

First, do not assist:

Myanmar's test to ASEAN's survival and the cost of "ASEAN Centrality"

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Analyses

First, Do Not Assist: Myanmar's Test to ASEAN's Survival and the Cost of "ASEAN Centrality"



Since the February 2021 military coup, Myanmar's civilian population has been the target of probable crimes against humanity and war crimes. The junta-led government is carrying out an escalating, systematic campaign of violence and oppression aimed at suppressing widespread opposition to its rule and eliminating a growing armed resistance movement. This campaign is marred by indiscriminate attacks targeting civilians, including mass arson, the bombing of essential civilian infrastructure like schools, hospitals and IDP camps, arbitrary detention of suspected opposition sympathisers and proxies, and extensive use of torture and sexual assault during detention among others.¹

Though the Myanmar military (Tatmadaw) is responsible for the crimes it perpetrates, its continuing access to arms, including heavy weaponry, dual-use equipment, surveillance technology, ammunition, and raw materials specific to weapons manufacturing calls into question the role of the international community.² States share collective and individual responsibility to not assist in the commission of crimes against humanity and war crimes.³

International responses to Myanmar's crisis are heterogeneous and remain largely driven by domestic and geopolitical concerns. However, there is widespread international agreement that the Association of Southeast Asian Nations (ASEAN), which includes Myanmar, is primarily responsible for addressing the situation.

This paper centres on ASEAN's response with a view to explaining its ongoing stalemate. Assuming that an effective response to the situation in Myanmar requires actively undermining an incumbent government's efforts to maintain and consolidate political power, the paper argues that Myanmar's predicament presents an unprecedented challenge to ASEAN's survival. Specifically, it creates a dilemma by positing the grouping's ability to achieve its *raison d'être* against its capacity to function. The association is unable and unwilling to act in a manner consistent with fulfilling member states' responsibility to not assist.

Delimitations

Time and space constraints significantly limit the scope of this policy paper. Firstly, it does not aim to help resolve the deeply entrenched, political, interethnic, and socio-economic conflicts that fuel the escalating civil war and violence in Myanmar; nor does it propose a means for removing from power or punishing the notoriously brutal Tatmadaw. Rather, it argues that one specific aspect of this conflict – the prolonged, well-documented commission of probable crimes against humanity and war crimes by the junta-led regime, entails states' responsibility to refrain from assisting in their commission.⁴ Secondly, the analysis of ASEAN's approach to Myanmar's crisis is strictly limited to ASEAN-level dynamics. Nonetheless, it is noteworthy that member governments' responses to the situation in Myanmar are primarily driven by domestic and geopolitical considerations. Thirdly, the paper centres on the “how” rather than the “why” of

ASEAN's response. Geopolitical concerns are only briefly mentioned as they (re)shape ASEAN's strategic environment. Finally, this inquiry does not address the ASEAN's responses to the atrocities against the Rohingya and the junta's ongoing denial of vital humanitarian aid to victims of Cyclone Mocha.⁵

International response to Myanmar: ASEAN's leadership and the debate over sanctions

Beyond calling for an end to violence, unhindered access to humanitarian aid, and peaceful resolution of the political conflict through dialogue, there is no coordinated international response to the crisis in Myanmar. Fundamentally different interpretations of the nature of Myanmar's predicament, as primarily a domestic political conflict or human rights crisis justify policies often driven by domestic and geopolitical interests. Governments on whom the junta depends to access the funds and weapons fuelling its campaign of violence include so-called "great powers" engaged in military and economic competition and vying for political influence in the region and Myanmar.⁶ Russian, Chinese and, to a lesser extent, Indian state-owned companies continue to provide weaponry and dual-use equipment to the junta.⁷ Banks and companies in the United States, the United Kingdom, and European Union provide financial services, access to foreign currency, and engage in business with junta-controlled state-owned enterprises (SOEs) due to poorly designed, coordinated, and implemented sanctions.⁸

Within this context, two aspects appear central to efforts at shaping an international response: agreement on the leading role of ASEAN and the punitive nature of current and potential restrictive measures in relation to Myanmar. China, the European Union, the United States, India and Russia are consistently expressing support for ASEAN leadership and its hallmark agreement, the Five-Point Consensus (5PC), in addressing the crisis.⁹ The vagueness of the 5PC renders it compatible with a wide set of governmental and intergovernmental approaches, while Myanmar's membership in ASEAN and the junta's apparent initial consent to the agreement point to the association's privileged position to both engage and pressure the notoriously brutal and intransigent Tatmadaw. UN General Assembly Resolution 75/287 (June 18th, 2021) and the UN Security Council Resolution 2669 (December 21, 2022) address the general post-coup human rights situation in

Myanmar and emphasize ASEAN's "central role", express support for efforts of the Special Envoy of the ASEAN Chair (ASEAN Envoy), and call for implementation of the 5PC and subsequent regional statements on the topic.¹⁰ ASEAN members were deeply involved in negotiations of both resolutions and sponsoring member states depict them as intended to complement, support, and strengthen ASEAN efforts and as "respon[se] to the calls of ASEAN leaders to United Nations support" respectively.¹¹

Concerning sanctions, widespread agreement that restrictive measures adopted in response to violence function as punishment is accompanied by controversy over their effectiveness and consequences. Washington, Brussels, and London, all of whom established sanction regimes in relation to Naypyidaw, frame these measures as designed to advance accountability for perpetrators, prevent individuals and companies from financially benefiting from the violence, pressure the junta to cease its brutal campaign, or simply stopping the violence.¹² This portrays the Myanmar crisis as a human rights emergency and the international community's role centres on restoring these rights and ensuring accountability. Opponents of restrictive measures claim they fail to stop violent behaviour, undermine diplomatic attempts to facilitate political negotiations, further divide the political factions engaged in the conflict, and/or worsen an already dire socio-economic and humanitarian situation.¹³ This assessment corresponds with Beijing, Moscow, and New Delhi's interpretation of the crisis as an internal political conflict, to be addressed through political negotiations among the various Myanmar parties. Here, the international community is to facilitate this process.

What and who is ASEAN?

Since its establishment in 1967, ASEAN's *raison d'être* was to provide protection against unwanted interference in its members' internal affairs by increasing their leverage in relation to so-called "great powers".¹⁴ This depends on the grouping's ability to "speak with one voice", and its capacity to reach compromise and project an image of unity – hereinafter "ASEAN Unity". Intra-ASEAN rivalries also required guarantees that the association itself would not turn into a vehicle for interference by relatively stronger member governments. The normative and

institutional evolution of ASEAN reflects members' efforts to meet the apparently contradictory needs of building regional consensus and securing the sovereign rights and political independence of member governments. Commitment to respect for sovereignty and non-interference in internal affairs functions as both a condition and guiding principle for regional cooperation and members generally uphold it in relations between the association and member governments. ASEAN's strictly intergovernmental nature and consensus decision-making reinforce this commitment. Though government representatives within dozens of ASEAN fora may be dismissed at will, they often serve together for many years, which helps create a sense of familiarity. The secretive nature and informal format of meetings is designed to allow frank discussions without the risk of incurring political costs and further enhance intergovernmental solidarity. This cooperation framework operates to manage intra-regional conflicts and facilitate consensus-building, which is furthered by the deliberately vague and contradictory language that characterises many of the grouping's documents. The overall purpose is to forge "ASEAN Unity", which, in turn, empowers the grouping to achieve its *raison d'être* – have a say in "great power politics" within the sub-region.¹⁵

The claim to ASEAN leadership in the region, referred to as "ASEAN Centrality", embodies the collective rationale for cooperation. Since the mid-1990s, the association has engaged regional and extra-regional "great and middle powers" (e.g. China, Russia, The United States, India, Australia, European Union, Canada, and South Korea) in a network of institutions that it set up to reflect its own normative framework and cooperation processes, and where, as convenor, it exercises significant influence on membership criteria and agenda-setting (i.e. ASEAN Regional Forum, the "ASEAN+" mechanisms, and the East Asia Summit).¹⁶

ASEAN's response to (international scrutiny of) gross human rights violations by regional governments

Since 2009, the human rights situation has been regressing throughout the region. Myanmar, Thai, Cambodian, and Malaysian authorities repeatedly used force to suppress peaceful protests.¹⁷ Thailand's military overthrew the country's elected government in May 2014 and, for the next five years, set up an opaque regime marred by systematic repression while dismantling the country's

fragile democratic institutions.¹⁸ Cambodia's Hun Sen banned the country's largest opposition party and imposed tough new legislation criminalising opposition in 2017.¹⁹ The Philippines' government carried out a largely extrajudicial "war on drugs" which led to tens of thousands of killings.²⁰ Brunei adopted a new penal code stipulating brutal punishments like death by stoning and severing of limbs,²¹ while Myanmar's military (Tatmadaw) committed genocide against the country's Rohingya population, with the complicity of the civilian government.²² Mounting evidence shows the junta also committed crimes against humanity following the 2021 coup.²³

ASEAN's response to these developments reveals a tacit compromise that all government-sanctioned abuses, notwithstanding their scale and the level of violence deployed, are internal matters of a primarily political and/or humanitarian nature, outside ASEAN's purview. As such, regional documents only mention events that attracted international scrutiny and condemnation, like Myanmar's Rohingya genocide. In the process, it follows Myanmar's narrative, does not even mention the word "Rohingya", and carefully avoids references to human rights while expressing support for Myanmar's then-civilian government.²⁴ ASEAN also issued joint statements in the UN for addressing these abuses arguing that mounting extrajudicial killings in the Philippines and "the situation in [Myanmar's] Rakhine state" are matters of internal affairs and outside the scope of any external interference without the consent of the respective government.²⁵

ASEAN's response to post-coup Myanmar crisis

What sets the current Myanmar crisis apart from similar regional crises, including the Rohingya genocide, is the resilience of Myanmar's resistance movement. In particular, its ability to disseminate information about the junta's atrocities worldwide, mobilize and organize civil disobedience campaigns as well as parallel political and social structures, and its capacity to mount an armed resistance.²⁶ This prevented the junta from achieving a quick transition and continues to deny it effective control over much of the country's territory and population. As the resistance gained ground, the junta employed increasingly brutal tactics on a larger scale.²⁷

This turned Myanmar's predicament into a regional crisis by causing waves of refugees and migrants, the spread of organised crime networks, and drug and human trafficking. It also fuelled

growing international scrutiny and pressure on the association to address the regional crisis. The Independent Investigative Mechanism on Myanmar and the Special Rapporteur on the Situation of Human Rights in Myanmar, both set up by the UN Human Rights Council, work to document abuses, assess their implications, and inform UN policy; while the Special Envoy of the UN Secretary-General on Myanmar also monitors developments. International, regional, and local civil society organisations (CSOs) inform and complement these accounts. Moreover, as escalating strategic, economic, and institutional competition between Beijing and Washington is reshaping the region’s geopolitical context, Southeast Asia, again, finds itself as the ground for great power competition.²⁸ Regional governments are acutely aware that maintaining “ASEAN Centrality”, by enhancing “ASEAN Unity”, is essential to their political independence and security.

Under these circumstances, Myanmar’s human crisis constitutes an unprecedented test to the association’s survival as it posits imperatives of “ASEAN Centrality”/its *raison d’être* against the need to ensure “ASEAN Unity”, the means through which “ASEAN Centrality” is created and exercised. Centrality requires ASEAN *to be seen* to effectively manage the crisis which implies, at a minimum, affecting the junta’s violent campaign. However, the junta’s notorious intransigence and its utter dependence on these brutal tactics for survival mean that pressure through quiet diplomacy, ASEAN’s *modus operandi*, is unlikely to bear fruit.²⁹ The alternative entails enabling ASEAN to take measures effectively undermining a member government’s political security, including targeted trade and financial restrictions and preventing the flow of weapons and other items fuelling the junta’s violence. Such a straightforward violation of what most ASEAN members regard as sovereign rights undermines the very glue that holds ASEAN together, fundamentally threatening “ASEAN Unity”.

So far, the grouping’s response to Myanmar’s crisis appears primarily designed to manage the threat to ASEAN – i.e., *be seen as* responding to the crisis without taking any steps to effectively undermine the junta’s ability to continue its campaign of violence.

The 5PC remains the crux of the grouping’s response to the crisis. Reached at an ASEAN Leaders’ Meeting on April 24, 2021, which included the junta’s leader, it calls for the “immediate cessation of violence”, “constructive dialogue among all parties”, appointment of a special envoy of the

ASEAN Chair (ASEAN Envoy) to “facilitate mediation”, his/her access to “all parties” in Myanmar, and states that ASEAN will provide humanitarian assistance.³⁰ It is unclear whether the junta leader committed to these terms since the 5PC was released as a Chairman statement, which allows ASEAN to circumvent a veto in case of significant support from other member governments. Nonetheless, three days later he rejected the plan saying that ASEAN’s “suggestions” would be “carefully considered” only “after” stability is restored.³¹

ASEAN responded to escalating violence and blatant failure to implement the plan by “uninviting” the junta from ASEAN Summit meetings in 2021, and from the ASEAN Foreign Ministers Meeting (AMM) in 2022.³² In justifying this unprecedented step, tantamount to withdrawal of political support for the junta and its exclusion from decision-making, AMM emphasised Myanmar’s refusal to allow the ASEAN Envoy access to “all parties” as well as the impact of Myanmar’s situation on regional security, ASEAN unity, centrality, and credibility. Outside the Summit and AMM, cooperation with junta-appointed government officials within the myriad of ASEAN bodies continued, including inter-ministerial fora such as the ASEAN Defence Ministers Meeting.³³

During their chairmanship, both Brunei (2021 ASEAN Chair) and Cambodia (2022 ASEAN Chair) focused negotiations over 5PC implementation on compelling the Tatmadaw to allow the ASEAN Envoy to meet mostly imprisoned opposition leaders, Daw Aung San Suu Kyi especially. Since the junta controlled access to these figures, ASEAN’s efforts were channelled into obtaining its consent.

Throughout the post-coup crisis, regional statements addressing the situation reflect widespread consensus on safeguarding ASEAN Centrality and Unity and growing frustration with the junta’s intransigence. They also attest to member states’ diverging approaches towards the conflict and ASEAN’s role in it. For instance, former Malaysian Foreign Minister (FM) Saifuddin Abdullah, supported less vehemently by his counterparts from Indonesia, the Philippines, and Singapore, appears instrumental in compelling reluctant fellow governments (Cambodia, Thailand, Vietnam, Laos) to take a tough stance against Naypyidaw.³⁴ Saifuddin went as far as calling for a change from ASEAN’s policy of “non-interference” to “non-indifference”, informal engagement with the

NUG, and for re-thinking the 5PC.³⁵ The November 2022 ASEAN Leaders' decision upon review of the progress in implementing the 5PC reflected these diplomatic efforts as it called for a more flexible approach in engaging “all stakeholders” within Myanmar and directed AMM to adopt an implementation plan “that outlines concrete, practical and measurable indicators with specific timeline”.³⁶ The document also went farthest in *alluding* to the Tatmadaw as primarily responsible for the violence, and calling for accountability while directing ASEAN to call on the UN and “external partners” for support in implementing the 5PC. Nonetheless, it also “reaffirmed that Myanmar remains an integral part of ASEAN” and the grouping’s commitment to *assist* Myanmar in finding a solution. The Thai government publicly broke ranks with ASEAN one month later, when it invited the junta’s foreign minister and other ASEAN foreign ministers to an “informal” meeting in Thailand. Cambodia, Laos, and Vietnam answered Thailand’s call while Malaysia, Indonesia, Singapore, Brunei and Philippines boycotted the meeting, offering a rare glimpse into the depth of the intra-ASEAN rift.³⁷

Upon assuming ASEAN Chairpersonship in January 2023, Indonesia acted quickly to address this rift. The change in administration in Malaysia assisted in the process insofar as it abandoned tough criticism of ASEAN and the 5PC. In early January, the Indonesian and Malaysian leaders agreed to strengthen ASEAN Centrality and urged the junta to implement the 5PC.³⁸ Thereafter, Indonesia launched a campaign of “quiet diplomacy” with both opposition leaders in exile as well as the junta.³⁹ In early February, FM Marsudi stated Indonesia had already proposed a plan to implement the 5PC that gained “broad support” within the grouping.⁴⁰ However, as of early July, lack of information suggests that negotiations on the plan continue. Reports on discussions during the May 10th ASEAN Summit Meeting signal that the decision to exclude the junta from Summit and AMM remains contentious.⁴¹ Thailand’s military leadership, which is closely linked to its Tatmadaw counterparts,⁴² considers the country “most affected” by the Myanmar crisis and “the only country in ASEAN that wants to see the problems end as soon as possible”.⁴³ It accelerated its engagement with the junta in 2023 and launched its own “Track 1.5 Dialogue” to address the conflict.⁴⁴ Brunei, Vietnam, Laos, and Cambodia joined a foreign ministers meeting with Myanmar, hosted by Thai FM on June 19, 2023 to discuss a proposal for ASEAN to “fully re-engage” the junta, though only Laos sent its top diplomat. This prompted clarification from Indonesia, supported by Malaysia and

Singapore, that “there is no consensus” on lifting the junta’s suspension from the two key ASEAN decision-making fora.⁴⁵ By this time, the military-led Thai government had lost national elections and the winning opposition coalition pledged to work with ASEAN in addressing the crisis.⁴⁶ Notwithstanding this development, the ability of a new government to change course and hold onto power in military-dominated Thailand remains uncertain.

Intra-ASEAN factionalism forces the grouping to act through ASEAN Chairperson statements in relation to Myanmar. Yearly rotating ASEAN Chair countries already have significant influence over agenda-setting and appointing ASEAN Envoys on Myanmar. Brunei and Cambodia appointed high-ranking diplomats as ASEAN Envoy while Indonesia set up an Office of Special Envoy, headed by FM Marsudi.⁴⁷ So far, ASEAN Chairs put aside their respective policies and prioritised ASEAN Unity. However, as the junta plans sham elections and Laos will assume ASEAN’s Chairmanship in 2024,⁴⁸ frustration with lack of progress may be replaced by understanding that there is no quick solution to the political conflict, and member states could turn to other fora and mechanisms, more accommodating of their respective policies. This would not only damage “ASEAN Centrality” and further split the grouping, but open a window to restore junta’s full membership rights, thereby turning the grouping into a vehicle for restoring its damaged international legitimacy. ASEAN would be fit for the purpose.

Conclusion

ASEAN’s response to Myanmar’s crisis is primarily a function of its nature. The grouping was deliberately designed to *not* deal with gross human rights abuses sanctioned by member governments. The collective commitment to human rights enshrined in its legally binding Charter did not change this situation. Moreover, the association was never intended to drive its member government’s foreign policies. Its role is limited to building intergovernmental consensus on shared issues and, as such, enhancing regional leaders’ leverage in relation to “great powers”. What renders the unfolding human tragedy in Myanmar particularly divisive is the prolonged, intensifying, largely international pressure to make a difference on the ground.

The association's key purpose is to protect member governments from unwanted regional and international interference, and despite the decision to withdraw such support from the junta, ASEAN's practice in response to the crisis remains largely consistent with this purpose. Frequent expressions of concern over escalating violence and calls for restraint notwithstanding, ASEAN carefully avoided any mention of human rights, international law, or legal responsibilities. Indonesia seems to have re-directed ASEAN's approach towards "quiet diplomacy" during 2023 and did not repeat the ASEAN Leaders' Nov 11, 2022 call for "all parties" bearing arms to be "fairly held accountable".⁴⁹ Despite acknowledging the lack of progress, the current ASEAN Chair expressed determination to continue these efforts.⁵⁰ As such, there is no strategy to mitigate the violence other than quietly pressuring the junta. Publicly available information suggests that restrictive measures to preclude member states from assisting in the junta's campaign of violence were never on the agenda. Intergovernmental consensus against any restrictive measures in the name of human rights appears to remain strong.

Consequently, the international community's expectations of effective ASEAN leadership in addressing the violence in Myanmar are not only unrealistic but dangerous. It functions to justify continued delay in fulfilling our responsibility to refrain from assisting in the commission of war crimes and crimes against humanity, thereby continuing to enable the junta's brutal campaign.

This analysis suggests two fundamental changes to the current international, including Southeast Asian, approach to the human and humanitarian tragedy unfolding in Myanmar. Firstly, there is an acute need to recognize that there is a basic legal and moral obligation to refrain from assisting in the commission of crimes against humanity and war crimes. Restrictive measures applied in relation to Myanmar should be designed to fulfil this obligation rather than punishing or pressuring the junta into changing its behaviour. In order to be effective, such measures should be extended to state-owned and private entities that continue to assist the junta in the commission of atrocities and rigorously implemented, first and foremost, domestically. Close monitoring of abuses, including emerging patterns of violence by rebel forces, should also be considered as restrictions would need to be adjusted to the situation on the ground. Open discussion of the harmful effects of both restrictive measures as well as continuing assistance to either of the parties engaged in

armed conflict should help build international support and facilitate continuing adjustment of existing measures to the latest information regarding the rapidly evolving situation.

Secondly, we need to stop artificially separating “human rights” from “politics”. Human rights are about politics and, at its heart, politics is about human rights. The history, philosophical underpinnings, discourse, and implementation of human rights norms ultimately regulate the relationship between power holders and the people subject to such power. Thus, restrictive measures intended to withdraw support, punish, or otherwise prevent the junta from waging war against Myanmar’s population will have a political impact – i.e., helping opposition forces, undermining the junta’s political and territorial control. Similarly, “quiet diplomacy” and cooperation with the junta in a quest to advance political dialogue may necessitate compromises that render concerned governments complicit in the commission of their crimes. These realities need to be acknowledged in order to help build a platform for international cooperation.

These changes may not *stop* the violence, resolve the conflict, and will inevitably have some harmful effects, but states share a collective and individual duty to try. Standing by is not “non-interference.” On the contrary, it renders concerned states complicit in the commission of the junta’s atrocities.

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