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The Struggle for International Recognition: Myanmar after the 2021 Coup

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The empty chair of Myanmar's Foreign Minister is pictured during a Plenary Meeting session of the 55th Association of Southeast Asian Nations (ASEAN) Foreign Ministers Meeting in Phnom Penh, on 3 August 2022. Myanmar was not represented at the meeting after the other members said they would not accept a junta minister and the generals refused to send another official. Photo: Mohd RASFAN/AFP.

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EXECUTIVE SUMMARY

- The military coup in Myanmar on 1 February 2021 created huge diplomatic repercussions, throwing into uncertainty the country's international position and representation.
- The coup's unconstitutional basis and the resistance to military rule in Myanmar also presented challenges for international and regional bodies to engage with stakeholders in Myanmar.
- The United Nations and ASEAN have approached these challenges on the basis of existing procedures and guidelines. Although the UN's existing guidelines seem to favour democratic legitimacy, it prefers not to be perceived as taking sides in Myanmar's representation.
- ASEAN, lacking similar guidelines regarding credentials and representation, has created its own precedents regarding the level of representation at key political meetings. Neither the UN nor ASEAN have accorded outright recognition to the State Administration Council (SAC) or the parallel National Unity Government (NUG), although individual member states have exercised unilateral initiatives to engage in dialogue with the NUG. Additionally, some members and dialogue partners of ASEAN have turned to existing treaty practices that allow arrangements for non-recognition disclaimers in concluding regional treaties and agreements involving Myanmar.
- Differing views and interests among member states at either UN or ASEAN tables also add to the continued ambiguity on engaging Myanmar. This *de facto de jure* divide in and on Myanmar seems likely to continue in 2023, with the SAC's election plans likely to exacerbate tensions.

INTRODUCTION

The coup mounted by Myanmar's military on 1 February 2021 has thrown the country's international representation into ambiguity and confusion. The State Administration Council (SAC) regime, headed by Commander-in-Chief Senior General Min Aung Hlaing, who also appointed himself head of a caretaker government on 1 August 2021, asserts that the SAC is the sole representative and voice of the country.

However, the SAC's creation as an instrument of arbitral military rule and the legality of its assertions were unconstitutional. While the coup leaders physically prevented the imminent convening of the Hluttaw, Myanmar's legislature, the parliament nevertheless proceeded to swear in its members and establish a Committee Representing Pyidaungsu Hluttaw (CRPH; Committee Representing the Union Parliament). Three days after the coup, about 70 lawmakers-elect from the incumbent National League for Democracy (NLD) proceeded to take their oaths of office, as an act of upholding the 2020 election results and their legislative commitments.¹ The CRPH eventually grew to 20 Members, with the support of 80 percent of the elected MPs, and it has been extended recognition in inter-parliamentary cooperation, including by the European Parliament and the International Parliamentary Union. Legal experts have highlighted the coup's unconstitutionality,² particularly the military's unproven and implausible claims of electoral fraud as a reason to justify declaring a state of emergency and deposing and detaining the internationally recognised leaders and senior officials, including President Win Myint, State Counselor Aung San Suu Kyi, the Chairman of the Election Commission,³ Chief Ministers and senior cabinet members of the National League for Democracy (NLD) government.

Since the coup, and particularly since the appointment in April 2021 of the National Unity Government (NUG),⁴ which draws its legitimacy both from the elected CRPH and a wider group of appointed representatives, both the SAC and those opposing military rule have put considerable effort into gaining international recognition by asserting the extent of their domestic reach and control as well as in their respective external engagements.⁵

The physical control of government buildings and the state machinery gave the military an initial upper hand, although mass resignations, strikes, and protests by an estimated 400,000 civil servants⁶ hampered the military's efforts to exercise administrative power.

The issue of representation and recognition presents challenges internationally and regionally. Both the United Nations (UN) and ASEAN operate on the basis of what they refer to as "recognising states rather than governing entities". While Myanmar's status as a member state is not in doubt, recognising the competency of a representative acting on behalf of a state presents a challenge in the post-2021 coup scenario.⁷

For the time being, the UN Credentials Committee has agreed that the incumbent Myanmar ambassador to the UN, Kyaw Moe Tun, would continue to represent Myanmar, and has deferred further decision.⁸ In October 2021, ASEAN made an unprecedented decision to limit the SAC's attendance at the 38th and 39th ASEAN Summits to a "non-political representative",⁹ upholding this for ASEAN's special summits with China in November 2021 and with the United States in May 2022, respectively. In February 2022, ASEAN further expanded the non-

political representative application to foreign ministers' meetings. The practice was extended to the ASEAN Defence Ministers' Meeting Plus on 23 November 2022.¹⁰ However, for all practical purposes, ASEAN interacts with Myanmar's Ministry of Foreign Affairs and embassies which are under SAC control.

At the same time, in February 2022, the International Court of Justice (ICJ) resumed hearings of the case brought against Myanmar by the Gambia regarding the Myanmar state's responsibility for preventing genocide towards the Rohingya population, under the Genocide Convention.¹¹ The ICJ hearings proceeded with the SAC in the defendant's seat.¹²

In August 2022, international civil society/rights organisations supporting the UNESCO World Education Summit, mistakenly addressed the SAC chief as head of government.¹³ Even in ASEAN, other than the Summit and foreign ministers' meetings, other sectoral and functional meetings and activities have continued with SAC representatives.

There is thus a level of ambiguity surrounding the accreditation and acceptance of Myanmar representatives to ASEAN and international meetings, and in dealings with the various regional and international instruments to which Myanmar is a party.

APPROACHES TO THE RECOGNITION OF GOVERNMENTS AND THE ISSUE OF CREDENTIALS

As a member of the UN and ASEAN, Myanmar's statehood is clear and undisputed. Myanmar meets the legal requirements of statehood under the 1933 *Montevideo Convention*.¹⁴ What is of greater concern, however, and particularly for ASEAN, is the recognition of competent representatives acting on behalf of a State, especially when the SAC and the NUG are both asserting their right to Myanmar's ASEAN seat.¹⁵

Under international law, the recognition of government (as opposed to states), is largely left to individual members' discretion. Most states or international institutions often resort to the Estrada Doctrine¹⁶ to avoid accusations of meddling with sovereignty when different parties contest authority in a country. This bears some resemblance to ASEAN's non-interference principle, as it is based on the principles of non-intervention and self-determination. Even so, considering the Estrada Doctrine in the context of the February 2021 coup in Myanmar runs the risk of condoning unconstitutionality. ASEAN member states had recognised the NLD's second landslide victory in 2020. The ASEAN Chair's statement on 1 February 2021 also emphasised the importance of "adherence to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms" and a "return to normalcy in accordance with the will and interests of the people of Myanmar".¹⁷

The general preference to recognise states and not governments does not resolve the question of recognising governments, especially concerning the establishment of embassies, the accreditation of ambassadors, or the signing of agreements.¹⁸

Thus, when the recognition of a new government needs to be considered, three criteria are usually referred to, namely: (i) the entity's effective control of the territory; (ii) its democratic legitimacy; and (iii) its adherence to international law.¹⁹ Before 1990, UN Credentials Committees usually referred to the traditional criterion of effective territorial control for recognising a government.

Apart from these three criteria, states may also consider moral considerations, based on whether a government gained effective control legitimately or otherwise, preferences for values or systems such as democracy, or asserting control through violence and authoritarian means. Such considerations are important, as they help to ensure that the coup in Myanmar is not a *fait accompli*.²⁰ The UN's credential practices post-1990 have also demonstrated the importance of these values, including factors such as human rights records.²¹

In the 21st century, democratic legitimacy has emerged as having a greater claim to recognition than the earlier characteristic of effective control. The UN chose to recognise democratic legitimacy in Cote d'Ivoire (2011) and Gambia (2017).²²

States may sometimes also use the terms *de facto* or *de jure* when the authority in a country is contested. Governments with *de jure* status are considered legal and constituted. In contrast, a *de facto* government may be in control of the political/executive affairs of the state although not legally recognised or enjoying a legal mandate.²³

In the case of Myanmar's representation at the UN, the 76th UNGA Credentials Committee²⁴ has deferred its decision indefinitely, based on the understanding that the incumbent, Ambassador Kyaw Moe Tun (appointed by the NLD government in 2019) retains Myanmar's seat.²⁵ Ambassador Kyaw Moe Tun states that he represents the NUG when participating in UN procedures and votes on UNGA resolutions. Inconsistent with the UN's own precedents and requirements, this position has not been reflected in other UN bodies, such as the secondary seats in Geneva and Vienna, or Myanmar's representation at ESCAP in Bangkok.

ASEAN does not possess a similar mechanism to examine the credentials of member states' representatives. The established rules in ASEAN do not have any guidelines to deal with cases in which appointments or credentials are contested, let alone the competency of the government that issues them. As such, in light of the non-recognition of the SAC's authority by some member states and dialogue partners, ASEAN has faced an unprecedented challenge of finding options for the conclusion (and entry into force) of ASEAN instruments and agreements.

In ASEAN, treaty practices²⁶ allow arrangements to consider the issue of non-recognition in concluding treaties. For example, states can issue a statement that their accession to a multilateral treaty does not imply or confer recognition to certain state(s). This practice allows ASEAN member states or dialogue partners that do not recognise the SAC as the government of Myanmar to introduce a statement or declaration as a non-recognition disclaimer. Admittedly, this disclaimer may have more to do with a country's position rather than a legal effect on the document.

Several member states and some dialogue partners of ASEAN have taken this approach in ratifying the Regional Comprehensive Economic Partnership (RCEP) agreement. Similarly, in

consideration of external parties' accessions to ASEAN's foundational document, the Treaty of Amity and Cooperation in Southeast Asia (TAC), the ASEAN parties to the TAC now submit individual written consent to the depository, replacing the previous (pre-February 2021) established practice of physical signatures to indicate consent.

SAC AND NUG: THE LEGITIMACY QUESTION

Although the SAC considers itself the ruling entity, and has styled itself as a provisional government since August 2021, experts have highlighted the military's deposing and detention of existing officeholders as unconstitutional.²⁷ The SAC had justified the military takeover under the 2008 Constitution, but that same document contains provisions that charges relating to impeachment can only be initiated by the Union Parliament. Furthermore, the President has to inform the Union Parliament of a decision to declare a state of emergency, which did not happen in February 2021.²⁸ Senior NLD leaders and party members were also detained without charges presented against them (lists of charges were only presented after detention). In this aspect, the military's actions cannot be considered as actions of a *de jure* government.

Apart from the unconstitutional basis of the takeover, the use of lethal force, extra judicial killings, and using the legal system to carry out the first judicial executions in decades, add to the violations of international law (in addition to the earlier legal action brought by the Gambia against Myanmar over atrocities against the Rohingya in Rakhine State).²⁹

The nationwide protests and coordinated civil disobedience movements across the country following the coup, the breakdown of SAC-controlled local administration in several parts of the country, and the escalation of a cycle of violence in response to the military's harsh crackdowns (which include airstrikes), also point to the reality that the SAC is unable to fulfil the criterion of "effective control" of the country.³⁰

However, the SAC regime seems to enjoy some measure of pragmatic acceptance by China and to a lesser extent India, and outright strong support by Russia.³¹ ASEAN has come under scrutiny for engaging the SAC to negotiate the cessation of violence in the country and facilitating humanitarian assistance, even as ASEAN members seek to differentiate engagement and acceptance. As at May 2022, four ASEAN member states – Brunei, Malaysia, the Philippines and Thailand, have not appointed/replaced their ambassadors to Myanmar. Thailand accepted the credentials of an SAC-appointed Myanmar ambassador to Thailand in June 2022.³²

ASEAN's negotiation of the Five-Point Consensus with Senior General Min Aung Hlaing in Jakarta in April 2021 at the ASEAN Leaders' Meeting, working with the SAC-led Myanmar National Task Force to deliver humanitarian assistance,³³ accepting the SAC's defence minister General Mya Tun Oo's presence at the ASEAN Defence Ministers' Meeting,³⁴ and the 2022 ASEAN Chair Cambodia's approach to engaging the SAC could be construed as 'normalisation' of military rule in Myanmar.³⁵

The NUG was formed out of a coalition of NLD law-makers, representatives of several ethnic nationalities, and members of civil society. Appointed in April 2021, it is part of a political roadmap outlined in the Federal Democracy Charter adopted by the CRPH—a body of lawmakers, largely from the NLD who had received the people’s mandate through the 2020 democratic election.³⁶ The NUG’s goal is to restore democratic rule and uphold the results of the 2020 election.³⁷ It also commits to a vision of an inclusive federal democracy.

The NUG seeks to: (i) gain formal recognition from the international community by collaborating with international governments and international organisations including the UN; (ii) work on ratification of international conventions and treaties that will protect the nation in line with international laws; (iii) collaborate with partner countries; and (iv) work through diplomatic approaches to bring effective sanctions of the international community against the council of the military junta.³⁸

The NUG has spared no effort to establish its diplomatic presence despite its constraints. To date, there are NUG representatives in Australia, Czech Republic, South Korea, the United Kingdom, France, Japan, and Norway. However, NUG representatives do not have diplomatic accreditation.³⁹ Several countries have dialogues with the NUG but have not officially recognised it. In this vein, various NUG ministers have held meetings with lawmakers from Canada and Spain, as well as senior government representatives from the US, Germany and Sweden.⁴⁰

The NUG has tried to justify its legitimacy, and capacity to govern, by stating its adherence and commitment to international norms. For example, in addition to its withdrawal (in February 2021) of objections on the case against Myanmar at the ICJ,⁴¹ the NUG has accepted the International Criminal Court’s jurisdiction and role in reviewing the crimes committed by the military against the Rohingya people since 2002, including the alleged genocide in 2017.⁴² The NUG has also offered potential citizenship to the Rohingyas.

At the UN and at international fora, the NUG continues efforts to highlight the SAC’s atrocities and illegitimate claims and to prevent/deny SAC participation in these platforms, through Ambassador Kyaw Moe Tun’s statements and meetings with the UN officials and member state representatives. Despite the obvious challenges to gaining formal recognition from the international community, the NUG seems nevertheless to have gained an advantage from existing UNGA rules that stipulate “the incumbent ambassador keeps the seat if there is a credentialing dispute”.⁴³ However, this does not translate into the UN recognising the NUG. In the absence of a firm decision by the Credentials Committee, the UN does not want to be seen as taking sides on Myanmar.⁴⁴

The NUG is also emphasising the ‘responsibility to protect’ as justification for its capacity to prove a responsible counterpart for dialogue towards a federal system in Myanmar.⁴⁵ In this endeavour, the NUG also recognises the importance of an ASEAN member state’s obligations. It has appointed an Ambassador to ASEAN,⁴⁶ who has been urging the regional bloc to uphold the principles enshrined in the ASEAN Charter and to at least recognise the duality of competing political forces in Myanmar.⁴⁷

Notwithstanding the public meeting between Malaysia's Foreign Minister, Dato' Saifuddin Abdullah and NUG Foreign Minister Zin Mar Aung, on the sidelines of the ASEAN-US Special Summit in Washington DC in May 2022, the NUG is aware that attaining formal recognition from ASEAN will be extremely challenging.

Limited support for the NUG may stem from perceptions of its limited long-term strategies and structural maturity, as well as uncertainty over the extent to which the NUG can represent the diverse populations in Myanmar (and their aspirations).⁴⁸ Operationally, the NUG is also limited in its ability to deliver public and consular services (including for Myanmar citizens abroad), such as issuing identity cards, passports, or visas to foreign visitors.⁴⁹

Furthermore, several ASEAN member states (especially those that share a border with Myanmar) remain disinterested in putting further pressure on Myanmar's military government nor do they seem keen to improve human rights, fundamental freedoms, and democracy in Myanmar.

CONCLUSION

The self-appointed nature of the SAC has limited justification to be recognised as the legitimate government of Myanmar. The sustained nature of the resistance against military rule close to two years after the coup also shows that the SAC has not proven able to establish effective control over the country. Furthermore, sanctions targeted against SAC elites and associates by the US and EU, among others, show that it is the SAC, rather than the Myanmar government, whose actions are unacceptable. Similarly, ASEAN's decision to invite only non-political representatives from Myanmar to ASEAN's high-level meetings, and the non-recognition disclaimers used by several ASEAN members in regional legal instruments indicate a disinclination to accord the SAC recognition.

The NUG's democratic legitimacy and its status as the entity broadly representing the forces for democracy in Myanmar, and its stated commitment to uphold international obligations and standards of human rights, are being increasingly viewed as important in considering credentials in international settings.⁵⁰ Even in the ASEAN setting, the argument that ASEAN has used in the past concerning the SAC, i.e. that engagement does not necessarily constitute conferring legitimacy, could also be applied to the actions of any member state seeking to engage with the NUG, as illustrated by Malaysia's action and proposals. Additionally, the Five-Point Consensus' provision that the Special Envoy of the ASEAN Chair meets with "all parties concerned" indicates that ASEAN does not necessarily need to seek further permission to carry out that mandate. The ASEAN Leaders have now given the special envoy of the ASEAN Chair more leeway to proceed accordingly.⁵¹

Although NUG may seem to be the more popular choice for the international community, the path ahead for its formal recognition remains uncertain. China and Russia's veto power at the UN Security Council and differing preferences in ASEAN may continue to provide SAC with the expectation that it could still pursue recognition and legitimacy via its plans for an election in 2023 under the SAC's five-point roadmap. Scepticism abounds on whether this planned

election will be free and fair. Even so, seasoned Myanmar watchers are cautioning that the military will doggedly continue its election plans, most likely limiting polls to areas that it deems sufficient to make the vote “legitimate”.

Members of the international community that have clearly stated their rejection of the February 2021 coup will maintain their positions, while the SAC will continue to find ways to retain its participation in ASEAN and strengthen its ties with countries such as Russia. Finally, even with stricter measures by ASEAN related to the implementation of the Five-Point Consensus,⁵² and a more favourable attitude towards unilateral engagements with the NUG, the NUG may still find itself still in need of exploring diplomatic tools and opportunities for wider recognition by the international community.

ENDNOTES

¹ The Irrawaddy, “Myanmar Lawmakers Denied Seats by Coup Hold Their Own Swearing-in Ceremony”, 4 February 2021 (<https://www.irrawaddy.com/news/burma/myanmar-lawmakers-denied-seats-coup-hold-swearing-ceremony.html>, accessed 4 November 2022)

² Andrew Harding, “Constitutional implications of Myanmar’s Coup on 1 February 2021”, ConstitutionNet, 11 February 2021 (<https://constitutionnet.org/news/constitutional-implications-myanmars-coup-1-february-2021>, accessed 4 November 2022)

See also Melissa Crouch, “The Constitutional Fiction of Myanmar’s coup”, Jurist Legal News and Commentary, 17 February 2021 (<https://www.jurist.org/commentary/2021/02/melissa-crouch-myanmar-coup-constitution/>, accessed 4 November 2022)

³ The Chairman of the NLD-appointed Union Election Commission (UEC), U Hla Thein, and UEC secretary U Myint Naing, were released “on humanitarian grounds” on 25 October 2022 after 20 months in custody.

See Associated Press, “Myanmar military commutes jail terms of election officials”, AP News, 9 November 2022 (<https://apnews.com/article/myanmar-general-elections-government-and-politics-24c6c6123e3f00da74a51b912b025535> , accessed 14 November 2022)

See also Myanmar International TV, “SAC Information Team Statement: Sentence to former UEC Chair & Member Relaxed”, 9 November 2022 (<https://www.myanmaritv.com/news/sac-information-team-statement-sentence-former-uec-chair-member-relaxed>, accessed 14 November 2022)

⁴ Myanmar Now, “CRPH announces lineup of interim ‘national unity government’”, 16 April 2021 (<https://myanmar-now.org/en/news/crph-announces-lineup-of-interim-national-unity-government> , accessed 4 November 2022)

⁵ Moe Thuzar, “Myanmar: Recognition is the Name of the Game”, *Fulcrum*, ISEAS – Yusof Ishak Institute, 6 December 2021 (<https://fulcrum.sg/myanmar-recognition-is-the-name-of-the-game/> , accessed 14 October 2022)

⁶ The Irrawaddy, “Over 400,000 Myanmar Civil Servants Still on Strike Against Military Regime”, 25 August 2021 (<https://www.irrawaddy.com/news/burma/over-400000-myanmar-civil-servants-still-on-strike-against-military-regime.html>, accessed 14 November 2021)

⁷ Sharon Seah, “ASEAN and the Problem of Legitimacy”, *Fulcrum*, ISEAS – Yusof Ishak Institute, 26 July 2021 (<https://fulcrum.sg/asean-and-the-problem-of-legitimacy/>, accessed 14 October 2022)

⁸ Moe Thuzar and Romain Caillaud, “Myanmar and the United Nations: Fighting for a Seat at the Table”, ISEAS-Yusof Ishak Institute, *Fulcrum*, 16 September 2021 (<https://fulcrum.sg/myanmar-and-the-united-nations-fighting-for-a-seat-at-the-table/> , accessed 8 November 2022).

See also United Nations “General Assembly defers decision on Afghanistan and Myanmar seats”, *UN News*, United Nations, 6 December 2021 (<https://news.un.org/en/story/2021/12/1107262>, accessed 8 November 2022)

⁹ Ministry of Foreign Affairs of Brunei Darussalam, Statement of the Chair of the ASEAN Foreign Ministers Meeting, 16 October 2021, <https://www.burmalibrary.org/en/statement-of-the-chair-of-the-asean-foreign-ministers-meeting>

¹⁰ This is the first time ASEAN has applied this practice to defence ministers’ meetings although Myanmar’s Defence Minister Mya Tun Oo had attended the ADMM-Plus in 2021 and the ADMM in June 2022. See: Tan Hui Yee “Myanmar junta snubbed at ASEAN defence chiefs’ meet”, 23 November 2022, <https://www.straitstimes.com/asia/se-asia/myanmar-junta-snubbed-at-asean-defence-chiefs-meet#:~:text=Myanmar's%20Defence%20Minister%20Mya%20Tun,an%20ADMM%20in%20Phnom%20Penh.>

¹¹ Myanmar, as Burma, had signed the Convention in 1949, ratifying it in 1956.

¹² The case had been brought to the ICJ in 2019, and Aung San Suu Kyi had represented Myanmar then, “for national interest”. See Moe Thuzar, “Myanmar at the ICJ: Intent and Implications”, *ISEAS Commentary*, ISEAS – Yusof Ishak Institute, 20 November 2019, <https://www.iseas.edu.sg/media/commentaries/myanmar-at-the-icj-intent-and-implications-by-moe-thuzar/>, accessed 8 November 2022.

In February 2022, the Myanmar representatives were U Ko Ko Hlaing, the SAC Minister for International Cooperation, and Dr Thida Oo, the SAC-appointed Attorney-General/Minister for Legal Affairs. This was due to the fact that the ICJ had communicated with the SAC-controlled Embassy of Myanmar in Belgium, which is accredited to the Netherlands which hosts the ICJ. The NUG and Myanmar’s Ambassador to the UN had protested the ICJ’s move.

After the February 2021 coup, the ICJ was the only UN body that accepted the SAC junta’s representation in the Myanmar seat. See Special Advisory Council on Myanmar, “Disgraceful ICJ decision irresponsible and unnecessary delay to justice”, 22 February 2022, <https://progressivevoicemyanmar.org/2022/02/21/disgraceful-icj-decision-irresponsible-and-unnecessary-delay-to-justice/>, accessed 8 November 2022.

See also Sebastian Strangio, “Myanmar Genocide Hearings Open, Overshadowed by Question of Recognition”, *Diplomat*, 22 February 2022 (<https://thediplomat.com/2022/02/myanmar-genocide-hearings-open-overshadowed-by-question-of-recognition/>, accessed 8 November 2022)

¹³ Amnesty International, “Myanmar: Letter on UN education summit”, 12 August 2022 (<https://www.amnesty.org/en/documents/asa16/5950/2022/en/>, accessed 8 November 2022)

¹⁴ According to the 1933 Montevideo Convention on the Rights and Duties of State (published on 26 December 1933), the four criteria are, namely: (i) a defined territory; (2) a permanent population; (3) an effective government; and (4) capacity to enter into diplomatic relations with other states. See: <https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml>

¹⁵ Sharon Seah, “ASEAN and the Problem of Legitimacy”, *Fulcrum*, ISEAS – Yusof Ishak Institute, 26 July 2021, <https://fulcrum.sg/asean-and-the-problem-of-legitimacy/>

¹⁶ Named after Mexican Foreign Minister Genero Estrada, who introduced this in the 1930s as a tenet of Mexico’s foreign policy. The Estrada Doctrine accords recognition based on de facto existence rather than legitimacy. Mexico applied this doctrine with regard to the 2019 Venezuelan presidential crisis.

¹⁷ ASEAN Chairman’s Statement on The Developments in The Republic of The Union of Myanmar 1 February 2021 (<https://asean.org/asean-chairmans-statement-on-the-developments-in-the-republic-of-the-union-of-myanmar-2/>, accessed 8 November 2022)

¹⁸ Special Advisory Council for Myanmar, “SAC-M Briefing Paper: Recognition of Government”, 23 August 2021, <https://specialadvisorycouncil.org/wp-content/uploads/2021/08/SAC-M-Briefing-Paper-Recognition-of-Governments-ENGLISH.pdf>

¹⁹ Ibid

²⁰ Ibid

²¹ The Myanmar Accountability Project has summarised, in a Legal Opinion document, decisions made by the UN Credentials Committee since the 1990s. The summary shows that the Credentials Committee “has been willing on occasions to approve the credentials of democratically elected governments and groups in restored democracies even in circumstances where they had been deposed from power or lacked effective control of the country concerned.” With particular reference to “situations where there has been a refusal to accept the outcome of a free and fair election or where power has been illegally seized through a coup,” the Credentials Committee has also taken into account other factors, including the “legitimacy of the entity issuing the credentials, the means by which it achieved and retains power, and its human rights record.”

See Myanmar Accountability Project, “Legal Opinion. United Nations Credential Committee: Representation of the State of Myanmar to the United Nations”, September 2021, <https://the-world-is-watching.org/wp-content/uploads/2021/09/Myanmar-Legal-Opinion-Final-2.pdf>, accessed 17 November 2022)

²² Sharon Seah, “ASEAN and the Problem of Legitimacy”, *Fulcrum*, ISEAS – Yusof Ishak Institute, 26 July 2021, <https://fulcrum.sg/asean-and-the-problem-of-legitimacy/>

²³ N.D. Houghton, “The Nature and General Principles of Recognition of De Facto Governments”, *The Southwestern Social Science Quarterly*, Vol. 13, No. 2 (September 1932):177-93

²⁴ Accreditation procedures are guided by Articles 27-29 of the General Assembly’s rules of procedures based on Article 21 of the UN Charter.

²⁵ Reuters, “U.N. committee agrees Taliban, Myanmar junta not allowed in U.N. for now”, Reuters, 2 Dec 2021, <https://www.reuters.com/world/asia-pacific/taliban-myanmar-junta-unlikely-be-let-into-un-now-diplomats-2021-12-01/>

²⁶ ASEAN generally follows the practice of treaty law, particularly the 1969 Vienna Convention of the Law of Treaties, in which a state with legal capacity may conclude international agreements in accordance with its domestic laws and regulations. Treaty law does not deal with the question of the recognition of the government or representative of the state as states are considered parties to the treaties rather than governments.

²⁷ Harding (2021), and Crouch (2021).

²⁸ Kimana Zulueta-Fulscher, “The Struggle for Legitimacy in Post-Coup Myanmar”, International Institute for Democracy and Electoral Assistance, IDEA, 15 April 2021, <https://www.idea.int/news-media/news/struggle-legitimacy-post-coup-myanmar>

²⁹ UNOCHA, “Developments in Gambia’s Case Against Myanmar at the International Court of Justice: Questions and Answers, OCHA Services, 14 February 2022, <https://reliefweb.int/report/myanmar/developments-gambia-s-case-against-myanmar-international-court-justice-questions-and>

³⁰ Sean Bain, “Myanmar: with Military Lacking Legitimacy and Control, Elected Reps Seek Recognition as Government”, *OpinioJuris*, 11 May 2021, <http://opiniojuris.org/2021/05/11/myanmar-with-military-lacking-legitimacy-and-control-elected-reps-seek-recognition-as-government/>

³¹ ASEAN Parliamentarians for Human Rights (APHR), “Time is not on our side: the failed international response to the Myanmar coup”, *Final Report by the International Parliamentary Inquiry (IPI) into Myanmar*, APHR, 2022, p. 33 (<https://www.aljazeera.com/news/2022/11/2/china-russia-india-enabling-myanmars-military-report>), accessed 9 November 2022)

³² 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>), accessed 9 November 2022)

See also Myanmar International TV, “Diplomat Ties: Myanmar Ambassador to Thailand Presented Credentials”, 19 June 2022 (<https://www.myanmarinternationaltv.com/news/diplomatic-ties-myanmar-ambassador-thailand-presented-credentials>) accessed 9 November 2022)

³³ Kontras, “ASEAN: Decision on humanitarian assistance on Myanmar must include all related parties to avoid aid weaponization by the junta”, 12 May 2022,

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