

DEMISE OF MYANMAR'S NATIONAL LEAGUE FOR DEMOCRACY AND ITS IMPLICATIONS FOR THE PRO- DEMOCRACY MOVEMENT

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ABSTRACT

On February 1, Myanmar's military, known as The Tatmadaw, attempted a coup d'état. Aung San Suu Kyi, President U Win Myint, and senior leaders of the ruling National League for Democracy were taken into custody (NLD). This was done under the pretence of fraud in the general election last year, which the NLD won by a landslide, as well as the export and import law and the natural disaster management statute. Afterward, two additional fees were added. Since then, a considerable number of demonstrators have been injured or killed, and martial law has been implemented in several regions of the country. Since the coup on 1 February, at least 150 people have perished and approximately 2,200 have been imprisoned.

Numerous nations, including the EU, the United States, and Australia, have spoken out against these measures. Vice President of the United States Joe Biden described the coup as a "direct assault on the country's move toward democracy and the rule of law." In light of this, the paper contends that democracy should be recognised as a fundamental human right. This essay examines the situation in Myanmar through the perspective of international law in order to provide a lucid and credible narrative. The section then discusses how the right to democracy has been utilised in various nations.

INTRODUCTION

In a word, democracy is about striking a balance between those who disagree and those who agree, as opposed to launching zero-sum, scorched-earth attacks on anyone who disagrees with the political standards of one group. This notion was reiterated in the final declaration of the 1993 Vienna World Conference on Human Rights, which stated, "Democracy, progress, and respect for human rights and fundamental freedoms are all interconnected and mutually beneficial."ⁱ

Former Secretary-General of the United Nations Boutros Boutros Ghali agrees with this democratic concept. He stated, "Human rights, equal rights, and rule of law are essential characteristics of democracy."

The United States proposed a resolution entitled "Promotion of the Right to Democracy" in April 1999. It emphasised that "democracy itself was a human right" and that it was "both a means to promote human rights and an objective in itself."ⁱⁱⁱ However, a huge number of member states voted against the resolution because they did not want the United States to intervene in their future affairs.

Threats to individual rights, particularly human rights, and, in a broader sense, the survival of the democratic framework at the international level raise the question of whether the right to democracy should be a human right. This is because human rights are more valued and protected in more democratic cultures.ⁱⁱⁱ Human rights, progress, development, and safety will be better preserved if the right to democracy is enshrined into a country's constitution.

A NATION-WIDE DEMOCRACY WITH CONSTRAINTS

Since 1990, Myanmar has only had two general elections. Daw Aung San Suu Kyi's National League for Democracy (NLD) party, which had been in the opposition for a long period, won overwhelmingly in these two elections to become the country's first democratic administration. The ability of the people to overthrow a government supported by the military was lauded worldwide. Long battles for democracy were deemed successful when Daw Aung San Suu Kyi first entered parliament and then, against the constitution, formed a government and elevated herself to the position of State Counselor, placing herself above the president.

It's crucial to remind everyone, including the rest of the world, that the military still dominates at the grassroots level, even though it appears to be a democracy. Our democratic transformation remains an elite-driven process. We are following in the footsteps of the generals, and Myanmar's democracy remains limited and controlled.

The military generals who ratified the Constitution of 2008 sacrificed some of their authority, but in exchange they received certain benefits. The opposition NLD did not vote in the 2010 general election because it believed that the military junta's new constitution would not lead to genuine democracy. People claimed it was more of a pension plan for generals than a democratic constitution. The constitution grants the military a 25% stake in both chambers of parliament and authority over the vital ministries of home affairs, border affairs, and defence. Additionally, the Constitution safeguards military rights. To amend significant portions of the constitution, 75 percent of all MPs in parliament must agree, and a majority of eligible voters must vote affirmatively in a national referendum.^{iv} Despite all of these obstacles, the NLD competed for office beginning with a by-election in 2012, proposing constitutional reforms inside the system. It triumphed in 2015 despite all of these obstacles.

Regular elections that are free and fair are the most essential aspect of a democratic society. Aside from that, democracies should safeguard themselves against omnipotent central administrations. Decentralizing government to regional and local levels is one way to achieve this goal, with the premise that all levels of government must be as accessible and responsive to the people as feasible. In Myanmar, however, the military holds complete power over all levels of government. In addition, the government does not do enough to support local democracy.

LEGAL ORDER AGAINST MILITARY RULE IN MYANMAR

Myanmar has been ruled by a military regime for 50 years. People had hoped for a better future over the past five years, but the events that occurred just before Aung San Suu Kyi's party won office for the second time evoked recollections of the horrible old days when democracy and the rule of law were not honoured. Historically, election results have been altered in this manner. In 1990, the NLD won the first national elections, but the military seemed

unconcerned. However, the military ruled the country at the time, unlike during the 2021 coup. This enhances the novelty of the new objects.

The international reputation of Myanmar did not begin to improve until 2010, when Aung San Suu Kyi was released from house detention and the NLD was given the opportunity to run for office. As a result, governments from around the world loosened restrictions on commerce with Myanmar and resumed business relations. For instance, foreign aid for development increased from \$285 million in 2012 to \$1.06 billion in 2017.^v This demonstrates the significance of a democratic framework to a country's development and leads to a discussion of what must occur for democracy to be recognised as a human right.

DISCOVERING WHAT INDIVIDUALS DESIRE: THE RIGHT TO DEMOCRACY

Article 21 of the UDHR states that "the will of the people should be the basis of government authority; this will shall be expressed in periodic and authentic elections by universal and equal suffrage, conducted by secret ballot or other free voting procedures."^{vi}

The majority of European nations, Japan, Canada, Australia, and New Zealand are highly regarded for their human rights records. All of them have a robust democratic political system that protects the rights of its residents by upholding the rule of law, respecting individual liberty, preventing excessive government interference, and safeguarding human rights.^{vii}

The Arab Spring is one example of how, in the absence of a democratic government, local leaders violated the rights of their people. This led to serious violations. In 2011, Egypt shut down the internet in violation of the International Covenant on Civil and Political Rights. This was done to prevent people from criticising the government. The Special Representative on the Promotion of the Right to Free Speech emphasised the gravity of the situation and urged the government to restore the people's right to express themselves and obtain information.^{viii}

In countries such as the United States and Canada, local governments have ensured that the democratic system has made it simpler for citizens to exercise their rights.^{ix} In the United States, for instance, the Federal Communication Commission has established guidelines for service providers regarding unrestricted access and neutrality toward legal information. In the Canadian case *Irwin Toy Ltd. vs. Quebec (Attorney General)*, the usefulness of internet access in terms of seeking and discovering the truth, engaging in social and political decision-making,

and obtaining personal fulfilment was acknowledged.^x Other reasons why democratic institutions make sense and are essential include speaking out against the enslavement of indigenous peoples in Latin America and ensuring the spread of information in Mexico.

TRANSITION TO DEMOCRACY IN MYANMAR, 2010–2015

How the Military Operates as a Team

Analysts have proposed a variety of explanations for the political changes in Myanmar since 2010. The military government's determination to oppose China's expanding influence and the public's growing desire for democracy are examples. The majority of political reforms in Myanmar are the result of military leaders' willingness to do so. According to the democracy theory of American political scientist Samuel Huntington, the most common way for a military government to transition into a democracy is through "transformation," which means the military regime initiates the shift.^{xi} Typically, these transitions are peaceful, but they don't last long since military regimes can recover power in non-democratic methods if they don't like how the transition is proceeding.

Typically, military leaders do not refer to themselves as the country's permanent rulers. Instead, they claim they are temporarily seizing power to "rescue the country from chaos." Military dictators can therefore always return to civilian power as a political choice. Myanmar's military stated that, once the country was calm, they would abandon their temporary duties and return to their regular duties.^{xii} According to Huntington's theory, three factors can accelerate the military's choice to cede power: (i) an assurance that military officers will not be prosecuted for actions they took while in power, (ii) guarantees regarding the military's autonomy and duty, and (iii) the opposition's stance.^{xiii} In the interim, the democratisation process is driven by interactions between three groups: (i) reformers in the government, (ii) reform opponents, and (iii) opposition members.

These groups have various perspectives on the prospects and possibilities of reform, and as the process progresses, so do the members of each group and their relationships with one another. Those in the military who oppose the reforms, for instance, may learn to appreciate democracy if their fears are unfounded.

Changes Made After 2010

Since 2010, when election laws were altered, the NLD was no longer outlawed, and Aung San Suu Kyi was released from house arrest, many of similar dialogues have taken place in Myanmar. After the embargo on social media platforms was lifted, free speech returned. As a result, both the opposition and the general public grew to view Thein Sein as a reformer who was receptive to democratic reforms.

Simultaneously, Thein Sein and other reformers reassured the military that it would retain its autonomy and strength. This was consistent with the 2008 Constitution of Myanmar, which placed a great deal of stress on the role of the armed forces in the country's new existence, and with regulations stating that military officers cannot be convicted in court. Therefore, the Constitution of 2008 ensures that the military will always be a priority, regardless of who is in office. In addition, it demonstrates the path to "disciplined democracy" by establishing the guidelines for reforms after a change of government. Lastly, the playing field is still substantially slanted in favour of the military-run party.

In 2011, the NLD and its leader, Aung San Suu Kyi, made the crucial choice to support the government's plan for achieving multiparty democracy. Aung San Suu Kyi's backing for the government's reform strategy and her clear confidence in Thein Sein provided the new government the most legitimacy within and without the country. The fact that previous military leaders were not held accountable for their acts meant that the opposition, such as the NLD or Aung San Suu Kyi, would behave "reliable" throughout the transition to democracy. Suu Kyi has previously openly opposed the government by organising protests and acts of civil disobedience.^{xiv} The NLD revised its strategies to be more moderate and to work with the government after realising that its previous tactics may halt the progress toward democracy and lead to the return of hardliners to power or a significant expansion in military power. It also stated that it will be a subordinate partner in the improvement of democracy. This made the 2015 transition to a democratic government orderly and seamless.

The Relationship Between Civilians and Soldiers After 2016

Since taking office in 2016, the NLD government has worked diligently to maintain good relations with the junta. This was demonstrated by the military's more flexible approach to handling ethnic problems throughout the country.

In May 2016, the NLD government created the "Central Committee on the Implementation of Peace, Stability, and Development in Rakhine State."^{xv} It also established a commission to advise on Rakhine's difficult difficulties. Former Secretary-General of the United Nations Kofi Annan led this panel. The junta and militant organisations such as the Arakan Army, Arakan Rohingya Salvation Army (ARSA), and Kachin Independence Army, who desire autonomy in the Kachin and Rakhine provinces, fought despite seminars and research attempting to determine what was happening (KIA). Millions of people have been forced to abandon their homes and have lost their employment and food sources as a result of the conflict. On the other hand, the NLD government has just asked the troops to remain quiet. It would rather prioritise other objectives.

In the ongoing instance of the ethnic cleansing of the Rohingya, the NLD administration and Aung San Suu Kyi have not only done nothing to stop the harsh treatment of the stateless Rohingya, but they have also denied any wrongdoing and imposed media restrictions.

Foreign observers were concerned that the former state counsellor was defending the military operation and referring to the problem as a "internal matter" despite the fact that millions of people had to cross the border to live in neighbouring countries.^{xvi} Even though the entire world opposed Aung San Suu Kyi, she maintained her stand. She defended the junta in the International Court of Justice in 2019 and disputed all genocide allegations.^{xvii}

The Second Transition and the Beginning of Trouble

Theorists assert that after a country transitions from military control to democracy, there is frequently a second successful transition to democracy.^{xviii} During the initial transition, the Resistance's "military task" is to establish a democratic administration without military opposition. During the second transition, the issue is ensuring that civilian institutions have effective control over the military.

Establishing civilian control of the GAD

While the NLD government sought to strike a balance between civilians and the military, it gradually pushed for people to have a greater say in organisations that were dominated by the

military. This procedure was deemed required for civilian control units to function. In 2019, the NLD attempted to put civilians in charge of Myanmar's primary public administration body, the General Administration Department (GAD). The military-run Ministry of Home Affairs has traditionally dictated the GAD's actions (MoHA). As the country's "bureaucratic backbone," it has direct control over all local state bureaucracy, including districts, townships, and village tracts. Many of its 36,000 employees are former military personnel. They are responsible for issuing licences, resolving land disputes, and collecting taxes. Since April 2011, the GAD has had to deal with an increase in international aid donors.

Therefore, handing the GAD to the Ministry of the Union Government that works with citizens will be a significant step towards ending military control. The objective of the reform is to increase decentralisation, which is essential if peace and security are to improve. A move like this might not immediately improve municipal government. Long-term, it may lead to the establishment of state and regional civil services in addition to specialised local offices.^{xix}

Modifications to the Constitution

The Constitution of 2008 provides the majority of Myanmar's military power. The Tatmadaw gives the military a prominent role in politics and ensures that other government institutions reflect its worldview. This worldview is rooted on the three national clauses of the Tatmadaw, which state that the Union, national unity, and national sovereignty shall not change.^{xx} 25 percent of the seats in Myanmar's Parliament are reserved for unelected military commanders to ensure compliance with these provisions. According to Articles 436 (a) and (b), more than 75% of members must vote in favour of authorised amendments for them to pass. This empowers members to veto amendments. In times of national emergency, the Constitution also grants the commander-in-chief of the military forces jurisdiction over the government, legislature, and judiciary. These clauses have helped the military maintain its role as "guardian" of a steady democratisation process while simultaneously safeguarding its fundamental ideological and private interests. Therefore, any modifications to the Constitution could make it more difficult for the Tatmadaw to manage the Myanmar government.

Even though the NLD has been outspoken about the undemocratic aspects of the Constitution since 2007, it did nothing to amend it when it came to power in 2016. After losing the 2018

by-elections, the party refocused its efforts on amending the Constitution. In January 2019, 149 members of parliament, 50 from the military, 50 from the National League for Democracy (NLD), 26 from the Union Solidarity and Development Party (USDP), and the remainder from ethnic parties, formed a committee to amend the Constitution. They were present throughout the entire seven-day discussion. As required by the constitution, 59 percent of the seats in Parliament were held by the NLD, 11 percent by ethnic minority parties, 5 percent by the USDP, and 25 percent by the military.

The suggested modifications were intended to weaken the military. The NLD desired to revoke the military's right to veto constitutional amendments, limit the number of seats it could hold in parliament, reduce its political influence, and revoke the authority of army chiefs to seize control in an emergency. The NLD proposes to reduce the number of votes required to amend the constitution from more than 75% of Parliament to "two-thirds of elected MPs," excluding military appointees. It further said that the military's share of seats should gradually decrease from 25% to 15% after the 2020 election, 10% after 2025, and 5% after 2030. Article 14 and other provisions of the Constitution stipulate that unelected military commanders hold a quarter of all seats in national and regional legislatures. The military generals were upset, and the commander-in-chief stated that the modifications were unfair and that such demands would harm national unity and the military's connection with the rest of the nation.^{xxi} Section 59 (f), which states that Aung San Suu Kyi cannot be president since her husband and sons are British, and Section 59 (d), which states that a person must have served in the military, were both proposed for amendment by the NLD. However, these initiatives did not receive the necessary votes in the legislature. One member of the junta believes that foreigners should not be able to exert influence over those in positions of authority.^{xxii}

The NLD proposed 114 amendments to the Constitution, but only modest modifications were approved. These modifications involved the phrasing of clauses concerning the selection of state and regional ministers. One could argue that the NLD's goal in pursuing so many changes was to improve its public image by convincing individuals that the military and the USDP were obstructing democratic reforms.

Both the army and the USDP were aware of the concept, and both the Tatmadaw and the USDP made their own modifications in response. The military faction desired to change Article 261 so that regional chief ministers are selected by local legislatures as opposed to the president on

behalf of the federal government.^{xxiii} This sort of amendment aims to modify the functioning of nation-states by delegating more authority to regions on the periphery. Despite the Tatmadaw's previous anti-federalism stance, which connected federalism to the country's disintegration, observers believe the real reason is to capitalise on ethnic minorities' growing discontent with the NLD.^{xxiv}

Consistent Democratic Concerns

Aside from the military generals' dislike of the NLD's growing ambition for democratic consolidation, which would give civilians control of the government, a few additional factors have made it difficult for the NLD to establish a durable democracy throughout its administration.

What Makes the NLD Exceptional?

According to the Constitution of 2008, the NLD has the right to select all levels of national and local governments. As a result of their 2015 triumph, the NLD refused to recognise ethnic state nationality parties. Instead, it placed its own officials and party members in charge of all states and regions, even those where the NLD had won only a few of state seats, without consulting the ethnic parties with which it had previously partnered.

There are two major ethnic parties in Myanmar. Their names are the Arakan National Party (ANP) and the Shan Nationalities League for Democracy (SNLD). A veteran Rakhine politician, U Aye Tha Aung, has been appointed vice-speaker of the Upper House (Amyotha Hluttaw) in the national parliament. However, this decision was made without consulting the ANP or obtaining its agreement.^{xxv} Similarly, the NLD did not grant the SNLD, a former government partner, administrative authority or representation. Instead, party leaders asked the SNLD to propose the position of "Minister of Ethnic Affairs." These actions alienated ethnic communities and damaged the reputation of the NLD. By imposing political power via "Burmanization" and project centralization, the party aggravated ethnic tensions. The installation of statues of General Aung San, for instance, prompted indignation and rioting in Kayah and other ethnic minority-populated areas. Local NLD leaders elected to largely employ

violence to address these concerns. Mon state erupted in protest after the NLD proposed renaming the General Aung San Bridge in Mawlamyine.^{xxvi}

Several NLD members and other pro-democracy figures, dissatisfied with these tendencies, founded their own parties prior to the 2020 elections, including the People's Pioneer Party, Union Betterment Party, and People's Party.^{xxvii} The military utilised this amendment against the NLD during the constitutional revision discussion.

GOVERNANCE ISSUES WITHIN THE DEMOCRATIC PARTY

Following the 2015 elections, the NLD party's strength strengthened. Prior to 2015, party membership was mostly a sign of solidarity and support. In the lack of a clear democratic philosophy, the growing number of party members raised concerns about new members seeking as much power and position as possible. Additionally, it became difficult to elect local leaders since people voted for Aung San Suu Kyi instead of specific local candidates. Consequently, local leaders were selected after the party headquarters won the election. This figure displays the distribution of power inside the NLD.^{xxviii}

Because the NLD administration was new and inexperienced, it did not invest in the training of party members or future leaders. Currently, there are few skilled people in positions of authority, and the majority have no understanding how to run a business. Some party members' management approaches are consistent with democratic culture and true policy openness, although the majority focuses primarily on communist-style forms of behaviour and control.^{xxix}

FLAWS IN NATIONAL RECONCILIATION

While the NLD was in charge of defence, the junta employed a "divide and conquer" strategy to keep a watch on ethnic militant organisations. Throughout the 1990s, the military was able to recruit some of them, but others who refused to join remained at odds with the government. The junta plans and directs the entire operation, waging war against some forces while negotiating with others. This permits certain organisations to retain their firearms and territory, tax their people, build structures resembling states, and profit from both legal and illegal activity. Its strategies take advantage of the fact that armed groups do not coordinate or learn

from one another's mistakes. Through cease-fire politics, the Tatmadaw has become the most dominating military, political, and economic force in the borderlands. In addition, the military exploits and harvests natural resources from the limits of ethnic minorities in collaboration with local leaders or "elite groups." This covers mining, forestry, and farming. This has allowed the military to exercise power in places where it previously lacked it, as well as accept help from ethnic armed groups despite not entirely meeting their needs.

To alter such a scenario, the administration must work diligently and be guided by a vision of peace. Due to the fact that the territorial claims of the armed factions overlap, they have different goals, and they have failed to coordinate their military and political operations, achieving peace must be the duty of a representative government of the Union. The International Crisis Group recommended the government that by the year 2020, all of the country's ethnic groups should be involved in politics and negotiations, and institutions should be built to allow each group to pursue its own objectives. This was not practicable, however, due to changes in military and civilian collaboration at the time.

INCORRECT PRIORITIES FOR SECURITY

Over the past five years, the major mission of Myanmar's military and judicial institutions has been to defend the state against local resistance or maintain order while protecting their own economic interests. The criminal justice system has mostly focused on pursuing political dissidents, but drug use and human trafficking, which are not typical security concerns, have been restricted and prosecuted frequently.^{xxx} In addition, the judiciary lacks autonomy because Bamar Buddhists control the majority of security agencies. It is still staffed with jurors and judges who formerly served in the military or under military rule.^{xxxi}

It is true that transferring military control to civilians does not always lead to more egalitarian and peaceful outcomes. Reforms to the justice system must be meticulously formulated and carried out. This includes military and police service orientations, skill training for developing tactical strategies without the use of extreme violence, people-centered processes, gender inclusivity and sensitivity, rehabilitation inside the prison system, and overall inclusion. According to research organisations, the authoritarian rule in Myanmar must be altered in three stages: Giving elected persons more authority as representatives of the public Altering Security

Culture preserving and enhancing public areas Due to the junta's uncertainty, the civilian government has been unable to act.^{xxxii}

This section is responsible for the lack of democratic progress in Myanmar. The military authorities hoped to acquire additional support by capitalising on the NLD's ineffectiveness. The people, on the other hand, continues to have a great deal of faith in Aung San Suu Kyi as a defender who will prevent a possible return to military rule. The majority of mistrust is directed towards the military regime, which is viewed as cruel.^{xxxiii} In reality, the USDP is no longer a prominent political party, and the NLD government's overwhelming victory in the 2020 elections has made the military's control of the legislative branch substantially more challenging. The NLD is anticipated to pursue additional constitutional revisions in the future, dramatically decreasing the military's role. This increases the NLD's position, yet openly challenging the junta's institutional authority could result in another coup.

CONCLUSION

Democracy involves not just the election of a new administration through free, fair, and competitive elections, but also a fundamental change in the way the government operates, according to scholars who research the global evolution of governments. The new political leaders must have sufficient authority to govern the nation. Therefore, reorganising authoritarian civil-military ties is a crucial aspect of the transition from authoritarian to democratic government in every nation. However, because military commanders set the conditions for change when they are in a strong position, they frequently retain a great lot of control over the process and the results, and the armed forces maintain their earned rights.

In order for the transition to democracy to be successful, civilian institutions must be created to oversee the military. This is especially challenging in nations with a lengthy military history, where the military may have amassed political and institutional influence. International mediation can be advantageous under such circumstances, but Myanmar has been nicknamed a "diplomatic graveyard" since the United Nations has been unable to provide humanitarian aid or bring the junta and democratic opponents together.

The military coup in February 2021 indicated that the government had failed to keep a close eye on the junta despite the NLD's efforts to make Myanmar more democratic. The coup has

plunged the country and its future into uncharted territory, and the outcome of the struggle will depend on how the public and the military react to the protests.

In this context, the UN's participation in safeguarding the functioning of democracies is crucial. The United Nations has placed the notion of human rights to the top of the list of global issues on the one hand. In addition, it has supplied various non-governmental organisations with the resources they need to promote and protect human rights. Concerns surrounding sovereign equality and non-interference under Article 2 (7) of the UN Charter continue to be a barrier to human rights, especially when we call for a human right to democracy, which requires direct intervention in a country's internal affairs.

As it has in the past in places such as Kosovo, the United Nations must take the lead internationally in constructing a democratic structure in Myanmar and in developing an international instrument that focuses on the human right to democracy.

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