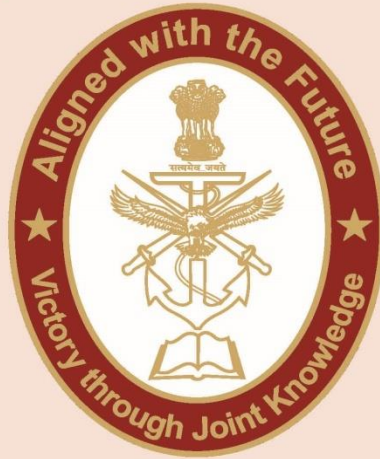


# CENTRE FOR JOINT WARFARE STUDIES



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### QUEST FOR LEGITIMACY: THE MYANMAR MILITARY

By

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On 14 September 2021 when the UN met for its annual session all attention was on who would occupy the seat for Myanmar's Special Representative. Following the coup of 01 February, the military caretaker government also known as the State Administrative Council (SAC) has sought to replace the representative of the National League for Democracy (NLD), Kyaw Moe Tun, with their own Aung Thurein at the UN. The latter, a military officer-turned-civilian immediately after the coup, having served 26 years in the Tatmadaw, as the defence services in Myanmar is known.

Seeking international legitimacy the military junta has annulled the general elections of November 2020 citing election fraud by the NLD, set up a caretaker government and named its Commander-in-Chief Senior General Min Aung Hlaing as Prime Minister. What was left thereafter was to seek international recognition by replacing the NLD representative with its own at the UN.

Of the 193 member General Assembly, a request such as this must first go to the nine-member Credentials Committee which this year comprises of Cameroon, China, Iceland, Papua New Guinea, Russia, Trinidad and

Tobago, Tanzania, United States and Uruguay. Each year before the regular session begins the Office of Legal Affairs at the UN recommends names of countries to form this committee. After a decision of accreditation by the committee is made it is once again put before the General Assembly which then votes in favour or against.

Following the military coup of 01 February, the pro-democracy group in Myanmar set up a shadow government comprising NLD representatives, politicians, law makers and members of ethnic communities which they have rightly called the National Unity Government (NUG). Leaders of the NLD, Aung San Suu Kyi and President Win Myint continue to be held under house arrest since the coup making the NUG rudderless at the moment.

During the session on 14 September 2021 no decision was reached. The current Credentials Committee having been appointed recently, the decision to choose between the representatives of the SAC and NUG to occupy Myanmar's seat in the UNGA has been deferred till November this year. Till then Kyaw Moe Tun the present incumbent and representative of the NLD will continue to occupy the seat.

The Credentials Committee will have to ensure that the name of the proposed candidate has been sent by the Head of State or Government (President or Prime Minister) or by the Foreign Minister. The decision will affect Myanmar's representation in all UN forums including the International Court of Justice at The Hague. At the same time acceptance of credentials does not imply recognition of a government.

The dilemma being faced by the committee to decide on who should occupy the seat can be well understood. On one hand they have the SAC of the military junta which being a caretaker government has all its ministerial heads appointed and in place in the country including the Prime Minister, and on the other they have the NUG, a shadow government comprising of a mixed lot of representatives with its leaders under detention.

The UN has a fixed set of rules to decide on whenever a situation like this arises. These are the claimant's effective control of the territory, its democratic standing, and its adherence to international law and human rights. While the military junta fails on all three counts, the NUG partially

fulfils these. Past precedence indicates the UN's ability to overrule military governments that had overthrown the democratically elected government, Haiti (1992) and Sierra Leone (1997) being two such examples.

If the NUG gets chosen it would mean the UN could intervene on a host of issues in Myanmar. Humanitarian aid and checking of human rights violations would be able to witness a priority. Sanctions could get partially lifted, financial assistance will begin to flow and the long standing problem of the Rohingyas could also find a solution. However, choosing the NUG as the legitimate government implies that it must have an individual to lead it and should comprise of elected members holding ministerial posts for world bodies to interact with. It cannot be composed merely of politicians, law makers and representatives of ethnic groups so as to identify with the name it has coined for itself. Further, it should also be acceptable to regional forums like the ASEAN and BIMST-EC.

In the ASEAN barring Malaysia and Indonesia, the remaining eight members have remained silent on the military's takeover in Myanmar. Following the principle of constructive engagement as it did in the past with Myanmar, Senior General Min Aung Hlaing was invited for the ASEAN Special Meet on Myanmar on 24 April at Jakarta.

Sri Lanka, the current Chair of BIMST-EC has also refrained from being critical of the military coup in Myanmar. Inviting the military junta's Foreign Minister Munna Maung Lwin for a virtual meeting of all foreign ministers of BIMST-EC on 01 April, Sri Lanka has clarified that it was within the ambit of the organization and unless a decision is taken by the regional forum to expel Myanmar, it would have to continue with all interactions as hitherto fore.

UN's recognition of the NUG as the legitimate government will not be taken well by the Tatmadaw which has promised elections within the next two years. NUG's recognition would mean a loss of face for the military, something which will not be easily acceptable. The result will be the clampdown becoming more stringent and restrictions more severe. The situation in the country must be allowed to return to normal. Unless this happens, the peace process cannot move forward.

The SAC of the Tatmadaw is the government presently in control of the country. It has a 'functional' Prime Minister and others in ministerial posts. It is also been acceptable to regional forums like ASEAN and BIMST-EC. Erywan Yusof, Brunei's Second Foreign Minister has been appointed as ASEAN's Envoy to Myanmar. In the past too it was through efforts of ASEAN that democracy returned to Myanmar. A five point action plan has been proposed by the envoy that has also been globally accepted.

The decision by the Credentials Committee in November this year will be critical. This could get deferred further. The military junta could lose on the grounds that the takeover was through the application of physical force in the form of an armed coup not by an election. The junta has aimed to counter this by gathering enough evidence to support its actions which it claims to be an outcome of election fraud committed by the NLD. The NUG on the other hand, could be recognized on the grounds of maintaining sanctity of the election results and as a special representative of the NLD was already in place at the UN.

### **CERTIFICATE**

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