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The Myanmar Test: Is ASEAN Truly at Political Crossroads?

ASEAN's consensus-oriented modus operandi as a Formal Intergovernmental Organization has already nullified the efficacy of the organization in recurring crises in Myanmar, and this could yield a new form of informal grouping evolving in the context of other geopolitical developments in Southeast Asia and the Indo-Pacific at large.

The coup d'état that rocked Myanmar in February 2021 is emblematic of three things: the impeded state building process that has colonial roots, a fractured approach to human rights, and a lack of cohesive international action despite multilateralism being on the rise among Asian states.

The Myanmar story has often been romanticized for its apparent transformation from an authoritarian military regime to more representative and democratic in the early years of the previous decade.

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The recognition, moreover, of some of the minorities residing within the state was considered a critical metric in measuring the liberal democracy rooting itself within the political realities of the Buddhist state. The on-going coup is, therefore, often portrayed in the media as a form of regression and slide down back to a place that was perceived as anachronistic. Such a situation gives rise to an inevitable question over the collective response of the regional stakeholders under the auspices of the Association of Southeast Asian Nations (ASEAN). Commentators have touted this scenario as a test for the intergovernmental organization which, having reached a political crossroads, faces long-term consequences for its legitimacy. The article will discuss the long-term effects of the coup, and pursue two critical questions: what is ASEAN's role in the internal political matters of the South East Asian Regional Complex (SEARC) in 2021, and what are its principal areas of (in)action? For the purposes of clarity, SEARC is an academic construct that is fluid; meaning it is not bound by a constitution or constrained by a single ideological structure, and its nature can vary based on the behavior and workings of Southeast Asian states at any given point in time.¹

The question of legitimacy is inherently abstract when discussing neoliberal institutions that are bound by a common constitution because they are often water-downed agreements based on some principles, without any leaving space for substantial universal implementation. But this factor turns extremely compartmentalized whilst talking about an institution that was established based on 'non-interference and in a region that has strong colonial legacies and

¹ Ryan Mitra, "Amity and Enmity within the Contemporary Southeast Asian Regional Complex," *The Calcutta Journal of Global Affairs* 4, no.2 (2020): 176.



trauma.² International action always comes with the question of sovereignty and is posed as an opportunity cost against legitimate Westphalian Statehood, a concept that is an historical import into the political matters of the region. The larger call for action from the international community, and specifically from ASEAN, implies that we cannot view the on-going developments as a vacuum-isolated event doused with a pernicious case of presentism, a view that only present things exist.³ Presentism works by exaggerating the present crisis as the biggest crisis ever faced while discounting previous experiences, thereby creating an impression of being in uncharted waters. This crisis, like many other international crises, is difficult to navigate but it is neither unfamiliar nor unprecedented.

It is important to keep in mind that the surface level transformation of Myanmar as a constitutionally democratic state is not proof of empirical realities of the state transforming. These realities have previously driven the strife and friction between the junta and citizens, and it is important to contextualize the coup against similar, previous events in the Southeast Asian country's independent history. They also need to be contextualized with the long-standing human rights regime and associated state behavior within the region, and the supposed role (if any) ASEAN has in the state-building process of its member states. To trace these processes, this article will briefly explore the intersection of Myanmar's political history and human

² Kamarulzaman Askandar, et al, "The ASEAN Way of Conflict Management: Old Patterns and New Trends," *Asian Journal of Political Science* 10, no. 2 (2002): 21-42.

³ Michael North, *What is the Present?* (Princeton, NJ: Princeton University Press, 2018), 10.

rights, followed by a discussion of ASEAN's internal commitments to principles within international law and its (in) efficacy as a Formal Intergovernmental Organization (FIGO) vis-à-vis the given situation in Myanmar.

The Burmese Story

Myanmar has been subject to political instability since its inception as an independent state during the post-Second World War years. While there is much to say about the theological and cultural aspects of this reality, this article will focus on the omnipresence of the tutelary regime in the socio-political domain of Myanmar's politics. It is important to note that while the international and academic community has identified the behavior of the junta for decades as authoritarian and dictatorial, the tutelary regime is noticeably wary of the pressure to democratize the country. Like the coup of 1988 and the coups before it, the military always pursued 'temporary' control over the operations of the state in the interest of preserving the fragile democratic fabric and unity of the state.⁴ Myanmar's constitution allows the military to dissolve the state's institutions if the military itself identifies a threat to the union or to national solidarity,⁵ which often has translated to nullifying the threats to the control it possesses over the union or to its vision of national solidarity.

The Burmese story thus far has been scripted by the junta, and the transformation of the state into 'Myanmar' as a (quasi) democratic state only deepened this portrayal. The junta has actively adapted to internal and geopolitical trends ranging from international sanctions

⁴ Sebastian Strangio, "Myanmar's Coup was a Chronicle Foretold," *Foreign Affairs*, February 2, 2021.

⁵ *Ibid.*



by the United States under George W. Bush⁶ to facing natural disasters, such as Cyclone Nargis,⁷ by intricately bulldozing the state's constitution and/or reorienting its foreign policy to the best possible configuration in its interests at a given time. This author would like to reiterate a fact that has been stated by few academics while commenting on the junta's capacity for statesmanship, that the military is cognizant of the political realities in the state and has effectively adapted as the political contours of the state have evolved, be it the end of the Cold War, technological development, transnational linkages on the lines of culture and heritage, and the advent of the Internet and social media. With this cognizance, the military has been able to mold the political sphere of the state in its image and it understands its capacity to undertake operations and adapt to evolving trends in the state. Repeatedly, it has responded 'boldly' in response to any losses in the electoral process. While scholars have accorded significant attention to the post-facto response of the military to these losses, it is also important to shed light on the trend of this patently authoritarian tutelary regime engaging in elections for decades in the first place. For its own benefit, the regime has employed the linear legitimization that elections impart to liberal democratic political establishments by periodically allowing electoral and political competition and offering certain concessions—the biggest of which were given against the backdrop of Cyclone Nargis in the 2008 constitution overhaul and consequent elections.⁸

⁶ Sebastian Strangio, "The Myanmar Mirage: Why the West got Burma wrong," *Foreign Affairs* 99, no. 3 (2020): 182.

⁷ *Ibid.*

⁸ Elizabeth Ferris and Lex Rieffel, "Cyclone Nargis: Catalyst for Change in Myanmar?" *Brookings*, May 16, 2008,

The military has neither trapped itself within the binary of the political spectrum of progressive (leftist) and conservative (rightist) bases as seen in many western states, nor has it run populist agendas, as will be explicated ahead. It has run a strictly (skewed) representative platform that is defined by majoritarianism, theology, and ethnicities. Why this platform is not populist is because it is so deeply entrenched within the polity of the Southeast Asian state that even the opposition, the National League of Democracy (NLD), that was supposed to be the antithesis to the junta's Union Solidarity and Development Party (USDP), failed to contest or speak out against these platforms. Aung San Suu Kyi, previously hailed by the international community for her fight for democracy in her country, also failed to contest the ethnically-driven, xenophobic, and discriminatory platform and actions of the military in the fringe regions of the state. When called upon by the International Court of Justice in 2019 for her testimony regarding the genocidal acts committed in Rakhine against the Rohingya, the Nobel laureate failed to hold the politicians from the USDP accountable.⁹ The current situation in Myanmar is rooted in the Burmese story of a state emerging from the deepest trenches of colonial oppression and the ethnic divide that was perpetuated following the incomplete consolidation of empirical variables of state-building such as social cohesion, protection of demographic plurality, the universality of constitutional rights, and the pooling of economic resources in specific parts of the Burmese polity.¹⁰ Out of this reality is

<https://www.brookings.edu/opinions/cyclone-nargis-catalyst-for-change-in-myanmar/>.

⁹ Strangio, "The Myanmar Mirage," 180.

¹⁰ Stathis N. Kalyvas, "New and Old Civil Wars: A Valid Distinction?" *World Politics* 54 (October 2001): 106.



borne a haunting story that is still on-going and continues to unfold as a part of the 2021 coup: the fractured human rights approach in the state.

Democracy?

It is important to note that the recognition of a state in the international system on normative lines, and the efficacy of the state as a legal personality in international relations on empirical lines, are distinct and run parallel to one another. While Myanmar fulfills the normative requirement for Westphalian statehood on the basis of having a defined territory, a population, a government, and international recognition, its current predicament stems from the underdevelopment and marginalization of empirical factors such as the lack of sustainable education and medical infrastructure, absence of assimilatory programs for societies and groups living in the fringe areas of the country, and an ethnic bias in government sector employment.

While the long periods of economic mismanagement by the junta government, and the mercurial nature of the constitution that has been crafted at the whims of the junta, have been noted elsewhere in detail, this article will briefly dwell on the failures of governance in the past and present to address the human rights deficit in the state. This deficit manifests in many forms, ranging from the repression of civil liberties such as the right to dissent and public gathering¹¹ to genocidal intent and acts against disenfranchised minorities.¹² The policies of various authoritarian regimes in Yangon during the Cold War

¹¹ Hannah Beech, "Myanmar's Protest Are Growing, Defying Threats and Snipers," *New York Times*, February 22, 2021.

¹² "Top UN Court Orders Myanmar to Protect Rohingya from Genocide," United Nations News, January 23, 2020, <https://news.un.org/en/story/2020/01/1055841>.

years not only worsened social cohesion, but also generated ethnically and religiously motivated violence, and caused widespread economic asymmetry.

As the political dimensions of the state evolved and the call for democracy strengthened, the military engaged in a unique Asian trend called “communal democracy.”¹³ This theory essentially espouses how tutelary and/or authoritarian regimes adopt liberal democratic behavior on normative lines while still exhibiting control over the empirical variables through ethnic and religious communalism. In the case of Myanmar, while the military chose to engage in elections, and allowed for greater participation in 2012, it was not emblematic of actual changes in the system. In reality, the military exercised control over all three critical factors required for a hybrid (civilian and tutelary) regime in a democratic state, which are (1) electoral competitiveness, (2) civil liberties, and (3) tutelary interference.¹⁴

It is worth recalling the oft-neglected Article 21 of the Universal Declaration of Human Rights (UDHR) that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives.”¹⁵ As well, Article 1 of the International Covenant on Civil and Political Rights, and on Economic, Social and Cultural Rights mentions that “by virtue of their right to self-determination, all people have the right freely to determine their political status.”¹⁶ Specifically applicable to Southeast Asia and

¹³ Chetan Bhatt, “Democracy and Hindu Nationalism,” *Democratization* 11, no. 4 (2004): 133-154.

¹⁴ Bunte, “Ruling but not governing.”

¹⁵ “Human Rights and Elections,” Office of the High Commissioner on Human Rights, p.6, <https://www.ohchr.org/Documents/Publications/training2en.pdf>.

¹⁶ *Ibid.*



Myanmar is article 25 (1) of the ASEAN Human Rights Declaration which reads, “every person who is a citizen of his or her country has the right to participate in the government of his or her country, either directly or indirectly through democratically elected representatives, in accordance with national law.”¹⁷

Since the first decade of the twenty-first century, the junta has allowed electoral competitiveness to gradually emerge within the national politics of the state. But it did so with an iron fist over critical constitutional matters pertaining to security and foreign policy,¹⁸ and a stern eye over the electoral process. Discrediting democratic institutions, figures, and processes is not an unprecedented tactic of the junta but rather its trump card that is constitutionally protected in the name of national emergencies. The rampant securitization and anti-politics behavior that has been on exhibit since 1988 also evolved during the second decade of the twenty-first century when the regime allowed the NLD to form a government and accepted its mandate as the governing national party.¹⁹ But then the military usurped the government’s role by taking an autonomous decision to attack the Rohingya, in response to attacks allegedly by the Arakan Salvation Army.²⁰ And the governing authorities failed to hold any military

¹⁷ “ASEAN Human Rights Declaration,” The ASEAN Secretariat, February 2013, p.7.

¹⁸ Aurel Croissant and JilKamerling, “Why Do Military Regimes Institutionalize? Constitution-Making and Elections as Political Survival Strategy in Myanmar,” *Asian Journal of Political Science* 21, no. 2 (2013): 105-125.

¹⁹ Ibid.

²⁰ Eleanor Albert and Linday Maizland, “The Rohingya Crisis,” *Council on Foreign Relations*, January 23, 2020, <https://www.cfr.org/background/rohingya-crisis>.

general or operative liable for the crimes committed. Instead, using social media platforms such as Facebook, the junta exercised its communal democratic prowess and stroked majoritarian Buddhist sentiment in favor of its actions. And in times of elections, the opposition failed to contest this platform, thus shrouding these inhumane acts with a blanket of political ignorance. Human rights have always borne the price of the junta's authoritarianism. The only point of analysis that remains is whose rights, and to what extent are they not respected?

The electoral crisis Myanmar is currently facing stems from the military's non-recognition of the popular vote, disrespect for electoral competitiveness, and seizure of control over the executive wing of the government for at least one year. As a consequence, the mass protests that erupted around the state have been met with hard, and often lethal tutelary interference, by clamping down on civil liberties such as the right to gather, to protest, and that of expression. All of these rights are also enshrined in the documents mentioned earlier. As of March 20, 2021, close to 250 people had been killed and more than 2,665 had been arrested as part of the violent interference by the security forces.²¹ The horrendous human rights violations and crimes against humanity committed against the Rohingya are well noted, and minority groups like them do not have constitutional recognition which nullifies the application of ASEAN's declaration to these groups. The junta had seized control of these empirical factors in various forms by either actively targeting minorities in the name of (communal) democracy and protecting the fabric of the state, or are not deterred from

²¹ George Petras, et al, "What's happening in Myanmar?" *USA Today*, March 20, 2021.



undertaking hard power measures against civilians when it needs to curb widespread dissent. In order to trace the current situation politically and examine how the political and human rights of the people of Myanmar have been treated, this article refers to a matrix by Ardeth Maung Thawngmung:²²

		The Military's Strategy		
		Non-accommodation	Partial accommodation	Full accommodation
The Protest Movement's Strategy	Compliance	1 A One-year military rule; NLD abolished? (1958 caretaker government) (Military's initial plan)	2 A NLD enters new elections but wins far fewer seats than in the 8 November 2020 polls (2010-2015 situation)	3A A return to Pre-1 February 2021 status quo (NLD's initial objective)
	Partial protest	1B Military rule for more than one year; political repression and drafting of new constitution or revision of 2008 constitution (SLORC/SPDC 1988-2004)	2B Limited degree of political and economic freedom as long as the military is not criticised; release of top NLD leaders/low level leaders; some negotiations with NLD or CRPH (SPDC 2004-2010)	3B Pre-1 February 2021 status quo; top generals resign and possibly go into exile
	Full protest	1C Failed state characterized by chaos and anarchy (Current situation)	2C Failed state characterized by local self-governance with a self-defense structure supported by EAOs.	3C Top generals resign; elimination of 2008 constitution; military under civilian control with possible federal army and elimination of military's parliamentary seats; "federal democracy" (e.g. General Strike Committee, General Strike Committee of Nationalities, KNU/EAOs)

²² Ardeth Maung Thawngmung, "Back to the Future? Possible Scenarios for Myanmar," Iseas Yusof Ishak Institute, March 2021, <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/...ture-possible-scenarios-for-myanmar-by-ardeth-maung-thawngmung/>.

Out of this matrix, a lot of questions and assumptions can be extracted but considering the possible regional and international implications of the current scenario it is important to explore what is an ideal situation for ASEAN to strive for. In view of the failures of the institution in dealing with similar crises in Myanmar previously,²³ and in other states such as Cambodia owing to its subversion of ASEAN processes,²⁴ the on-going political crisis in Thailand,²⁵ and the despicable human rights record of the Philippines,²⁶ the fundamental question is: is this truly a unique political crossroad for the regional FIGO?

ASEAN in the Middle

There are multiple layers of response that the international community could have proffered. Ideally, the United Nations Security Council, having taken cognizance of the crisis, would have swiftly undertaken an action in accordance with Chapter 7 of the UN Charter along with the cooperation of regional actors including India, and the ASEAN states.²⁷ But the political dimensions, especially with China's rise as a revisionist state, have prevented this from coming to fruition. Furthermore, the application of the Right to Protect (R2P) principles is pragmatically a non-viable avenue to pursue in the UNSC, especially

²³ Askandar, et al, "The ASEAN Way of Conflict Management."

²⁴ Ibid.

²⁵ Sebastian Strangio, "Myanmar's Crisis is Starting to Spill Beyond its Borders," *The Diplomat*, March 19, 2021.

²⁶ "Philippines: Events of 2020," World Report 2021, Human Rights Watch, <https://www.hrw.org/world-report/2021/country-chapters/philippines>.

²⁷ Martin Petty, "Explainer: West looks to Tougher Sanctions as Myanmar Violence Intensifies," *Reuters*, March 1, 2021.



after its questionable application in Libya in the previous decade.²⁸ Therefore, the only structured and constituted FIGO the international community can constructively turn to for a collective response is ASEAN. But the Southeast Asian FIGO comes with its own constitutional barriers that would require unprecedented incursion into the domestic politics of a member state and violation of its non-interference policy.

ASEAN's guiding principle of non-interference in the internal affairs of a member state has played an active part in the organization's response to previous domestic crises among its members. The on-going coup is not the first of its kind that the FIGO is facing. It has previously experienced coups in Myanmar and Cambodia which resulted in mass human rights violations and bloodshed.²⁹ Many of the member states had previously agreed on the shortcomings of the grouping's current philosophy given the tumultuous circumstances many of the regional stakeholders chronically face. But no criterion of revision of this philosophy was agreed upon.³⁰ The fact that in 2021 ASEAN is again being looked at to provide a constructive response to various human rights violations, which are becoming an increasingly recurring trend in the region, raises the question of whether ASEAN's role encompasses policing the South East Asian Regional Complex? And if so, how should its constitution and philosophy evolve?

The conceptualization of FIGOs, discussed below, sheds some light on the existing constraints that are often homogenous shortcomings of formal intergovernmental organizations in general.

²⁸ Rebecca Adler-Nissen and Vincent Pouliot, "Power in Practice: Negotiating the International Intervention in Libya," *European Journal of International Relations* 20, no. 4, (2014): 889-911.

²⁹ Askandar, et al, "The ASEAN Way of Conflict Management."

³⁰ Ibid.

Felicity Vabulas and Duncan Snidal highlight the difference between FIGOs and informal intergovernmental organizations (IIGOs). They note that “FIGOs even though are created by formal agreements, there is significant variation in the precision of their underlying agreements so there may not be complete agreement as to member’s obligations.”³¹ Repeatedly, some of ASEAN’s member states (and in this case, Myanmar) have not abided by—as required—the tacit and overt obligations of the declaration and other international agreements. Furthermore, the passive role the organization has played in comparison to other regional institutions, such as the African Union, in terms of interference in the internal matters of its member states for political and social peacekeeping purposes, has repeatedly been at the forefront of criticism about the effectiveness of the organization. While peacekeeping operations and interference without consent raise a whole other set of concerns, it is to be noted that some of the member states in recent times, and specifically in regard to the on-going crisis, have exhibited a heightened sense of concern.

In response to the crisis, both Singapore and Indonesia voiced concern over the political turmoil in Myanmar and were “very distressed” by the situation.³² While Singapore and Indonesia have stated they believe there should be no foreign interference, they have called for ASEAN’s role to be exercised in any way legally possible. It is unclear if this ‘foreign interference’ alluded to extra-regional interference or was in line with the non-interference principle of

³¹ Felicity Vabulas and Duncan Snidal, “Organization without Delegation: Informal Intergovernmental Organizations (IIGOs) and the Spectrum of Intergovernmental Arrangement,” *The Review of International Organizations*, Springer 8, no. 2 (2013): 193–220.

³² Sebastian Strangio, “Singapore Joins Calls for Emergency ASEAN Summit on Myanmar,” *The Diplomat*, March 26, 2021.



ASEAN. Singapore, in a clarion call along with Indonesia and Malaysia, called for an emergency ASEAN Summit to address the turmoil but pressing questions remain in regard to the efficacy of ASEAN going into this proposed emergency session. The informal meeting held via a video link at the start of March 2021 already failed in yielding any substantial consensus on Myanmar apart from token solidarity words and speeches calling for a halt to the violence.³³ There were no explicit thresholds, demands, or red lines put forward to overturn the coup.

The first meeting between ASEAN leaders and the junta chief since the coup was held on April 24, 2021 amid continuing questions over the grouping's handling of the errant country and signifying two issues as highlighted earlier.³⁴ The first being that ASEAN will need to either tacitly or explicitly recognize the seizure of power by the military, and in some form legitimize the coup if it wants to negotiate the easing of domestic tensions in Myanmar. Second, this approach highlights the point made earlier regarding its 'non-interference' policy being ripe for change and revision, considering how restricted the FIGO is turning out in the increasingly volatile geopolitical reality of SEARC. Figuratively, this epitomizes the dissonance that is at play here; where ASEAN wishes to stand by its human rights commitments but is willingly engaging with the perpetrators of the violations of those principles on a consensus-only based model.

Moving forward, since diplomacy and negotiation (and a certain shade of appeasement) is the modus operandi that will be adopted, ASEAN countries will have to (even temporarily) recognize the junta's

³³ Sebastian Strangio, "ASEAN Foreign Ministers Meet to Discuss Myanmar Crisis," *The Diplomat*, March 3, 2021.

³⁴ Editor's Desk, "Myanmar activists deride ASEAN-junta consensus, vow to continue protests," Reuters, April 25, 2021.

role as the political authority in the state. This long-term trend has been observed in previous coups in Myanmar as well. If the international community decides to pursue targeted sanctions amid a roiling mix of the on-going pandemic, widespread economic disparity, and ethnic strife, it will most likely have a dire impact on the people protesting the junta in the first place. Furthermore, ASEAN as an organization neither has constitutional measures nor political consensus on any sort of sanctions against member states. Considering the fracturing of political structures in many of the member states, this author believes the ASEAN system is not going to change in the near future.

In conclusion, reflecting on the question the title raises, the author concurs that ASEAN is at a political crossroads but this is not the first time it is visiting it. It is imperative to actively avoid falling into the presentism trap. Noting Myanmar's example itself highlights how ASEAN has faced different variations of the same fundamental issue of political turmoil and consequent human rights' violations. Rather than moving forward and breaking new ground towards contemporary regional cohesion and enforcing its own declared principles, the FIGO has always banked sideways while dealing with political issues in the region through actions short of being substantive. This behavioral trend inevitably makes them return to this point, this crossroad chronically.

Is ASEAN the SEARC's policeman? No. Not in its current configuration, as there is neither enough political will nor national backing among the member states for it to undertake such a role in any form. And what will the Myanmar test yield for ASEAN's future? It is hard to chart the FIGO's trajectory especially because of regional factors such as the emergence of several national political issues



among the member states parallelly, associated human rights violations, the impact of climate change, and their deepening dependence on China for the pursuit of economic benefit. In the opinion of this author, the consensus-oriented modus operandi of the FIGO has already nullified the efficacy of the organization in such matters and this could yield a new form of informal grouping evolving in the context of other geopolitical developments in the SEARC and the Indo-Pacific at large.

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