aung Hlaing. According to the *Global New Light of Myanmar,* the pair discussed "plans to open two Myanmar consulates to Russia in order to promote the diplomatic relations as Russia and Myanmar are close friends, efforts to be made for opening

[229] Belarus Ministry of Foreign Affairs, Press Statement, "First Deputy Minister of Foreign Affairs of the Republik of Belarus S. Aleinik meets the Ambassador of Myanmar," 9 August 2022, https://mfa.gov.by/en/press/news_mfa/eea4aba78f445c23.html.

[230] *Ibid.*

[231] Embassy News, Embassy of the People's Republic of China in the Republic of the Union of Myanmar, "The Leader of Myanmar Senior General Min Aung Hlaing Met with Chinese Ambassador to Myanmar," 6 June 2021.

Russian consulates in Myanmar, plans of them to ally as permanent friendly countries and permanent allies" and extensive cooperation across various sectors.[232]

215. While Japan has not formally presented credentials to the SAC, in November 2021, its government decided to accept five junta-appointed diplomats as representatives of Myanmar after previously committing to continue recognizing diplomats who were fired by the junta after the coup. A source from Japan's Foreign Ministry defended these actions stating that there must be some practical connections with the military government.[233]

2. Engagement on junta-run elections

216. Some Member States have, through their actions, indicated a willingness to support the SAC's plans to orchestrate "elections" in 2023. The Indian Ambassador met with the junta's Union Election Commission Chairman U Thein Soe in Naypyitaw on 25 April 2022. According to the *Global New Light of Myanmar*, Ambassador Kumar and the UEC Chairman discussed "the compiling of voter lists to hold the election, inspections of political parties, preparations to adopt a PR [proportional representation] system and good cooperation of the two countries in electoral processes."[234] India told the Special Rapporteur that this meeting was an offer to share its experience as a democratic country that has held hundreds of elections. India also explained that it had not yet made a decision as to whether it will engage with the SAC on its planned election, including by providing technical support to the UEC.

Union Foreign Affairs Minister receives Indian Ambassador to Myanmar

U Wunna Maung Lwin, Union Minister for Foreign Affairs of the Republic of the Union of Myanmar, received Mr Vinay Kumar, Ambassador Extraordinary and Plenipotentiary of the Republic of India to the Republic of the Union of Myanmar at 11:00 am on 26 July 2022 at the Ministry of Foreign Affairs in Nay Pyi Taw.

During the call, they cordially exchanged views on matters pertaining to the promotion of bilateral relations, enhancement of mutually beneficial cooperation as well as close collaboration in the international fora. — MNA

Indian Ambassador Mr Vinay Kumar calls on MoFA Union Minister U Wunna Maung Lwin in Nay Pyi Taw on 26 July 2022.

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217. Belarus has provided the SAC with training in election strategies. On 7 July 2022, ten representatives from the junta attended a class at Belarusian State University (BSU) entitled "Modern Political Technologies," focusing on elections and electoral systems and discussing topics such as propaganda, instruments of political influence, public opinion polling, and legal bases for elections.[235] The following month the rector of BSU met with the junta's ambassador to Russia, and according to a BSU press release discussed a plan to hold a "professional development" program for Myanmar students titled, "Dynamics of the political system and modern election campaigns."[236]

[232] "State Administration Council Chairman Prime Minister Senior General Min Aung Hlaing holds talks with Minister of Foreign Affairs of the Russian Federation Mr Sergey Lavrov," *Global New Light of Myanmar*, 13 July 2022, https://cdn.myanmarseo.com/file/client-cdn/gnlm/wp-content/uploads/2022/08/4_August_22_gnlm.pdf.
[233] "Japan accepts 5 Myanmar diplomats appointed under junta rule," *Kyoto News*, 12 November 2021, https://english.kyodonews.net/news/2021/11/5091a7c7be82-japan-accepts-5-myanmar-diplomats-appointed-under-junta-rule.html.
[234] "UEC Chairman receives Indian Ambassador to Myanmar," *Global New Light of Myanmar,* 26 April 2022, https://www.gnlm.com.mm/uec-chairman-receives-indian-ambassador-to-myanmar/.
[235] Belarusian State University, "A delegation from the Republic of the Union of Myanmar visited BSU, Belarusian State University" 8 August 2022, https://bsu.by/en/news/a-delegation-from-the-republic-of-the-union-of-myanmar-visited-bsu-d/; *see also* Justice for Myanmar (@justicemyanmar), Twitter, 7 July 2022, https://twitter.com/justicemyanmar/status/1545238203464323072.
[236] *Ibid.*

218. In October 2022, the *Global New Light of Myanmar* reported that the Electoral Commission of South Africa and the Association of World Election Bodies (A-WEB) invited a junta delegation led by U Thein Soe, the military-appointed chair of the Union Election Commission, to attend the 5th General Assembly held in Cape Town 17-22 October 2022.[237] According to the junta-run newspaper, the A-WEB conference included a session, attended by the SAC's delegation, entitled "Safeguarding Election Management Bodies in the Age of Global Democratic Recession." The article also reported that the junta delegation took part in discussions about, "The good practice of democracy in elections in different countries, action to help promote good practices, the role of electoral management bodies in a democratic system, conditions to be able to cooperate for high progress."[238]

3. Strengthening bilateral relations

219. Some States have set themselves apart from much of the international community through actions taken to enhance bilateral cooperation with the junta. China actively promoted economic activity with the junta throughout 2021 and 2022. On 11 August 2021, for instance, the Chinese government transferred USD 6 million to the junta for 21 development projects under Beijing's Mekong-Lancang Cooperation framework.[239] A report from Chinese state media agency Xinhua confirmed that the transfer of funds was facilitated by the junta's Foreign Affairs Minister Wunna Maung Lwin and Chinese Ambassador to Myanmar Chen Hai.[240] In late March 2022, Chinese Foreign Minister Wang Yi expressed the Chinese government's support for the junta during a meeting with the SAC Foreign Minister Wunna Maung Lwin. According to *Xinhua*, the Chinese Foreign Minister told the junta's foreign minister, "No matter how the situation changes, China will support Myanmar in safeguarding its sovereignty, independence and territorial integrity, and in exploring a development path suited to its national conditions . . . China is ready to work with Myanmar to deepen exchanges and cooperation in all areas to achieve the goal of building a China-Myanmar community with a shared future."[241] Wang Yi also "called on the two sides to accelerate the construction of the China-Myanmar Economic Corridor (CMEC), better carry out major landmark projects, and deepen solidarity in the fight against the COVID-19 pandemic."[242]

220. Chinese Foreign Minister Wang Yi travelled back to Myanmar on 2 July 2022 to co-chair a foreign ministers meeting taking place in Bagan. While Wang Yi reportedly urged the junta's Foreign Minister, Wunna Maung Lwin, to "strive to achieve political reconciliation… including by engaging its political opponents," the junta's media used the visit as a propaganda opportunity to project international acceptance and legitimacy.[243] The *Global New Light of Myanmar* enthused how the two "cordially exchanged views on further consolidation of the existing Pauk Phaw relations, the continued implementation of Myanmar-China bilateral projects… exchanged views on closer collaboration between the two countries in both regional and multilateral contexts particularly the ASEAN and the United Nations."[244]

221. The Russian Federation has actively expanded military relations with the junta since the coup. Less than two months after the coup, Alexander Fomin, Russian Deputy Defense

[237] "UEC delegation leaves for 5th General Assembly of Association of World Election Bodies (A-WEB)," *Global New Light of Myanmar*, 17 October 2022, https://www.gnlm.com.mm/uec-delegation-leaves-for-5th-general-assembly-of-association-of-world-election-bodies-a-web/.

[238] "UEC Chairman returns from South Africa's 5th General Assembly of Association of World Election Bodies (A-WEB)," *Global New Light of Myanmar*, 24 October 2022, https://www.gnlm.com.mm/uec-chairman-returns-from-south-africas-5th-general-assembly-of-association-of-world-election-bodies-a-web/. The Special Rapporteur received information that International Idea and ANFREL publicly protested against the participation of the SAC-installed UEC in the event.

[239] Sebastian Strangio, "China Announces Aid Dispersal to Myanmar's Military Junta," *The Diplomat*, 11 August 2021, https://thediplomat.com/2021/08/china-announces-aid-dispersal-to-myanmars-military-junta/.

[240] "Myanmar receives funds from China for projects under LMC Special Fund," *Xinhua,* 10 August 2021, http://www.xinhuanet.com/english/asiapacific/2021-08/10/c_1310119753.htm.

[241] "Chinese FM meets with Myanmar counterpart," *Xinhua,* 2 April 2022 https://english.news.cn/20220402/c7a0ce24652d460aa2669c20796cef46/c.html

[242] *Ibid.*

[243] "China Urges Myanmar Junta to Hold Talks With Opponents," *Voice of America*, 3 July 2022, https://www.voanews.com/a/china-urges-myanmar-junta-to-hold-talks-with-opponents/6643550.html.

[244] "U Wunna Maung Lwin, Union Minister for Foreign Affairs and Mr. Wang Yi, State Councilor and Foreign Minister of China hold Bilateral Meeting," *Global New Light of Myanmar,* 4 July 2022, https://cdn.myanmarseo.com/file/client-cdn/gnlm/wp-content/uploads/2022/07/4_July_22_gnlm-1.pdf.

Minister, travelled to Myanmar to meet with junta leaders in the most high-profile visit from the international community to that point. According to the *Financial Times,* on 25 March 2021 the Deputy Defense Minister said, "[Moscow is] committed to a strategy aimed at bolstering relations between the two countries." The same article noted that Russia's Ministry of Defense was broadcasting footage of the visit that showed Alexander Fomin exchanging gifts with Senior General Min Aung Hlaing.[245] In another example, Russian Defence Minister Sergei Shoigu held talks in Moscow with junta leader Senior General Min Aung Hlaing on 22 June 2021. According to Russia's RIA news agency, at a meeting with junta officials Shoigu said, "We are determined to continue our efforts to strengthen bilateral ties based on the mutual understanding, respect and trust that have been established between our countries."[246] During the same visit to Moscow, Min Aung Hlaing attended a Russian security conference and met with Nikolai Patrushev, Secretary of Russia's Security Council.[247]

222. On 7 September 2022, Min Aung Hlaing conducted his third post-coup trip to Russia and met with President Vladimir Putin on the sidelines of the Eastern Economic Forum.[248] According to the Kremlin, President Putin greeted Min Aung Hlaing stating, "You have repeatedly visited our country in various capacities, and now – as Prime Minister of the Provisional Government and Chairman of the [State Administrative] Council."[249] Min Aung Hlaing responded, "And I am very proud of you that when you began to rule the country, Russia became, so to speak, in first place in the world. And we would call you not the leader of Russia, but the leader of the world, because you control and organize stability throughout the world."[250]

223. Since the coup, Russia has also begun working with the SAC to develop nuclear technology. In his July 2022 trip to Russia, Min Aung Hlaing oversaw the signing of a nuclear cooperation agreement between the SAC and Russia's state-owned nuclear energy company Rosatom. Rosatom released a statement stating, "the parties stressed that the signing of the Memorandums lays a solid foundation for the development of further cooperation on practical projects."[251] Rosatom and the SAC subsequently agreed to a specific roadmap for nuclear cooperation in September 2022, which according to Rosatom "fixes the defined steps for further Russian-Myanmar cooperation in nuclear sphere . . . provid[ing] for the expanding of bilateral legal framework, possibility of implementing a small modular reactors project in Myanmar, as well as personnel training and work related to the improvement of public acceptance of nuclear energy in Myanmar."[252] A follow-on memorandum of understanding in November between the SAC and Rosatom provided additional specifics on nuclear reactor implementation in Myanmar, and Rosatom officials met with SAC officials in Nay Pyi Taw in December 2022 to discuss specific project implementation steps.[253]

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[245] "Russia seeks deeper ties with Myanmar military junta," *Financial Times* 26 March 2021, https://www.ft.com/content/c023ae3a-b667-4da6-811f-2ae6875053f0.

[246] "Russia says to boost military ties with Myanmar as junta leader visits," *Reuters,* 23 June 2021, https://www.reuters.com/world/asia-pacific/russia-says-boost-military-ties-with-myanmar-junta-leader-visits-2021-06-23/.

[247] "Russia and Myanmar junta leader commit to boosting ties at Moscow meeting," *Reuters,* 21 June 2021, https://www.reuters.com/world/russia-myanmar-junta-leader-commit-boosting-ties-moscow-meeting-2021-06-21/.

[248] Government of Russia, "Meeting with Chairman of the State Administrative Council of Myanmar Min Aung Hlaing," 7 September 2022, http://kremlin.ru/events/president/news/69296.

[249] *Ibid.*

[250] *Ibid.*

[251] Rosatum, Press Release, "ROSATOM and Myanmar Discuss Cooperation in Nuclear Energy in Myanmar," 12 July 2022, https://www.rosatom.ru/en/press-centre/news/rosatom-and-myanmar-discuss-cooperation-in-nuclear-energy-in-myanmar/?sphrase_id=3592688.

[252] Rosatum, Press Release, "Rosatom signed the Roadmap on cooperation with the Ministry of Science and Technology and the Ministry of Electric Power of Myanmar," 6 September 2022, https://www.rosatom.ru/en/press-centre/news/rosatom-signed-the-roadmap-on-cooperation-with-the-ministry-of-science-and-technology-and-the-minist/?sphrase_id=3592688.

[253] Rosatum, Press Release, "ROSATOM and the Republic of the Union of Myanmar signed the Memorandum of understanding," 22 November 2022, https://www.rosatom.ru/en/press-centre/news/rosatom-and-the-republic-of-the-union-of-myanmar-signed-the-memorandum-of-understanding/?sphrase_id=3592688; "MoEP Union Minister discusses projects with Russian State Atomic Energy Corporation Rosatom," *Global New Light of Myanmar,* 9 December 2022, https://www.gnlm.com.mm/moep-union-minister-discusses-projects-with-russian-state-atomic-energy-corporation-rosatom/; "Meeting on Myanmar-Russia projects held in Nay Pyi Taw," *Global New Light of*

224. India has also taken action to expand its relations with the SAC, particularly with respect to trade and economic development. Soon after India's Ambassador presented his credentials to Min Aung Hlaing, India's Foreign Secretary Harsh Vardhan Shringla conducted his first official visit to Myanmar following the coup on 22-23 December 2021. A press release announcing the visit from India's Ministry of External Affairs noted that in meetings with SAC leaders, India's Foreign Secretary expressed "India's continued support for people-centric socio-economic developmental projects, including those along the India-Myanmar border areas, as well as India's commitment for expeditious implementation of ongoing connectivity initiatives such as the Kaladan Multimodal Transit Transport Project and the Trilateral Highway. Foreign Secretary also reiterated India's commitment to continue with the projects under Rakhine State Development Programme and Border Area Development Programme for the benefit of the people of Myanmar."[254] Nearly one year later in November 2022, the new Indian Foreign Secretary conducted a two-day visit to Myanmar where he met with "the senior leadership of Myanmar," referring to the SAC's leaders. According to an Indian Foreign Ministry press release, he continued to express India's support for the implementation of shared economic development projects in Myanmar.[255]

225. The Government of Japan cooperated with the Myanmar military through its decision to allow Myanmar military students to continue military training in facilities in Japan following the coup. The National Defense Academy of Japan was hosting 6 cadets from the military before the coup, and an additional 2 cadets had joined after the coup.[256] In correspondence with the Special Rapporteur, Japan described the training program as an "education programme," but confirmed that "the education programme includes physical training with firearms."

226. The Government of Japan continued military education programs for Myanmar soldiers in 2022. According to a Human Rights Watch report that cited a Japanese National Diet (parliament) meeting on 26 April 2022 at the Committee on National Security of the House of Representatives, then Japanese Defense Minister Kishi Nobuo disclosed that Japan would admit 4 additional military students to the so-called education programs.[257] He defended the decision to accept military students: "cultivating even one person who understands civilian control and democracy will hopefully contribute to Myanmar's future."[258] In its communication with the Special Rapporteur, the Government of Japan noted that Japan's Defense Minister had in April 2022 "clarified the purpose to accept the students from Myanmar that it had been expected they would grow up to valued people with deep knowledge of democracy and civilian control in the process of considering from the various perspectives what and how the armed forces should be by placing themselves in the real environment of the Japan Self-Defense Forces which operated under the strict civilian control."

227. On 20 September 2022, Japan's Ministry of Defense announced that it would no longer accept Myanmar military students in its training program starting in 2023. The two officers and nine cadets from the Myanmar military enrolled in the program would be allowed to stay and complete their programs.[259] A spokesperson from the Ministry of Defense reportedly stated: "We decided it's not appropriate to continue the military cooperation and

Myanmar, 14 December 2022, https://www.gnlm.com.mm/meeting-on-myanmar-russia-projects-held-in-nay-pyi-taw/.

[254] India Ministry of External Affairs, Press Release, "Visit of Foreign Secretary Shri Harsh Vardhan Shringla to Myanmar," 23 December 2021, https://mea.gov.in/press-releases.htm?dtl/34723/Visit+of+Foreign+Secretary+Shri+Harsh+Vardhan+Shringla+to+Myanmar+December+2223+2021.

[255] India Ministry of External Affairs, Press Release, "Visit of Foreign Secretary to Myanmar (November 20-21, 2022)," 22 November 2022, https://mea.gov.in/press-releases.htm?dtl/35910/Visit_of_Foreign_Secretary_to_Myanmar_November_2021_2022.

[256] Human Rights Watch, "Japan: Cut Defense Ties with Myanmar Military," 20 December 2021, https://www.hrw.org/news/2021/12/21/japan-cut-defense-ties-myanmar-military.

[257] Teppei Kasai, "Japan to Train New Cadets, Officers from Abusive Myanmar Military," Human Rights Watch, 27 April 2022, https://www.hrw.org/news/2022/04/27/japan-train-new-cadets-officers-abusive-myanmar-military.

[258] *Ibid.*

[259] Teppei Kasai, "Japan to Suspend Myanmar Military Training Program," Human Rights Watch, 23 September 2022, https://www.hrw.org/news/2022/09/23/japan-suspend-myanmar-military-training-program.

exchange in its current form."[260] The ministry also cited the junta's execution of four political activists in July 2022 as a motivating factor in the suspension of the program.

228. On 15 July 2022, Toyo Keizai, a Japanese media company, citing unconfirmed internal Japanese International Cooperation Agency (JICA) documents, reported that JICA decided in June 2022 to dispatch potentially "dozens" of economic cooperation experts to Myanmar to engage in development ventures.[261] According to the report, JICA warned development consultants about the propaganda value the junta may place on JICA's presence, stating, "When holding a meeting (with local officials above the director), be careful not to be reported in the state media, etc."[262]

229. A Japanese envoy engaged with the SAC in 2022. According to the *Global New Light of Myanmar*, for example, Chairman of the Japan-Myanmar Association, Hideo Watanabe, met with the SAC's second in command, Vice Senior General Soe Win on 25 November 2022. According to the report, Watanabe and Soe Win "frankly exchanged views on further cooperation measures of the Japan-Myanmar Association, undertakings for improvement of the Thilawa Special Economic Zone, internal and international political and economic progress, investments of Japan, political changes in Myanmar, and implementation of the roadmap and objectives."[263] Watanabe also reportedly met with the SAC's proxy party, USDP, and according to the USDP Chairman's Facebook page, Watanabe declared his closeness to the USDP and said he wanted to foster ties between political parties in Japan and Myanmar.[264]

230. The Republic of Korea engaged with junta military officials in its November 2021 "Dialogue for Economic Cooperation between Team Korea and Myanmar" meeting. The event was organized by the Korean Embassy and included representatives from the military-appointed Directorate of Investment and Company Administration, the United Myanmar Federation of Chambers of Commerce and Industry, and the Korean Chamber of Commerce, in addition to executives from Korean companies.[265] However, in written correspondence with the Special Rapporteur, the Republic of Korea asserted, "The Korean Chamber of Commerce led the Dialogue, and the Embassy organized the meeting to help address the complaints and difficulties of Koreans in Myanmar. It is a regular part of the Embassy's economic diplomatic service and irrelevant to acknowledging the Myanmar military's claim of legitimacy."

4. Bangladesh's issue-specific engagement

231. Bangladesh has engaged with the military junta primarily to press for a solution related to the repatriation of the roughly 1 million displaced Rohingya individuals from Rakhine State who are residing in Bangladesh. One such example of diplomatic engagement came on 14 June 2022 when Bangladesh's Foreign Secretary Masud Bin Momen and the junta's Permanent Secretary of the Ministry of Foreign Affairs U Chan Aye met virtually for the Myanmar-Bangladesh Joint Working Group on repatriation.

232. In communication with the Special Rapporteur, Bangladesh provided further context around this June 2022 meeting, writing: "The Joint Working Group meeting held virtually on 14 June 2022 was a renewed attempt to find out possible ways to initiate the long-pending repatriation process of the Rohingya . . . It would be unwarranted for external actors to misconstrue this engagement as an exercise at conferring legitimacy to the incumbent Myanmar administration." Regarding general engagement with the junta to date, Bangladesh also highlighted the following: "Moreover, Bangladesh does not enjoy the luxury of complete

[260] *Ibid.*
[261] Hiroyuki Okada, "Pros and cons of dispatching JICA experts to Myanmar," *Toyokeiza Online*, 14 July 2022, https://toyokeizai.net/articles/-/603730.
[262] *Ibid.*
[263] "SAC Vice-Chairman Dy PM Vice-Senior General Soe Win receives Mr Hideo Watanabe," *Global New Light of Myanmar*, Chairman of Japan-Myanmar Friendship Association, 26 November 2022, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/GNLM2022-11-26-red.pdf.
[264] "Myanmar Junta's Man in Japan Cozies Up to Military's Proxy Party," *The Irrawaddy*, 30 November 2022, https://www.irrawaddy.com/news/the-world-myanmar/myanmar-juntas-man-in-japan-cozies-up-to-militarys-proxy-party.htmlhttps://www.irrawaddy.com/news/the-world-myanmar/myanmar-juntas-man-in-japan-cozies-up-to-militarys-proxy-party.html.
[265] Christian Davies, "South Korean companies met Myanmar officials despite coup censure," *Financial Times,* 16 December 2021, https://www.ft.com/content/ff30dd07-663d-4f1d-81a8-542d864293be.

non-engagement or dissociation with Myanmar while many countries, including some of our regional neighbours and powers, continue to pursue multi-dimensional official engagements with the Myanmar junta. Among a host of other issues, Bangladesh and Myanmar are required to have periodic meetings on border related issues."

5. Australia's issue-specific engagement

233. While, as highlighted above, Australia joined in international criticism of the SAC following the coup, it has chosen not to impose any economy sanctions on the junta, its senior officials or its economic interests, and has engaged directly with representatives of the military junta, largely to advocate for the release of Australian citizen Sean Turnell.

234. Australia first engaged with high-ranking officials of the Myanmar military on 22 February 2021 when the Vice-Chief of the Australian Defence Forces Vice-Admiral David Johnston spoke with Deputy Commander-in-Chief, Vice-Senior General Soe Win, in efforts to gain Turnell's release. The junta's mouthpiece, the *Global New Light of Myanmar*, stressed that during the meeting Min Aung Hlaing told the Vice-Admiral: "Myanmar Tatmadaw is a democratic Tatmadaw [sic] as the Australian military, valuing democratic practices including freedom of expressions and avoidance of brutal crackdown on the peaceful protesters, handling protests in line with democratic norms and existing laws in the last three weeks under the state of emergency, and using the minimal forces in controlling riots."[266] The same article alleged that the Vice-Admiral and SAC leaders discussed future bilateral cooperation between Myanmar and Australia.[267] The Vice-Admiral spoke again with Vice-Senior General Soe Win on 16 June 2021, reiterating previous calls for the release of Turnell.[268]

235. An Australian government representative told the Special Rapporteur that the SAC's description of its interaction with Vice-Admiral Johnston was inaccurate: "In these calls, [the] Vice-Admiral advocated for the immediate release of [Turnell], expressed Australia's deep concern at the situation in Myanmar, urged the regime to refrain from violence against civilians, and underlined the importance of ASEAN's diplomatic efforts to resolve the crisis."

236. On 6 April 2022, the outgoing ambassador to Myanmar, Andrea Faulkner, and the Australian defense attaché to Myanmar met with Min Aung Hlaing and other members of the junta's State Administration Council. The junta seized on the meeting as another opportunity to promote an impression of legitimacy. The *Global New Light of Myanmar* reported the meeting prominently (see *Global New Light* image below) and highlighted that the Ambassador and Min Aung Hlaing:

> "… exchanged views on further maintenance of good relations between two countries, enhancement of cooperation in various sectors between governments and peoples of both countries, political progress in Myanmar, acts of CRPH, NUG and PDF terrorists in committing terror acts to undermine the administrative machinery of the government and against the innocent people and educational, health and other government service personnel…"[269]

237. An Australian government representative told the Special Rapporteur that the junta's characterization of the meeting was false:

> "Ms. Faulkner sought the release and return to Australia of [an] Australian citizen . . . Ms. Faulker reiterated Australia's concerns about the situation in Myanmar, and urged the Myanmar military to cease violence, release those who have been arbitrarily detained, engage in dialogue, and ensure unimpeded access for humanitarian assistance. Ms. Faulkner also underscored Australia's strong support for ASEAN-led efforts to de-escalate the situation in Myanmar, and urged the

[266] "Vice-Senior General holds discussions with Australian Vice-chief of Defence Force over phone," *Global New Light of Myanmar,* 23 February 2021, https://www.gnlm.com.mm/vice-senior-general-holds-discussions-with-australian-vice-chief-of-defence-force-over-phone/.
[267] *Ibid.*
[268] Mazoe Ford, "ADF Vice Chief David Johnston calls on Myanmar's junta to immediately release Australian Sean Turnell," *ABC News*, 17 June 2021, https://www.abc.net.au/news/2021-06-17/adf-vice-chief-calls-myanmar-to-release-sean-turnell/100221708; Australia Ministry of Defence, "Call with Myanmar Deputy Commander-in-Chief," 16 June 2021, https://news.defence.gov.au/media/on-the-record/call-myanmar-deputy-commander-chief.
[269] "MoHA Union Minister meets outgoing Australian Ambassador," *Global New Light of Myanmar*, 8 April 2022, https://www.gnlm.com.mm/moha-union-minister-meets-outgoing-australian-ambassador/.

Myanmar military to implement the ASEAN Five Point Consensus. We do not consider that meetings in pursuit of these objectives, such as the previous Ambassador's meeting with the Commander-in-Chief, legitimise the current regime."

Chairman of State Administration Council Prime Minister Senior General Min Aung Hlaing receives outgoing Australian Ambassador

CHAIRMAN of the State Administration Council Prime Minister Senior General Min Aung Hlaing received Ms Andrea Marie Faulkner, Ambassador of Australia, who has completed her tour of duty, at the parlour of the office of the SAC Chairman in Nay Pyi Taw yesterday afternoon.

They exchanged views on further maintenance of good relations between two countries, enhancement of cooperation in various sectors between governments and peoples of both countries, political progress in Myanmar, acts of CRPH, NUG and PDF terrorists in committing terror acts to undermine the administrative machinery of the government and against the innocent people and educational, health and other government service personnel, plans to take legal action against those involved in the terror acts and those who encouraged the terror acts, efforts of Myanmar to strengthen the genuine, disciplined multiparty democracy and lead to the building the Union based on democracy and federalism, **the heartily welcome of Australia to the visit of the Deputy Prime Ministry of Cambodia who is also the special envoy of the Alternate Chairman of the ASEAN on Myanmar to Myanmar and its belief that they would continue the constructive issues related to Myanmar, implementation of the five-point consensus of the ASEAN by Myanmar as much as possible and taking action against terror acts under the international standards, arrangements being made to hold the dialogues, and distinct views for providing assistance to the government and that for the people in aid to the people of Myanmar via AHA Centre as some casualties happened in the outbreak of COVID-19 and conflicts in Myanmar.**

After the meeting, the Senior General presented gifts to the Australian Ambassador. —MNA

State Administration Council Chairman Prime Minister Senior General Min Aung Hlaing receives Australian Ambassador Ms Andrea Marie Faulkner, who has completed her tour of duty, in Nay Pyi Taw on 6 April 2022.

Global New Light of Myanmar, 7 April 2022

C. ASEAN Members States

238. States often defer to ASEAN with regard to the crisis in Myanmar. ASEAN's relevance to the crisis is without question, given Myanmar's membership in the regional intergovernmental body and the impact that the crisis has had on other ASEAN Member States. However, as described in the Special Rapporteur's reporting, the response of ASEAN Member States to the crisis has been inconsistent, and ASEAN has failed to secure Myanmar's cooperation in implementing the Five-Point Consensus. In general, ASEAN's Member States fall into two categories with regard to their response to the coup: (1) those that have increasingly acted to isolate the SAC and reject its claims of legitimacy and, (2) those that continue to engage with the SAC as if it was the government of Myanmar.

1. ASEAN Member States that reduced diplomatic engagement and increasingly rejected the military junta's claims of legitimacy since the coup

239. After initially taking a neutral stance towards the coup, some ASEAN Member States— namely Brunei, Indonesia, Malaysia, the Philippines, and Singapore—have signaled a shift in their approach towards the junta with stronger statements of condemnation and the reduction or downgrading of diplomatic relations. These states have taken specific actions to withdraw or lessen support for the SAC, including limiting meetings with junta officials. Some have opened engagement with the National Unity Government.

240. In the immediate aftermath of the coup, the Philippines refrained from condemning the actions of the military on the grounds that "the situation in Myanmar is an internal matter

we won't interfere with."[270] However, a 15 January 2022 statement by Foreign Affairs Secretary Teodoro L. Locsin, Jr., following news of the junta's sentencing of the detained State Counsellor, was unequivocal: "I condemn today's sentencing to four years in prison of State Counsellor Aung San Suu Kyi. The military regime is using the judicial system to silence political opponents and crush the National League for Democracy."[271] In March 2022, the government called for the immediate release of State Counsellor Aung San Suu Kyi[272] and for the military to exercise restraint and cease "excessive and needless force against unarmed protesters."[273]

241. Brunei, Indonesia, Malaysia, the Philippines, and Singapore spoke out or otherwise acted, to varying degrees, against the Myanmar junta within the regional bloc. Indonesia began leading early efforts within ASEAN to gather support for a diplomatic solution to the situation in Myanmar. Indonesian President Joko Widodo called for an ASEAN emergency meeting on Myanmar and Indonesia's Foreign Minister Retno Marsudi travelled to Brunei and Singapore to gather support from her counterparts for actions to condemn the military.[274]

242. In October 2021, Foreign Minister Marsudi made clear Indonesia's opposition to Myanmar's military junta as a full participating partner in ASEAN: "Indonesia proposed [that] the participation of Myanmar at the summits should not be represented at the political level until Myanmar restores its democracy through an inclusive process."[275] As the 2021 ASEAN Chair country, Brunei, with majority backing, ultimately decided to exclude the junta and Min Aung Hlaing from the annual regional summit in an unprecedented rebuke of the junta.[276] Singapore publicly defended ASEAN's decision to exclude Myanmar military leadership from the October 2021 regional summit, calling it "a difficult but necessary decision to uphold ASEAN's credibility given the unsatisfactory and highly limited progress in the implementation of the ASEAN Leaders' Five-Point Consensus."[277]

243. Several of these countries encouraged ASEAN to take greater action against the junta in 2022 as it became clear that the junta had little support within Myanmar and had no intention of fulfilling its commitment to the Five-Point Consensus. For example, Malaysia has refused to recognize the junta as the government. Following Cambodian Prime Minister Hun Sen's controversial visit to Myanmar in January 2022, Malaysian Foreign Minister Saifuddin Abdullah stated that some ASEAN member countries feared that the visit risked being interpreted as official recognition of the military junta, given Cambodia's role as ASEAN Chair.[278] The Malaysian Ministry of Foreign Affairs then announced that Malaysia would not support invitations to political representatives from Myanmar at ASEAN bloc

[270] Pia Ranada, "Philippines refuses to 'interfere,' calls Myanmar coup 'internal matter'," *Rappler,* 1 February 2021, https://www.rappler.com/world/asia-pacific/philippines-statement-myanmar-military-coup/.
[271] Philippines Department of Foreign Affairs, "Statement of Foreign Affairs Secretary Teodoro L. Locsin, Jr. On Myanmar," 15 January 2022, https://dfa.gov.ph/statement-remarks-apc/30050-statement-of-foreign-affairs-secretary-teodoro-l-locsin-jr-on-myanmar.
[272] Philippines Department of Foreign Affairs, "Philippine Statement at the Informal ASEAN Foreign Ministers Meeting," 2 March 2021, https://dfa.gov.ph/dfa-news/statements-and-advisoriesupdate/28687-philippine-statement-at-the-informal-asean-foreign-ministers-meeting-regional-and-international-issues.
[273] Philippines Department of Foreign Affairs, "Statement: On the Violence on Myanmar's Armed Forces Day," 30 March 2021, https://dfa.gov.ph/dfa-news/statements-and-advisoriesupdate/28792-statement-on-the-violence-on-myanmar-s-armed-forces-day.
[274] Kiki Siregar, "Indonesia and Malaysia to continue cooperation on combatting palm oil discrimination," *Channel News Asia*, 5 February 2021, https://www.channelnewsasia.com/asia/malaysia-muhyiddin-indonesia-jokowi-palm-oil-discrimination-322191.
[275] James Griffiths, "ASEAN 'has to do more' for Myanmar, government-in-exile says, as junta defence minister attends Cambodia summit," *The Globe and Mail,* 22 June 2021, https://www.theglobeandmail.com/world/article-asean-has-to-do-more-for-myanmar-government-in-exile-says-as-junta/; "Indonesian envoy: ASEAN bars Myanmar junta chief from upcoming summit," *Radio Free Asia*, 15 October 2021, https://www.rfa.org/english/news/myanmar/bars-10152021185940.html.
[276] Ain Bandial, "Biden joins Southeast Asian leaders to rebuke Myanmar junta excluded from summit," *Reuters*, 26 October 2021, https://www.reuters.com/world/asia-pacific/southeast-asian-leaders-hold-summit-excluding-myanmar-coup-leader-2021-10-26/.
[277] Singapore Ministry of Foreign Affairs, MFA Spokesperson's Comments in Response to Media Queries on the Emergency ASEAN Foreign Ministers' Meeting, 16 October 2021, https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2021/10/20211016-ASEAN-FM-Meeting.
[278] Prak Chan Thul, "Cambodia PM chides 'arrogant' Malaysia minister for questioning junta visit," *Reuters* 21 January 2022, https://www.reuters.com/article/us-cambodia-asean-malaysia-idUSKBN2JV0KG.

meetings "unless there was real progress and full implementation of the five-point consensus."[279] In February and March 2022, the Philippines and Singapore similarly denounced the junta's failure to abide by its promises to ASEAN.[280] On 13 September 2022, Singapore's Foreign Minister wrote in response to a parliamentary inquiry, "The primary responsibility for the ongoing crisis in Myanmar lies with the Tatmadaw . . . The setbacks to ASEAN's efforts are not a matter of ASEAN credibility, but rather of the Tatmadaw's intransigence."[281]

244. All of these States have demonstrated a growing willingness to reject the junta's claim of legitimacy. For example, in a communication with the Special Rapporteur, Indonesia emphasized that "the Government of Indonesia has never taken actions to support the legitimacy of the junta or to other parties who claim to be the legitimate Government of Myanmar. Any actions taken to invite or not to include the junta in the various meetings of ASEAN were decided jointly by ASEAN based on the ASEAN Charter."

245. Similarly, Malaysia highlighted to the Special Rapporteur that "engagements with all concerned parties are crucial to achieve a long-lasting and sustainable solution to the crisis in Myanmar. Malaysia wishes to reiterate its position that any engagement that Malaysia undertakes with parties in Myanmar does not tantamount to recognition, or otherwise of those parties."

246. Some of these countries have begun to open dialogue with the NUG. Malaysia became the first ASEAN country to publicly open dialogue with the National Unity Government, after disclosing that its government had engaged with the NUG as early as February 2022.[282]

247. During the US-ASEAN Special Summit that took place from 12–13 May 2022 in Washington, D.C., Malaysian Foreign Minister Saifuddin met openly with the NUG's Foreign Minister Zin Mar Aung.[283] Following a Special ASEAN Foreign Ministers' meeting on 27 October 2022 to discuss the Myanmar crisis, Malaysia's Foreign Minister issued a statement indicating that "Malaysia proposed for ASEAN to engage the National Unity Government (NUG), National Unity Consultative Council (NUCC) and other stakeholders."[284] According to Singapore's Foreign Minister, as of at least March 2022, Singapore has also "maintained lines of communication" with the NUG.[285]

248. **ASEAN under Brunei's chairmanship.** The year of Brunei's chairmanship saw Brunei move from tacit acceptance of the SAC to actively denying recognition to the SAC as government. One month into its ASEAN Chairmanship, the Myanmar military conducted its coup. On 18 March 2021—less than a week after military and police killed 65 men and women in Yangon—junta leader Min Aung Hlaing and other senior military officials attended the virtual ASEAN Chiefs of Defence Forces' Meeting, which was chaired by Brunei's government. The junta's delegation participated in the meeting's discussion on the theme "We care, We prepare, We prosper" with defense leaders of other ASEAN countries. The *Global*

[279] P Prem Kumar, "Malaysia to Hun Sen: Myanmar regime still not welcome at ASEAN," *Nikkei Asia*, 25 January 2022, https://asia.nikkei.com/Politics/International-relations/Malaysia-to-Hun-Sen-Myanmar-regime-still-not-welcome-at-ASEAN.

[280] Joyce Ann L. Rocamora, "PH to reject military junta-led Myanmar in RCEP sans consensus," *Philippine News Agency*, 19 February 2022, https://www.pna.gov.ph/articles/1168113; Singapore Ministry of Foreign Affairs, Minister for Foreign Affairs Dr Vivian Balakrishnan's Live Interview on Channel 5's "News Tonight" Programme, 6 March 2022, https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2022/03/20220306-Min-interview.

[281] Singapore Ministry of Foreign Affairs, Minister for Foreign Affairs Dr Vivian Balakrishnan's Written Reply to Parliamentary Questions on ASEAN's Response to Lack of Progress on Five-Point Consensus on Myanmar, 13 September 2022 , https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2022/09/20220913FMPRM.

[282] Shailaja Neelakantan, "Malaysia contacts Myanmar's shadow govt as ASEAN fails to implement 5-point consensus," *Benar News*, 25 April 2022, https://www.benarnews.org/english/news/malaysian/malaysia-contacts-burmese-nug-as-analysts-slam-asean-for-inaction-on-consensus-04252022161617.html.

[283] "Malaysia foreign minister meets counterpart from Myanmar shadow government in Washington," *Reuters*, 15 May 2022, https://www.reuters.com/world/asia-pacific/malaysia-foreign-minister-meets-counterpart-myanmar-shadow-govt-washington-2022-05-15/.

[284] Saifuddin Abdullah, Malaysia Minister of Foreign Affairs, Press Statement: ASEAN Special Ministerial Meeting on Myanmar in Jakarta, 27 October 2022, https://twitter.com/saifuddinabd/status/1586279531622862850.

[285] *Ibid.*

New Light of Myanmar printed a screenshot of the virtual meeting on its front page showing Min Aung Hlaing in the center of the screen flanked on all sides by defense ministers of all ASEAN countries.[286] As the host country, Brunei led the development of a working paper to deepen military cooperation through the establishment of ASEAN Military Exercises.[287]

249. As part of the implementation of the Five Point Consensus, from 4 to 5 June 2021, Brunei's Second Foreign Minister Erywan Yusof and his compatriot ASEAN Secretary-General Lim Jock Hoi traveled to Myanmar and met with Min Aung Hlaing. In a statement that was later removed from the ASEAN Secretariat's website, ASEAN's Secretary General openly recognized the assumed titles of Min Aung Hlaing and others at the meeting.[288] The *Global New Light of Myanmar* used the visit as a tool to project legitimacy on Min Aung Hlaing as Myanmar's leader and the NUG/CRPH as terrorists, writing: "State Administration Council Chairman Commander-in-Chief of Defence Services Senior General Min Aung Hlaing received Minister of Foreign Affairs of Brunei Darussalam Dato Erywan Pehin Yusof and ASEAN Secretary-General Dato Lim Jock Hoi at the parlour of the Diplomat Hall of the Office of the SAC Chairman yesterday morning. They exchanged views on results in the summit of ASEAN leaders, efforts to establish the ASEAN Community, implementation of the recommendation of initial survey of ASEAN, efforts of ASEAN to ensure availability of COVID-19 vaccine, Myanmar-Brunei bilateral relations, terror acts in Myanmar by associations and terrorist groups related to unlawful CRPH and NUG, errors in voter lists and findings in inspection in the 2020 multiparty general election, plan to hold the election in peace and stability of the country, and cooperation of Myanmar in humanitarian aid."[289] In explaining the trip to the Special Rapporteur, Brunei stated, "In June 2021, the Minister of Foreign Affairs of Brunei Darussalam, in his capacity as Chairman of the ASEAN Foreign Ministers' Meeting conducted a visit to Myanmar, with the objective of following-up with all parties on the effective and timely implementation of the Five-Point Consensus. He also reiterated the ASEAN Leaders' call for all parties to exercise utmost restraint and the Chairman offered to assist in facilitating dialogue among all parties concerned to seek a peaceful solution in the interests of the people."

250. Brunei took a decidedly different approach to a proposed October 2021 visit to Myanmar. Brunei reported to the Special Rapporteur: "In October 2021 the Special Envoy was invited to visit Myanmar, however, following careful consideration on the proposed programme, including the refusal to allow the Special Envoy to meet with key stakeholders, the decision was taken not to visit Myanmar in order to maintain his neutral and impartial role, without aligning with any particular party or political stance."

251. Also in October 2021, Brunei led ASEAN discussions that ultimately concluded with the decision to exclude Myanmar military leadership from the upcoming regional summit. Brunei issued a statement that cited "a lack of progress made on a roadmap that the junta had agreed to with ASEAN in April to restore peace in Myanmar" as the reason for the junta's exclusion.[290] Brunei explained to the Special Rapporteur that, "This arrangement ensured that no party from Myanmar was represented at any of the ASEAN Summits or Related Summits during Brunei Darussalam's Chairmanship of ASEAN in 2021, thus not according legitimacy to any party."

2. ASEAN Member States that continue official engagements with the junta

252. In contrast to the approach of the aforementioned ASEAN Member States, Cambodia, Laos, Thailand, and Vietnam have effectively normalized bilateral engagement

[286] "18th ASEAN Chiefs of Defence Forces Meeting (ACDFM-18) held via video conferencing," *Global New Light of Myanmar*, 19 March 2021, https://www.gnlm.com.mm/18th-asean-chiefs-of-defence-forces-meeting-acdfm-18-held-via-video-conferencing/.
[287] Justice for Myanmar, "ASEAN'S Complicity in the Myanmar Military's Atrocity Crimes," 10 May 2022, https://www.justiceformyanmar.org/stories/aseans-complicity-in-the-myanmar-militarys-atrocity-crimes.
[288] "Brunei's disastrous mission," *The Jakarta Post*, 10 June 2021, https://www.thejakartapost.com/academia/2021/06/09/bruneis-disastrous-mission.html.
[289] "State Administration Council Chairman Commander-in-Chief of Defence Services Senior General Min Aung Hlaing receives Minister of Foreign Affairs of Brunei Darussalam , ASEAN Secretary-General," *Global New Light of Myanmar,* 5 June 2021, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/GNLM2021-06-05-red.pdf.
[290] Ain Bandial, "Biden joins Southeast Asian leaders to rebuke Myanmar junta excluded from summit," *Reuters*, 26 October 2021, https://www.reuters.com/world/asia-pacific/southeast-asian-leaders-hold-summit-excluding-myanmar-coup-leader-2021-10-26/.

with the Myanmar junta, treating it as the government of Myanmar. That said, Cambodia and Vietnam expressly stated to the Special Rapporteur that these engagements should not be viewed as recognition of the SAC as the government of Myanmar, with Cambodia asserting, "it is seriously misleading to equate such engagements with legitimizing them" and Vietnam stating, "contact, exchange and cooperation activities with Myanmar within bilateral settings or ASEAN frameworks should not be interpreted as or equated with a recognition of the military government or the State Administration Council (SAC)."

253. Thailand has maintained high-level engagement with the SAC and continued diplomatic engagement since the coup, including having its ambassador to Myanmar present credentials to Min Aung Hlaing on 7 December 2022.[291]

254. On 14 November 2021, Thailand's Deputy Prime Minister and Foreign Minister Don Pramudwinai led a delegation of five Thai government officials on an official trip to Myanmar where they met with junta leader Min Aung Hlaing in Naypyitaw, reportedly to discuss humanitarian aid and issues of national interest.[292] On 4 July 2022, Pramudwinai traveled again to Myanmar and met with the junta's Minister of Foreign Affairs, Wunna Maung Lwin. The junta's press publicized the high-profile visit, with coverage noting that the two sides "cordially exchanged views on matters pertaining to the further enhancement of the existing friendly relations and multifaceted bilateral cooperation between the two countries…"[293]

255. On 6-7 June 2022, a delegation led by the junta's Deputy Minister for Home Affairs and Chief of Myanmar Police, Zin Min Htet, visited Bangkok at the invitation of the Royal Thai Police General, Suwat Jangyodsuk. The meeting represented the first Thai-Myanmar working group committee meeting on the topic of cooperation in combatting cross-border crimes.

256. Most recently, on 22 December 2022, Thailand hosted a "ministerial Informal Consultation on the situation in Myanmar" with the junta's foreign minister, and the foreign ministers of Cambodia, Laos, and Vietnam (Deputy Foreign Minister representing). Thailand's news release on the meeting stated, "The open-ended informal consultation was meaningful with Ministers engaging in free-flow and proactive discussions. This included the opportunity to hear from Myanmar and to exchange views on finding the exit strategy and pathways towards a return to normalcy in Myanmar – with special focus on facilitating the provision of humanitarian assistance as well as exploring other approaches that could support the implementation of the Five-Point Consensus."[294]

257. Laos' engagement with the junta has been largely limited to economic trade and border policy, with one recent example of a meeting between the junta's Minister of Investment and Foreign Economic Relations and Mr. Bountheung Douangsavanh, Deputy Minister for Laos Ministry of Industry and Commerce, during the ASEAN Economic Ministers' Special Meeting in May 2022.[295]

258. Vietnam has maintained defense and economic relations with the junta. For example, during a series of March 2022 ASEAN defense meetings (ASEAN Military Intelligence Meeting, ASEAN Chiefs of Defence Forces Meeting and ASEAN Military Operation Meeting), the Myanmar military's Chief of General Staff Maung Maung Aye met with Vietnam's Chief of the General Staff of the Vietnam People's Army along with Vietnam's Deputy Defence Minister. Media reports of the event referenced an official Vietnamese government website that said Maung Maung Aye, the junta's representative, "stressed that

[291] "SAC Chairman Prime Minister Senior General Min Aung Hlaing accepts Credentials of Thai Ambassador to Myanmar," *Global New Light of Myanmar,* 8 December 2022, https://www.gnlm.com.mm/sac-chairman-prime-minister-senior-general-min-aung-hlaing-accepts-credentials-of-thai-ambassador-to-myanmar/.
[292] "Don keeps mum on junta chief talks," *Bangkok Post,* 19 November 2021, https://www.bangkokpost.com/thailand/general/2217811/don-keeps-mum-on-junta-chief-talks.
[293] "MoFA Union Minister meets Thai Deputy Prime Minister and Foreign Minister," *Global New Light of Myanmar,* 5 July 2022, https://www.gnlm.com.mm/mofa-union-minister-meets-thai-deputy-prime-minister-and-foreign-minister/.
[294] Ministry of Foreign Affairs of the Kingdom of Thailand, Information Paper On the Informal Consultation on 22 December 2022, 22 December 2022, available at: https://www.khmertimeskh.com/501207689/information-paper-on-informal-consultation-on-situation-in-myanmar/.
[295] "Union Minister for Investment and Foreign Economic Relations attends ASEAN Economic Ministers' Special Meeting," *Global New Light of Myanmar*, 19 May 2022, https://www.gnlm.com.mm/union-minister-for-investment-and-foreign-economic-relations-attends-asean-economic-ministers-special-meeting/.

his country wished to promote defence cooperation with the Vietnam People's Army, affirming to create favorable conditions for Vietnamese citizens and businesses to do business in Myanmar."[296]

259. In correspondence with the Special Rapporteur, Vietnam, however, emphasized, "contact, exchange and cooperation activities with Myanmar within bilateral settings or ASEAN frameworks should not be interpreted as or equated with a recognition of the military government or the State Administration Council (SAC)."

260. **ASEAN under Cambodia's chairmanship.** Under the leadership of Cambodia, as ASEAN Chair in 2022, ASEAN representatives repeatedly met with the Myanmar junta and invited its leaders to bloc meetings in the post-coup period. In one notable example, on 7-8 January 2022, ASEAN Chairman and Cambodian Prime Minister Hun Sen travelled to Myanmar and met with junta leader Min Aung Hlaing. According to the *Associated Press,* Cambodia defended the trip as a means to press the military junta on the implementation of the Five-Point Consensus.[297] Not surprisingly, junta-controlled media publicized the Chair's visit as one focused on increased bilateral cooperation between Myanmar and ASEAN.[298]

261. In communications with the Special Rapporteur, the Cambodian government made clear that it was not affirming the legitimacy of junta. Cambodia stressed, "As the ASEAN Chair, Cambodia has the mandate to advance the implementation of the 5PC, and the visits of Samdech Techo Prime Minister (STPM), and H.E. Prak Sokhonn, in his capacity as the Special Envoy of the ASEAN Chair, have one and only purpose, which is to break the ice, build momentum and put in place a constructive environment for all concerned parties to peacefully resolve the current crisis. As mandated, our Special Envoy will meet with all concerned parties, and so far he has met with the SAC, Ethnic Armed Organizations, political parties and opposition groups. Thus, *it is seriously misleading to equate such engagements with legitimizing them* (emphasis added). ASEAN is not in the position to judge who is the most legitimate representative of Myanmar, this decision should be made by the people of Myanmar through a democratic means."

262. From January 2022 till July 2022, ASEAN invited members of the junta to meetings covering humanitarian assistance,[299] health cooperation,[300] defense cooperation,[301] and economic cooperation.[302]

263. Cambodia and ASEAN appeared to signal a shift in their approach towards the military junta in the aftermath of the junta's execution of four political opponents in July 2022. On 27 July 2022, ASEAN released a statement that read, "ASEAN denounces and is strongly disappointed by the execution of four opposition activists… The implementation of the death sentences, just a week before the 55th ASEAN Ministerial Meeting is highly reprehensible as it created a setback to and present (sic) a gross lack of will to support the efforts, particularly by the ASEAN Chair, in expediting progress on the implementation of the Five-Point Consensus (5PC)."[303]

264. The bloc then excluded the junta's foreign minister from the ASEAN Foreign Ministers meeting on August 2022, and a joint communiqué published after its conclusion on

[296] Justice for Myanmar, "*ASEAN's Complicity in the Myanmar Military's Atrocity Crimes*," 10 May 2022, https://www.justiceformyanmar.org/stories/aseans-complicity-in-the-myanmar-militarys-atrocity-crimes.
[297] Sopheng Cheang and Jerry Harmer, "Cambodia defends leader's trip to Myanmar as 'positive step'," *Associated Press*, 8 January 2022, https://apnews.com/article/business-asia-myanmar-global-trade-southeast-asia-57ccda7666c13fd9bd81b584c05a93e3.
[298] "State Administration Council Chairman Prime Minister Senior General Min Aung Hlaing holds talks with Cambodian Prime Minister Samdech Akka Moha Sena Padei Techo Hun Sen," *Global New Light of Myanmar*, 8 January 2022, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/GNLM2022-01-08-red.pdf.
[299] ASEAN, Press Release, "On the Outcomes of the Consultative Meeting on ASEAN Humanitarian Assistance to Myanmar," 6 May 2022, https://asean.org/wp-content/uploads/2022/05/ENG-Post-Event-PR-for-CM-Final.pdf.
[300] "MoH Minister attends 2nd day of 15th ASEAN Health Ministers' meeting, and related meetings," *Global New Light of Myanmar*, 16 May 2022, https://www.gnlm.com.mm/moh-minister-attends-2nd-day-of-15th-asean-health-ministers-meeting-and-related-meetings/.
[301] Justice for Myanmar, "*ASEAN'S Complicity in the Myanmar Military's Atrocity Crimes*," 10 May 2022, https://www.justiceformyanmar.org/stories/aseans-complicity-in-the-myanmar-militarys-atrocity-crimes.
[302] "Union Minister for Investment and Foreign Economic Relations attends ASEAN Economic Ministers' Special Meeting," *Global New Light of Myanmar*, 19 May 2022, https://www.gnlm.com.mm/union-minister-for-investment-and-foreign-economic-relations-attends-asean-economic-ministers-special-meeting/.
[303] ASEAN Chairman's Statement on the Execution of Four Opposition Activists in Myanmar, 27 July 2022, https://asean.org/asean-chairmans-statement-on-the-execution-of-four-opposition-activists-in-myanmar/.

3 August signaled that ASEAN would reassess its policy towards the junta: "we recommended that the ASEAN Summit assesses the progress towards the implementation of the Five-Point Consensus by the State Administration Council to guide the decision on the next steps."[304] In his opening remarks during the ASEAN Foreign Ministers meeting on 3 August 2022, the Cambodian Prime Minister also stated, "If more prisoners are to be executed, we will be forced to rethink our role vis a vis ASEAN's five-point consensus," adding that ASEAN was "disappointed and disturbed by the execution of these opposition activists despite the appeals from me and others for the death sentences to be reconsidered for the sake of political dialogue, peace and reconciliation."[305]

265. The *Global New Light of Myanmar* reported that a junta-led delegation attended the ASEAN Chief Justices' Meeting that took place 4-5 November in Malaysia.[306] Soon after, Myanmar junta's General Tun Aung was appointed chair of the ASEAN Air Chiefs Conference, with the official handover taking place on 4 November 2022. As the new chair, General Tun Aung will lead a series of meetings between ASEAN air forces next year.[307] General Tun Aung is a former director of Myanmar Economic Holdings Limited (MEHL) and is sanctioned by the UK, Canada, and the EU.

266. On 11 November 2022, ASEAN decided to continue to pursue the Five-Point Consensus despite acknowledging that there had been little progress in its implementation. A statement posted to the ASEAN website following the meeting indicated that ASEAN foreign ministers would be tasked to develop a "an implementation plan that outlines concrete, practical and measurable indicators with specific timeline to support the Five-Point Consensus." No timeframe was established for the development of the implementation plan. The same statement noted that the ASEAN Coordinating Council would be responsible for reviewing Myanmar's representation at ASEAN meetings, apart from the summits and foreign ministers' meetings where only a non-political representative would be allowed.[308]

[304] Joint Communiqué of the 55th ASEAN Foreign Ministers' Meeting, 3 August 2022, https://asean.org/wp-content/uploads/2022/08/Joint_Communique-of-the-55th-AMM-FINAL.pdf.
[305] "ASEAN warns Myanmar against more executions," *Mizzima*, 4 August 2022, https://www.mizzima.com/article/asean-warns-myanmar-against-more-executions.
[306] "Union Chief Justice-led Myanmar delegation attends 10th Council of ASEAN Chief Justices' Meeting in Malaysia," *Global New Light of Myanmar*, 8 November 2022, https://www.gnlm.com.mm/union-chief-justice-led-myanmar-delegation-attends-10th-council-of-asean-chief-justices-meeting-cacj-in-malaysia/.
[307] Justice for Myanmar, "ASEAN actively aiding and abetting Myanmar junta's war crimes and crimes against humanity," 8 November 2022, https://www.justiceformyanmar.org/press-releases/asean-actively-aiding-and-abetting-myanmar-juntas-war-crimes-and-crimes-against-humanity.
[308] ASEAN Leaders' Review and Decision on the Implementation of the Five-Point Consensus, 11 November 2022, https://asean.org/wp-content/uploads/2022/11/06-ASEAN-Leaders-Review-and-Decision-on-the-Implementation-of-the-Five-Point-Consensus_fin.pdf.

State Administration Council Chairman Prime Minister Senior General Min Aung Hlaing holds talks with Cambodian Prime Minister Samdech Akka Moha Sena Padei Techo Hun Sen

State Administration Council Chairman Prime Minister Senior General Min Aung Hlaing receives Mr Hun Sen, Prime Minister of Cambodia in Nay Pyi Taw on 7 January 2022.

CHAIRMAN of the State Administration Council Prime Minister Senior General Min Aung Hlaing received Cambodian Prime Minister Samdech Akka Moha Sena Padei Techo Hun Sen, who arrived here to pay a working visit to Myanmar, at the Credentials Hall of the Office of the SAC Chairman in Nay Pyi Taw yesterday afternoon.

First, the Senior General welcomed the Cambodian Prime Minister who signed the visitors' book and posed for documentary photos with the Senior General.

At the parlour of the Credentials Hall, they exchanged views on the promotion of diplomatic relations, friendly ties and cooperation between the two countries, the progress of the internal peace process in Myanmar and participation of

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IX. Conclusions and Recommendations

267. **By any standard, the SAC is not a legitimate government and should not be recognized, or engaged with, as such. Whether it be effective control, democratic or constitutional legitimacy, or the legitimate representative of the people standard, the SAC fails the test of legitimacy. The Special Rapporteur recognizes that some States, particularly those sharing a border with Myanmar, may have security reasons to maintain communication channels with the junta. Indeed, many asserted that their engagement should not be an indication of a recognition of legitimacy. He urges that whatever communication may be pursued, Member States not engage the SAC as the rightful government of Myanmar. Any engagement related to resolving the crisis should include the NUG and other pro-democracy bodies. As this report documents, the SAC will seize any opportunity to create the false impression that Member States recognize it as legitimate.**

268. **The words of government recognition scholar Brad Roth in 2011 can easily be applied to Myanmar: "Where blatantly thuggish forces impose themselves on a manifestly unwilling political community, deference to the outcomes of 'internal processes' cannot be rationalized as respect for the self-determination of independent political communities. Ideological pluralism, however, foundational to the international legal order, ultimately finds its limiting cases, where no internationally respected principles of public order support the governmental pretensions of narrowly self-interested cliques and glorified street gangs."** [309]

269. **The SAC is seeking to turn back the clock, close the door on Myanmar's democratic opening, and rip away the modest freedoms and opportunities that Myanmar's people began to enjoy over the past decade. The junta's vision for Myanmar is a military-controlled political system in which military leaders employ divide-and-**

[309] Roth, "Secessions, Coups and The International Rule of Law," p. 434.

rule tactics against the ethnic minorities and other groups and are accountable only to themselves. For the sake of the human rights of the people of Myanmar, the SAC must not be allowed to cement its power and achieve this outcome.

270. **Most critically in the near term, the international community must not recognize or support in any way the SAC's orchestration of what it is describing as an "election." Member States, international organizations, and election monitoring groups must not provide technical support to the SAC's Union Election Commission or send election observers to Myanmar. Instead, they should explicitly denounce what will be a farcical exercise designed to perpetuate military control of Myanmar's political system.**

271. **The Special Rapporteur recommends that all UN Member States:**

a. **Diplomatically isolate the SAC. Deny it opportunities to propagandize and feign legitimacy at every opportunity;**

b. **Initiate a coordinated, strategic approach to strengthen, coordinate and enforce economic sanctions and an arms embargo on the SAC, including by targeting its military forces and business operations. Prioritize cutting off the most substantial sources of income and support to the SAC, including the oil and gas sector, aviation fuel, natural resources, and key SAC-controlled financial channels, including the Myanmar Foreign Trade Bank;**

c. **Encourage and otherwise seek to ensure that other Member States reject the SAC, including requesting that Member States join calls to reject the SAC's 2023 sham elections;**

d. **Urge election monitoring organizations to not provide any form of assistance to the SAC as it prepares its sham elections. Assure that they are aware of the situation in Myanmar and that it is Member States' policy to not in any way support the 2023 elections;**

e. **Increase engagement with the National Unity Government. Provide recognition as the legitimate representative of Myanmar and begin providing appropriate support to help ensure its sustainability. This includes technical support in increasing trust between the NUG and EROs;**

f. **Engage directly with EROs supporting the pro-democracy movement and provide technical assistance and resources to them; and**

g. **Refuse to provide financial or material support to the SAC.**

272. **The Special Rapporteur recommends that ASEAN Member States also:**

a. **Publicly distance themselves from the SAC and condemn its actions; call for the SAC to end human rights violations, release political prisoners, and allow the formation of a legitimate government reflecting the will of the people;**

b. **Support the enforcement of international sanctions in your jurisdictions and cooperate with international investigations into SAC finances;**

c. **Reject the SAC's attempt to hold sham elections, publicly call out the SAC for lacking the authority to hold credible elections, and refuse to engage or indicate support for them;**

d. **Ensure that election monitoring organizations are aware of the situation in Myanmar and understand that it is your policy to not in any way support the 2023 elections;**

e. **Increase engagement with the National Unity Government. Welcome the NUG to regional meetings, seek their uniquely valuable perspective and expertise on meeting critical challenges including addressing the growing humanitarian catastrophe within Myanmar. Provide recognition to the NUG as the legitimate representative of Myanmar and begin providing appropriate support to help ensure its sustainability. This includes technical support in increasing trust between the NUG and EROs; and**

f. **Engage directly with EROs that support the pro-democracy movement and provide technical assistance and resources.**

273. **The Special Rapporteur recommends that Australia, Japan, New Zealand, and the Republic of Korea, all of which have imposed sanctions in the Russia-Ukraine context but not the Myanmar crisis, act immediately to impose sanctions on the SAC and its interests.**

274. **The Special Rapporteur recommends that Japan also:**

a. **Immediately expel SAC officers who are undergoing training in Japan; and**

b. **Review all economic support to Myanmar including overseas development assistance to ensure that it does not benefit the SAC.**

275. **The Special Rapporteur recommends that Belarus, China, India, Russia, Saudi Arabia, and Sri Lanka:**

a. **Reconsider and reverse their policies with respect to actions that are tantamount to recognizing or otherwise legitimizing the SAC;**

b. **For those countries with land or maritime borders with Myanmar, limit engagement strictly to security concerns involving territory controlled by the SAC and qualify it as such; and**

c. **Do not provide financial or material support to the Myanmar military.**

276. **The Special Rapporteur recommends that the National Unity Government:**

a. **Continue to broaden its base of support as the legitimate representative of the people of Myanmar;**

b. **Promote additional ethnic minorities, including Rohingya, into meaningful positions of influence and power within the government; and**

c. **Increase dialogue and advance negotiations with EROs, civil society, and other stakeholders concerning the political and constitutional framework for a future peaceful and democratic Myanmar.**

277. **The Special Rapporteur recommends that the UN Security Council, General Assembly, and Human Rights Council:**

a. **Reject the SAC's so-called "elections" as illegitimate;**

b. **Confirm that the SAC is not recognized as the legitimate government of Myanmar; and**

c. **Express support for the National Unity Government, including by urging Member States to engage and recognize the NUG.**

278. **The Special Rapporteur recommends that UN agencies conduct due diligence before inviting Member States to conferences to ensure that SAC representatives are excluded. The Special Rapporteur also recommends that the UN Office of Legal Affairs instructs all UN funds, agencies, programs, and affiliates that the SAC should not be invited to any UN conferences or meetings.**

279. **The Special Rapporteur recommends that regional and global election monitoring and support organizations expressly disavow and reject the SAC's planned elections for 2023, publicly stating that genuine elections are impossible under these extreme circumstances and committing not to support the elections in any way.**

280. **The Special Rapporteur recommends that donors exercise flexibility with their recipients and, in particular, not require NGOs operating in Myanmar to register with the SAC as a condition for receiving funding and support.**