Misunderstanding Myanmar

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EXECUTIVE SUMMARY

This article examines how, in retrospect, the military coup in Myanmar in February 2021 was a foreseeable consequence of domestic political dynamics in the country and the misperceptions of the international community about the hybrid civilian-military government.

MAIN ARGUMENT

On February 1, 2021, the military in Myanmar deposed the civilian side of the hybrid civilian-military government to reassert direct military rule. The coup ignited a nationwide resistance against the new military junta, the State Administrative Council, involving many of the nation’s decades-old ethnic armed organizations (EAOs), newly created People’s Defense Forces (PDFs), and an opposition National Unity Government. Looking back, Myanmar’s military saw the 2008 constitution and its hybrid government as the end point for political reform, not as the beginning of a transition. The military’s actions during this decade reflect this. Attempts by Aung San Suu Kyi, the National League for Democracy, and the international community to foster further political changes may have been contributing factors to the military’s decision to stage a coup. Myanmar is now embroiled in a multifront civil war involving most of the country’s largest ethnic communities, including the Bamar majority, with no end in sight.

POLICY IMPLICATIONS

- Peaceful resolution of the conflict in Myanmar is not likely at this time. The U.S. and other nations should consider providing limited and targeted military assistance to the EAOs and PDFs.

- The Biden administration should expedite implementation of the authorities provided in the BURMA Act, including the provision of nonlethal assistance to the EAOs and PDFs. The U.S. State Department should rekindle its ties to the EAOs to facilitate nonlethal assistance and efforts to form local governments in areas “liberated” by the EAOs and PDFs.

- The U.S. Agency for International Development should shift the delivery of humanitarian assistance to local organizations operating in India and Thailand to more effectively provide aid to refugees and internally displaced persons from the civil war.

- The U.S. and other nations should provide financial assistance for efforts to document possible war crimes and crimes against humanity allegedly committed by the junta’s military forces and coordinate this effort with the Independent Investigative Mechanism for Myanmar, the International Criminal Court, and the International Court of Justice.
Two years after Myanmar’s military staged yet another coup, the nation is embroiled in a civil war to determine the future of the country. From the western border with India and Bangladesh to its eastern border with China, Thailand, and Laos, a variety of long-standing ethnic armed organizations (EAOs) and their allied People’s Defense Forces (PDFs) seek to defeat the Myanmar military and dismantle its military junta, the State Administrative Council (SAC). Despite the presence of two claimants—the SAC and the self-declared National Unity Government (NUG)—the ongoing civil war has left the country without a functional federal government. In the areas of Myanmar that the EAOs and PDFs claim to have “liberated,” these groups are establishing interim local governments to provide necessary social services, while local civil society organizations are providing much needed humanitarian assistance. In addition, the EAOs, PDFs, and civil society organizations have begun discussions on how to establish democratic state governments. However, episodic bombings by the Myanmar Air Force and armed assaults by the Myanmar Army on civilian targets continue to disrupt efforts to restore some semblance of normalcy in the country.

The international response to the crisis has largely consisted of strongly worded condemnations of the coup, calls for an end to the fighting, modest sanctions, and a limited amount of humanitarian assistance. So far, the response has brought little relief to the people of Myanmar.

In retrospect, the warning signs for a possible coup were there to be seen, but overly optimistic attitudes resulted in a false narrative of the situation in Myanmar that blinded nearly everyone to the mounting tensions inside the country. According to this narrative, Myanmar was a nation undergoing a difficult and uneven transition from an oppressive military junta to a democratic civilian government. As discussed below, this narrative was frequently presented by the U.S. government to rationalize policies that may have partially contributed to Min Aung Hlaing’s decision to seize power. The article is organized as follows:

~ pp. 132–39 review the major events frequently highlighted by democracy advocates to support the transition narrative in Myanmar, recasting them more objectively.

~ pp. 139–45 discuss less frequently acknowledged events that portended the 2021 coup.

~ pp. 145–55 examine how misunderstandings in the U.S. government and the international community may have contributed to ripening conditions for the coup.

~ pp. 155–156 detail the coup and its aftermath.
pp. 156–59 offer suggestions on how the U.S. and other governments should adjust their perspectives of Myanmar and adopt new policies that have the potential to provide relief to the country’s people and hope for democracy.

THE FALSE NARRATIVE AND ITS MISUNDERSTANDINGS

The understandably appealing narrative adopted by the U.S. government and much of the international community is based on misinterpretations of the significance of certain events and relationships in Myanmar over the last fifteen years. The key problems were misinterpreting the significance of the parliamentary elections, overstating the impact of Thein Sein’s political reforms, and underappreciating the fatal flaws in the peace process promoted by Thein Sein and Aung San Suu Kyi.

The Parliamentary Elections

Since 2010, nationwide parliamentary elections have been held three times—in 2010, 2015, and 2020. In the 2015 and 2020 elections, pro-democracy leader Aung San Suu Kyi’s party, the National League for Democracy (NLD), secured landslide victories. These results were interpreted as an indication that Myanmar was transitioning to a civilian democracy. However, underlying the election results were simmering political tensions.

In 2008, Myanmar’s military junta, the State Peace and Development Council (SPDC), announced that it would hold a national referendum in May on a new constitution for the country. The announcement came just a few months after the SPDC brutally put down the Saffron Revolution, a largely peaceful nationwide protest against the ending of fuel subsidies. The May referendum was held as scheduled, despite the devastation of much of central Myanmar by Cyclone Nargis. According to official results, more than 90% voted in favor of adopting the new constitution, but the results were generally viewed as fraudulent.

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The SPDC then held the national parliamentary election on November 7, 2010, despite a boycott by the NLD and most of the ethnicity-based political parties. The SPDC-backed political party, the Union Solidarity and Development Party (USDP), won nearly 80% of the contested seats. However, there were again widespread and credible allegations of election fraud.

In 2015, the NLD opted not to boycott the elections and secured a majority in both chambers of the Union Parliament and in all but two of the regional or state parliaments. The USDP emerged as the second-largest party in the Union Parliament, with 12 seats in the National Assembly and 30 seats in the People’s Assembly. Various ethnic-based political parties won most of the remaining seats.

After some speculation that Aung San Suu Kyi might be selected for president, despite language in the 2008 constitution that barred her candidacy, she was appointed as foreign minister and her close friend, Htin Kyaw, was selected by the parliament as president. Later, the parliament created the position of state councilor, with power similar to a prime minister, and appointed Aung San Suu Kyi to that position. As a result, she became the de facto leader of the civilian side of the hybrid civilian-military government.

In 2020, the NLD slightly increased its majorities in both chambers of parliament but lost some seats in state parliaments. The USDP saw a decline of four seats in both the National Assembly and People’s Assembly but remained the second-largest party in both chambers—a result that was clearly disappointing to Min Aung Hlaing, who made unsubstantiated claims of election fraud.

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6 Section 59(f) of the 2008 constitution prohibits anyone from serving as president or vice president if the person, a parent, a spouse, a legitimate child, or a spouse of a legitimate child is a “subject of a foreign power or citizen of a foreign country.” Aung San Suu Kyi’s deceased husband was a foreign national as are her two children.
8 The timing and nature of Min Aung Hlaing’s unsubstantiated claims of election fraud were similar to those raised by Donald Trump after his loss in the U.S. presidential election in November 2020, provoking questions about whether Trump’s false allegations may have influenced Min Aung Hlaing.
There are at least two problems with interpreting the results of Myanmar’s parliamentary elections as signs of progress toward democracy. First, such an interpretation ignores the power structure created by the 2008 constitution that kept the military in control. Second, hidden beneath the NLD victories in 2015 and 2020 are indications that many ethnic communities were dissatisfied with Aung San Suu Kyi and her government.

From the start, the Myanmar military made no secret of the fact that it never intended to create a real democracy. Its goal was to create a new government of its own design that would cast a democratic mirage while the military remained in power. On August 30, 2003, General Khin Nyunt declared that the SPDC would undertake a seven-step roadmap to a “disciplined flourishing democracy.” Although Khin Nyunt would be purged from the military junta in 2004, the SPDC continued to follow his roadmap, completing the task in the spring of 2011 with the swearing in of the new parliament and the selection of General Thein Sein, SPDC prime minister, as the first president of the newly established Republic of the Union of Myanmar. In short, for the Myanmar military, the new government was not the first step in a transition to democracy but the end of a well-organized political transformation that kept the military in control.

The 2008 constitution created a hybrid civilian-military government in which 75% of the seats in each chamber of the new parliament were to be popularly elected. The other 25% of the seats, however, were to be filled by active military officers appointed by the commander in chief of Myanmar’s security forces, effectively preventing legislative amendments to the constitution. In addition, the new constitution gave the commander in chief the power to appoint active military officers in three key government ministries: the Ministries of Border Affairs, Defense, and Home Affairs. The constitution created a National Defense and Security Council, in which active military officers were a majority of the members. This council was also given the power to declare a national emergency and transfer legislative, executive, and judicial powers to the commander in chief. In brief, the 2008 constitution provided the facade of civilian power while maintaining military control over the government.

The NLD’s victories in 2015 and 2020 additionally masked the underlying softness and narrowness of support for Aung San Suu Kyi and the NLD,

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particularly among Myanmar’s non-Bamar population. There are indications that the NLD’s strong showing in 2015 was more a vote to remove the military from power than an endorsement of the NLD. Seat-by-seat results in the seven ethnic states revealed an underlying preference for ethnic-based party candidates over the NLD in many districts. Because Myanmar holds “first past the post” elections, and there were frequently two or more ethnic-based party candidates, the NLD candidates emerged as the winner with a plurality of the votes.

The 2020 parliamentary elections had similar results and showed similar signs of relatively soft support for Aung San Suu Kyi and the NLD. In the seven states (majority-populated by their respective ethnic groups)—Chin, Kachin, Kayah (Karenni), Kayin (Karen), Mon, Rakhine (Arakan), and Shan—efforts were made by many of the ethnic-based political parties to either merge or back a common candidate in the hopes of defeating the NLD candidate. This campaign had mixed results, with its most successful outcomes in the state parliamentary elections.

Perhaps no other action undermined Aung San Suu Kyi’s credibility among Myanmar’s non-Bamar population more than her response to the military’s genocidal attack on the Rohingya in 2017. Her unwillingness to unequivocally condemn the assault on unarmed civilians was seen by other ethnic groups as having little regard for their rights, and her decision to defend the military in the International Court of Justice was further evidence to these groups that she cared more about her own political prospects and maintaining good relations with the military than defending the rights of the people of Myanmar regardless of ethnicity or religious belief. Five years of NLD control over the civilian portion of the hybrid national government convinced many EAO leaders that she was not to be trusted.

*The Thein Sein Government’s Reforms*

The members of the first Union Parliament officially took office on March 30, 2011. On the same day, the parliament selected General Thein Sein as president, and Senior General Than Shwe transferred the position of commander in chief of Defense Services to his protégé, Senior General Min Aung Hlaing.

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10 The Bamar are Myanmar’s largest ethnic group at about 68% of the population.

11 “Burma Transfer of Power Complete,” BBC, March 30, 2011. Although the members of the Union Parliament had previously met in January 2011, the formal transfer of power from the SPDC to the new government did not take place until Than Shwe dissolved the SPDC on March 30, 2011.
During his five years in office, President Thein Sein implemented several political reforms that some observers viewed as further transitional steps toward democracy in Myanmar. In the end, however, these changes proved comparatively limited in scope and did not dramatically alter the balance of power in the government. There are also indications that the political reforms were in part designed to encourage the United States, the European Union, and other nations to remove the sanctions they had imposed on Myanmar. Whether or not it was Thein Sein’s intention, many of those sanctions were indeed lifted following his political reforms.

Thein Sein’s government made several notable reforms, including the release of hundreds of political prisoners (while at the same time overseeing the arrest of hundreds more), ending pre-publication censorship of the press, legalizing trade unions, implementing land reform, and passing a foreign investment law. Each of these was a marked improvement over the situation under SPDC rule, but all these reforms were limited in scope, retaining some degree of military control.

For decades, Myanmar’s military juntas detained and imprisoned political activists and prisoners of conscience. The existence of hundreds of political prisoners in Myanmar was frequently cited in U.S. law as a reason for the United States’ imposition of political and economic sanctions.\(^1\) Despite Thein Sein’s pledge to release all political prisoners and the pardons he granted, his government continued to use oppressive laws promulgated by past military governments to arrest and detain political prisoners.\(^2\)

Thein Sein’s termination of pre-publication censorship on print media was another reform that received a lot of international attention. Under the SPDC, all print media was subject to pre-publication review by the Press Scrutiny and Registration Division of the Ministry of Information. Under the Television and Video Act, all film media was subject to censorship. On June 10, 2011, this division suspended its pre-publication review of printed materials, but publishers were still subject to criminal charges and/or fines if materials were considered inappropriate after publication, and video materials were still subject to pre-release review. This reform did contribute to a major increase in the number of newspapers and magazines circulated in Myanmar as well as


\(^{13}\) According to the Assistance Association for Political Prisoners, in March 2016 there were still 110 political prisoners incarcerated and an additional 428 people awaiting trial for their political activities in Myanmar. Assistance Association for Political Prisoners, “March 2016 AAPP Monthly Chronology,” Press Release, April 21, 2016 ~ https://aappb.org/?p=4465.
to greater press freedom. According to Reporters Without Borders, in 2015, Myanmar rose from 169th in 2011 to 144th in its global ranking of freedom of press.\textsuperscript{14} While this indicated some improvement, journalists in Myanmar still faced severe restraints under the country’s restrictive laws.

Thein Sein’s legalization of trade unions and land reforms similarly appeared to be a significant improvement but, in reality, did not fundamentally change conditions. While workers could unionize, Myanmar’s labor laws constrained workers’ rights and their unions. The Farmland Law and the Vacant, Fallow, and Virgin Lands Management Law provided greater protections to landowners, but they also permitted the government to confiscate what it decided was idle or fallow land. This allowed the government and the military to take possession of large amounts of land, often with little or no compensation to the previous owner.

Myanmar’s foreign investment law was another case of a reform being less than it seemed. The law stipulated a regulatory process by which foreign companies could invest in Myanmar after years of uncertainty, and following the law’s passage, foreign investment in Myanmar increased. However, much of the new investment came from countries that never had restrictions on investments in Myanmar. Relatively few companies from the United States and the European Union invested in Myanmar due to the poor quality of the nation’s infrastructure and other factors. In addition, the pervasive presence of the military in many sectors of the economy, along with serious corruption within military-controlled companies, was a major barrier to foreign investors.

Overall, while Thein Sein’s reforms were clearly an improvement over conditions under the SPDC, Myanmar remained a relatively oppressive country. According to Freedom House, its index of freedom score improved slightly between 2011 and 2015, but the country continued to be classified as “not free.”\textsuperscript{15}

\textit{Bilateral and Multiparty Ceasefire Agreements}

In addition to political reforms, Thein Sein initiated an extensive effort to end Myanmar’s decades-old civil war. His plan was to first sign temporary bilateral ceasefire agreements with the more than twenty EAOs that had been formed over the last 70 years in opposition to military juntas. The second step


was to negotiate a collective ceasefire agreement with all the EAOs, which would then permit discussion on possible political reforms. To carry out this plan, Thein Sein established the Myanmar Peace Center and appointed negotiating teams to meet with the EAOs. In theory, the center was intended to be available to all parties to facilitate the ceasefire negotiations process. Thein Sein’s negotiating teams were also given a fair amount of latitude in discussing terms of the ceasefire agreements.

The first step was largely successful. Bilateral ceasefire agreements were reached with all the larger and more important EAOs and with many of the smaller EAOs. The second step, however, proved elusive. Talks between the EAOs, the military, and the Thein Sein government made little progress.

In the end, the government signed what it inaccurately called a “nationwide ceasefire agreement” on October 15, 2015, with just eight of the more than twenty EAOs. Three of the major EAOs—the Chin National Front, the Karen National Union, and Shan State Army–South—were among the signatories. However, several of the major EAOs—the Kachin Independence Army, the Karenni Army, the Shan State Army–North, and the United Wa State Army—refused to sign the agreement over disputes about the terms of the ceasefire and because of the exclusion of allied EAOs from the ceasefire process. Despite its mixed results, the agreement was praised by some as a breakthrough in resolving the civil war. The U.S. embassy in Myanmar, for example, issued a statement, stating, “The signing of the text of the Nationwide Ceasefire Agreement (NCA) by the government and eight ethnic armed groups is a critical first step in a long process of building a sustainable and just peace in Burma”.

Thein Sein’s decision to formally conclude the ceasefire agreement appeared to be politically motivated. With the 2015 parliamentary elections just a few weeks away, he may have hoped that the agreement would improve his party’s prospects in the elections. If so, his hope was unfulfilled, as his party suffered a major defeat. In addition, the ceasefire agreement did little to end the fighting. As will be discussed below, fighting in Myanmar instead increased during the negotiation of the bilateral and multiparty ceasefire agreements.

After the NLD’s 2015 election victory, Aung San Suu Kyi announced that she would continue Thein Sein’s ceasefire initiative, but her efforts did not provide any significant breakthroughs either. Her administration’s Panglong Peace Conferences experienced organizational problems and produced

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statements of modest significance that did little to promote domestic peace. Much of the failure to advance peace can be attributed to the uncompromising position taken by the military, which insisted that the EAOs accept the legitimacy of the 2008 constitution and disband their armies.

**THE IGNORED ISSUES**

Besides misunderstanding many of the major events of the last fifteen years in Myanmar, the international community and many observers in it also ignored critical developments during this period that contradicted the narrative of a transitional path to democracy. Probably the most overlooked issue was the ongoing civil war, which expanded in scope and severity between 2008 and 2020. Another underrecognized issue was the passage of several oppressive laws during the alleged transition period. A third issue was the military’s frequent violation of human rights, especially among the non-Bamar population. While the genocidal attack on the Rohingya was the most egregious in the last fifteen years, similar crimes against humanity were regularly committed by the Myanmar military across the country on a smaller scale. Taken together, these ignored issues reveal an escalation of tensions between the Bamar majority, represented by the Myanmar military and Aung San Suu Kyi’s NLD, and the other ethnic communities in the country.

*The Civil War*

An often-overlooked aspect of Myanmar is its long history of organized armed struggle between its various ethnic groups. Relations between the Bamar and other ethnic communities have given rise to dozens of EAOs, some of which have sought to establish independent nations or obtain greater autonomy from the central government. This history of ethnic conflict was a major reason why the military overthrew a democratically elected civilian government in 1962, beginning nearly 60 years of continual military rule in Myanmar.

Over the years, fighting between the military and the EAOs has ebbed and flowed. Unable to obtain a complete victory, the Myanmar military has vacillated between conducting major operations against selected EAOs and negotiating temporary ceasefire agreements. When Myanmar’s military leaders think it is to their advantage, they have broken the ceasefire agreements and launched intense assaults on the EAOs and civilians alike. As a result, there is great mistrust of the military among the non-Bamar ethnic communities.
In addition, the Myanmar military has a reputation for committing crimes against humanity, war crimes, and other serious human rights violations.

The start of the civil war. Myanmar’s civil war began only a few months after the founding of the Union of Burma in January 1948. Dissatisfied with the 1948 constitution, the Communist Party of Burma organized an armed rebellion. The Karen National Union and its armed forces, the Karen National Liberation Army, also soon formed to fight for Karen independence, which the Karen thought they had been promised by the United Kingdom before decolonization. Fighting between this EAO and the Myanmar military erupted in early 1949 over the establishment of a Karen Free State, also known as Kawthoolei. This conflict continued throughout the 1950s, 1960s, and 1970s, intensifying after the military overthrew the national civilian government and established a junta. In 1976, the Karen National Union shifted its position from seeking full independence to insisting on a high degree of autonomy.

In the early days of the Union of Burma, the Communist Party of Burma and the Karen National Union were not the only armed threats to the new government—other ethnically based groups also established bids for independence. The Karenni Army was created in 1949 and began its struggle for independence in 1957 after the Karenni state was not permitted to separate from the Union of Burma. The Pa-O National Organization and its army were also formed in 1949. Mon activists organized an independence movement, which in 1958 became the New Mon State Party and the Mon National Liberation Army. In 1961, the Kachin Independence Organization and its armed wing, the Kachin Independence Army, were formed for the purpose of obtaining independence for the Kachin state. The Shan State Army was established in 1964 and eventually split into what has become the Shan State Army–North and the Shan State Army–South.

After seizing power in March 1962, the military junta, known as the Union Revolutionary Council, intensified its military campaign against the various EAOs and the Communist Party of Burma. Led by General Ne Win, the Myanmar military utilized a strategy known as the “Four Cuts” designed to deny the EAOs food, finances, intelligence, and recruits. In practice, the Four Cuts meant that the military’s troops did not discriminate between enemy combatants and the local civilian population. As part of the Four Cuts strategy, for example, soldiers frequently burned entire villages.

When these military campaigns were unable to defeat the EAOs, the Union Revolutionary Council and its successors—the State Law and Order Restoration Council (SLORC) and the SPDC—would negotiate temporary ceasefire agreements with the EAOs, offering to cede some local administrative
authority to the EAOs in exchange for an end to the fighting. As a result, significant portions of Myanmar have been under varying degrees of EAO control and governance for decades.

Some of the major EAOs—including the Chin National Army, Myanmar National Democracy Alliance Army, T’a’ang National Liberation Army, and the United Wa State Army—were formed in the late 1980s and early 1990s after the junta refused to accept the results of parliamentary elections held in 1990. The Arakan Army was created later, in 2009, with the goal of restoring Arakan sovereignty over Rakhine state.

The escalation of the civil war after 2008. The military’s failure to defeat the EAOs was likely a contributing factor in General Khin Nyunt’s announcement of the seven-step roadmap in 2003, the promulgation of a new constitution in 2008, and the transfer of power to the hybrid civilian-military government in 2011. These actions, however, did not end the civil war or convince the EAOs to disband. Nor did the transfer of power de-escalate the civil war. In fact, fighting in Myanmar increased in intensity and spread into previously peaceful areas between 2010 and 2020.

In April 2009, the SPDC announced that the EAOs were to be transformed into “border guard forces” (BGFs) under the authority of the commander in chief of Defense Services and the military. Any EAO that refused to be transformed into a BGF would be considered illegal and could face possible military action. Some of the smaller EAOs agreed to become BGFs, but all of the major EAOs rejected the SPDC’s ultimatum.

Faced with the widespread rejection of its ultimatum, the SPDC first targeted the Myanmar National Democracy Alliance Army. In August 2009, SPDC forces attacked a semi-autonomous area controlled by this EAO for the Kokang, an ethnically Chinese population in the northern Shan state, causing up to 30,000 Kokang to flee to China’s neighboring Yunnan Province. Soon after this apparent success, the Myanmar military broke a seventeen-year-old ceasefire and launched a major campaign against a territory controlled by the Kachin Independence Organization and Kachin Independence Army in 2011. Although newly appointed president Thein Sein ordered an end to the attacks, the Myanmar military ignored his orders. Efforts in 2013 and 2014 to broker a ceasefire agreement with the Kachin Independence Army, including

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17 The defeat of the Myanmar National Democracy Alliance Army proved to be short-lived. In 2015, reconstituted forces were able to retake control over portions of northern Shan state, with the support of the Kachin Independence Army, the Shan State Army–North, and the T’a’ang National Liberation Army.

meetings hosted by the Chinese government, failed to end the fighting, and the conflict between the Kachin Independence Army and the Myanmar military has continued at varying degrees of intensity through the present. Since the 2021 coup, the Kachin Independence Army and its allies have been able to re-establish control over territory taken by the military in the previous decade. The military also took aim at the Shan State Army–North. In March 2011, the Myanmar military attacked several of the organization’s outposts and bases after the EAO refused to become a BGF. These assaults continued even after a bilateral ceasefire agreement was signed in January 2012. The Myanmar military launched a major offensive against the group in October 2015, with the apparent goal of driving it out in a similar fashion to the 2009 defeat of the Myanmar National Democracy Alliance Army.\textsuperscript{19} Besides these major campaigns, the military applied pressure and violence on other EAOs between 2008 and 2020.

Not all the fighting during the decade from 2011 to 2020 was started by the Myanmar military. In 2015, the Arakan Army sent an expeditionary force into Rakhine state to assess the prospects for establishing an autonomous Arakan region. Although the initial campaign had limited success, the Arakan Army resumed their efforts to seize control of Rakhine state in 2018, following the Myanmar military’s genocidal attack on the Rohingya. By the end of 2020, the Arakan Army had taken control over most of northern and central Rakhine state, and it concluded a bilateral ceasefire agreement in November 2020 in which the government effectively ceded control of northern and central Rakhine state to it.

There are several reasons why the intensification of Myanmar’s civil war was largely ignored by the international community. First, much of the fighting took place in rural areas, far away from Yangon, where most embassies and international media were located. Second, the battles were generally small, involving one or two battalions at most, with neither side providing information on military or civilian casualties. Third, recognition of the civil war would have undermined the narrative that Myanmar was a nation undergoing a peaceful transition to democracy and discredited the “peace process” initiated by Thein Sein and continued by Aung San Suu Kyi.

\textsuperscript{19} Charm Tong, “Govt Invasion of Shan State Mocks Ceasefire Pact,” Bangkok Post, October 24, 2015.
Repressive Laws

Another major underreported development between 2011 and 2020 was the failure of both the USDP-controlled and NLD-controlled national parliaments to repeal or amend Myanmar’s repressive laws. Instead, both parliaments passed new laws or amended existing laws that contributed to the country’s legal suppression of the people’s rights.

Under the 2008 constitution, all of Myanmar’s previous laws remained in effect, including some dating back to British colonial rule. Many of the colonial laws, as well as those promulgated by the military governments, were designed to control a potentially restive and resentful local population. In general, Myanmar’s military juntas behaved like an army of occupation in their own country and created laws to curtail and suppress opposition to their rule. For example, it was and remains illegal in Myanmar to criticize the Myanmar military or its leaders.

Although the USDP-controlled parliament in Thein Sein’s administration did pass some progressive laws, it also approved repressive laws. The Peaceful Assembly and Peaceful Procession Law of 2014, for example, created a burdensome and intrusive process for people to exercise their constitutional rights of assembly and protest. Protest organizers had to obtain prior approval for the protest, and the application process required that they provide personal information about the organizers and any speakers, estimate the number of people who would attend, and provide the text of any chants or slogans that would be recited. Government officials could deny the request, and violation of the law could result in prison sentences of up to two years. Not surprisingly, this law was used by the Thein Sein government to arrest and imprison its political opponents.

Other examples of repressive litigation passed during the Thein Sein presidency were the Race and Religion Protection Laws. Passed in 2015, these four laws appeared to target Myanmar’s Muslim population. The Monogamy Law criminalized having more than one spouse or living with someone other than a legal spouse. The Religious Conversation Law required Myanmar citizens to obtain government approval to change religion. The Interfaith Marriage Law allowed the government to prohibit marriages between people of differing religions. The Population Control Law mandated a period of

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no less than 36 months between births for women living in predominately Muslim areas of Myanmar.

Myanmar’s legal environment did not greatly improve when the NLD assumed the majority in parliament. Although a special commission set up by the NLD-led government identified more than 140 laws that should be abolished or amended, only a few had been addressed by the end of 2020.

Rather than focusing efforts on repealing or amending Myanmar’s repressive laws, Aung San Suu Kyi and the NLD-controlled parliament focused their efforts on amending the 2008 constitution—with little success.\(^\text{22}\) In 2019, the NLD proposed 114 changes to the constitution, but the military members of the parliament blocked them all. Members of parliament from ethnic-based political parties also proposed amendments to grant the seven ethnic states more autonomy, including the power to select the state’s chief minister, but the NLD refused to put those proposals up for a vote—a decision that increased dissatisfaction with Aung San Suu Kyi among the non-Bamar population.

**Human Rights Abuses**

Unquestionably, the most grievous violation of human rights in Myanmar between 2011 and 2020 was the military’s genocidal attack on the Rohingya in 2017.\(^\text{23}\) An unknown number of unarmed civilians were murdered, thousands of women and girls were sexually assaulted, hundreds of villages were burned to the ground, and more than 750,000 Rohingya fled to neighboring Bangladesh. Calling the August 2017 assault a “clearance operation” against an alleged new Rohingya armed organization, the Arakan Rohingya Salvation Army, the Myanmar military deployed more than 70 battalions into Rakhine state and indiscriminately attacked Rohingya towns and villages. While the assault quickly received widespread international condemnation, little action was taken to hold the Myanmar military accountable for its actions.

What was generally overlooked at the time was that other ethnic communities had been, and continued to be, subjected to similar gross human rights violations by the military. For decades, dozens of local human rights

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\(^\text{23}\) For more about the 2017 attack on the Rohingya, see Michael F. Martin, Rhoda Margesson, and Bruce Vaughn, “The Rohingya Crisis in Bangladesh and Burma,” Congressional Research Service, CRS Report for Congress, R45016, November 8, 2017.
organizations had been collecting evidence and documenting allegations of crimes against humanity committed by Myanmar military forces across the country. A 2019 compilation of seventeen reports identified nearly 40 individuals and more than a hundred security units that had allegedly committed serious human rights abuses since 2011.\(^{24}\) While the newly independent press in Myanmar regularly reported on these allegations, they garnered little attention from the international community.

Members of Myanmar’s non-Bamar population and some EAOs expressed frustration about the lack of concern toward their suffering at the hands of the military.\(^{25}\) While some expressed sympathy for the Rohingya, they were frustrated that no one seemed to care about the crimes committed against them. As a result, some of the EAOs determined that they could not trust the international community to come to their assistance.

**THE INTERNATIONAL COMMUNITY’S ROLE IN THE 2021 COUP**

International responses to the events in Myanmar after 2011 did not cause the 2021 coup, but they were a contributing factor in Min Aung Hlaing’s decision to oust the civilian side of the hybrid government and establish another military junta. Believing that a transition toward democracy was underway, much of the international community made decisions and took actions that allowed Myanmar’s military leaders to think that they could stage a coup without risking serious consequences. In addition, the actions of key players in the international community significantly reduced leverage over the Myanmar military and weakened the position of Aung San Suu Kyi and the NLD, as well as the EAOs.

U.S. policy during the Obama and Trump administrations provides a good example of how misinterpreting events and neglecting those that did not fit the democratic transition narrative led to policy errors that undermined prospects for democratic reform in Myanmar. Congress also could have intervened and corrected what it perceived as errors in U.S. policy, but efforts by some members to pass laws establishing a new approach to relations with Myanmar were repeatedly stymied by other members.


\(^{25}\) Author’s private interviews with EAO leaders and non-Bamar activists, Autumn 2017.
U.S. Policy during the Obama Administration

During the first few years of Barack Obama’s presidency, the administration took a cautious, skeptical stance on the political reforms underway in Myanmar. Toward the end of his eight years in office, the administration seemed eager to see the reforms as a success, not only for Myanmar but for President Obama’s legacy. This shift in policy can be seen in many of the statements and actions taken during the administration.

In November 2009, Obama described his administration’s new approach to Myanmar:

Despite years of good intentions, neither sanctions by the United States nor engagement by others succeeded in improving the lives of the Burmese people. So we are now communicating directly with the leadership to make it clear that existing sanctions will remain until there are concrete steps toward democratic reform.26

This approach followed closely the suggestions made by Michael Green and Derek Mitchell in a 2007 article in Foreign Affairs.27 As Obama stated, the new effort involved high-level engagement with Myanmar’s military leaders to encourage and pressure them to implement democratic reforms. If and when “concrete steps toward democratic reform” were taken, the U.S. government would relax or remove sanctions on Myanmar commensurate to the reforms’ significance. Obama considered the 2010 elections “neither free nor fair” and retained U.S. sanctions on the country.

Inside the State Department, this approach was often referred to as “action for action.” According to one State Department official, a spreadsheet was created, matching the possible political reforms made in Myanmar with corresponding sanction restrictions to be removed or other benefits to be given. The alleged spreadsheet was reportedly based in part on the requirements to waive sanctions stated in the laws that imposed them on Myanmar, such as the Burma Freedom and Democracy Act and the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act. In 2011, Derek Mitchell was confirmed by the Senate to serve as special representative and policy coordinator for Burma, an ambassador-level position created by the JADE Act.

One of the first challenges to the Obama administration’s new approach to Myanmar was the parliamentary elections of 2010. As previously discussed,

those elections were boycotted by Aung San Suu Kyi’s NLD and many other pro-democracy political parties. After the parliamentary elections were over, the Obama administration considered them “neither free nor fair” and retained U.S. sanctions on the country.

In December 2011, Secretary of State Hillary Clinton visited Myanmar.\(^28\) The trip had been hotly debated within the administration and Congress, but the decision to go ahead with it was apparently made after consultation with Aung San Suu Kyi, who had been released from house arrest in late 2010. During the trip, Secretary Clinton met with Thein Sein and Aung San Suu Kyi. At the time, the trip was generally regarded as a success.

In April 2012, the NLD fielded a full slate of parliament candidates and won 43 of 44 contested seats.\(^29\) In addition, Thein Sein had released many political prisoners and ended the pre-censorship of print media, and parliament had passed the Peaceful Processions and Peaceful Assembly Act. However, three months later, Obama issued Executive Order 13619, authorizing new sanctions on individuals who threatened the peace, committed human rights violations, or conducted trade with North Korea.\(^30\) In this directive, he recognized some of the positive developments in Myanmar but went on to indicate the reasons why the new sanctions were warranted, including the “continued detention of political prisoners, efforts to undermine or obstruct the political reform process, efforts to undermine or obstruct the peace process with ethnic minorities, military trade with North Korea, and human rights abuses in Burma particularly in ethnic areas, effectuated by persons within or outside the Government of Burma.”\(^31\)

In accordance with its action-for-action policy, the Obama administration continued to seek ways to suitably reward the Thein Sein administration for what it saw as encouraging steps toward democracy. The State Department lobbied Congress to pass legislation allowing the president to waive the obligation for U.S. representatives to international financial institutions to oppose assistance to Myanmar as required by the Burmese Freedom and Democracy Act. On September 20, 2012, Congress passed Public Law 112–192, providing the president with the necessary authority, and on


\(^{31}\) Ibid.
October 12, 2012, Secretary Clinton issued such a waiver. In November 2012, Obama traveled to Myanmar—the first trip by a sitting U.S. president to the country and his first overseas trip after winning re-election. In his speech at Yangon University, Obama expressed his support for the political changes that had taken place in Myanmar, pointed out how the U.S. government had responded to these positive developments, and indicated that more needed to be done.32

Around the time the executive order was issued, there were also indications in 2012 that the Obama administration was shifting from its action-for-action policy to an approach that was designed to attempt to foster greater reform and a more rapid development of democracy. Mitchell was nominated and then confirmed as the official U.S. ambassador to Myanmar in July 2012, after having served just over a year as the special representative. The Thein Sein government appointed Than Shwe, a career diplomat and former colonel, as ambassador to the United States. This was the first bilateral exchange in ambassadors since the departure of U.S. ambassador Burton Levin in September 1990.

During his confirmation hearing, Mitchell seemed to support continuing the action-for-action policy:

> Each action we have taken in recent months has had as its purpose, to benefit the Burmese people and strengthen reform and reformers within the system. This engagement should continue and expand. If confirmed, I will do my part in the field to support a principled approach that effectively marries our values with our broader national interests. 33

However, just a few days before Mitchell’s confirmation, Assistant Secretary of State for East Asian and Pacific Affairs Kurt Campbell provided a slightly different characterization of U.S. policy in Myanmar, stating:

> One of the things that we will be seeking to do over the course of the next several weeks is to be quite clear about the path that we will take in terms of the easing of our sanctions. We want to create a capacity for substantial American investment and involvement in the country.34

The decision to exchange ambassadors and normalize diplomatic relations ignored the fact that the major EAOs and some pro-democracy organizations

34 Ibid.
in Myanmar did not recognize the legitimacy of the 2008 constitution and the national government. By exchanging ambassadors, Obama—who had previously discredited the 2010 elections—had seemingly changed his view of the Thein Sein government and implicitly rejected the view of the EAOs and others on the government’s legitimacy. In the eyes of some of the EAOs, the administration had effectively taken sides in the ongoing civil war, backing the Thein Sein government and the Bamar majority.

On August 6, 2013, the Obama administration took another step to ease the sanctions on Myanmar. Obama issued Executive Order 13651 which, while prohibiting the import of jadeite or rubies from Myanmar, waived the general trade ban in section 5(b) of the JADE Act.\textsuperscript{35}

Inside the State Department, there were reportedly serious differences of opinion about the proper conduct of U.S. policy in Myanmar between 2012 and 2016. On one side was the Bureau of East Asian and Pacific Affairs. On the other side was the Bureau of Democracy, Human Rights, and Labor and, to a lesser degree, the Bureau of Population, Refugees, and Migration. While the Bureau of East Asian and Pacific Affairs advocated a more rapid relaxation of restrictions in an effort to foster further political and economic reform in Myanmar, the other two bureaus involved supported continuing the action-for-action policy to maintain leverage on the military and government and incentivize progress toward democracy and respect for human rights. The Bureau of East Asian and Pacific Affairs tended to focus on the gains made compared to military juntas of the past, whereas the Bureau of Democracy, Human Rights, and Labor and the Bureau of Population, Refugees, and Migration pointed to the continuing widespread abuses of human rights, the ongoing civil war, and the nondemocratic aspects of Myanmar’s government.

Toward the end of the Obama administration, U.S. policy in Myanmar had clearly shifted in favor of the Bureau of East Asian and Pacific Affairs’ approach. After the NLD’s landslide victory in 2015, President Obama congratulated Aung San Suu Kyi and the NLD on the “historic” parliamentary elections, indicating that “the election and formation of a new government could be an important step forward in Burma’s democratic transition and the effort to forge a more peaceful and prosperous future.”\textsuperscript{36}


\textsuperscript{36} “Readout of the President’s Call with Aung San Suu Kyi of Burma,” White House, November 12, 2015.
In mid-September 2016, Aung San Suu Kyi made an official visit to Washington, D.C., to seek U.S. support for the policies of her new government. Prior to the visit, her close advisers indicated that among her requests would be the relaxation of economic restrictions on nonmilitary entities in Myanmar and the continuation of such sanctions on military-owned or controlled businesses. In a closed-door meeting with congressional leaders, she reportedly made such a request.

However, on September 15, 2016, the White House released a statement indicating Aung San Suu Kyi’s support of Obama’s decision to waive the remaining sanctions, including those on military-owned or controlled businesses. In that statement, Aung San Suu Kyi was quoted as saying, “We think that the time has now come to remove all the sanctions that hurt us economically, because our country is in a position to open up to those who are interested in taking part in our economic enterprises.”

It is unclear why Aung San Suu Kyi apparently changed her view of U.S. sanctions between meeting with members of Congress and with Obama. Her advisers subsequently stated that senior Obama administration officials and State Department lawyers allegedly told her that there was no legal way to remove the sanctions on nonmilitary businesses while retaining them on military ones. Faced with an all-or-nothing option, she had reluctantly chosen the full removal of sanctions. Some members of Congress, human rights advocates in Myanmar and the United States, and the major EAOs were similarly unhappy with Obama’s decision to end the sanctions.

Obama continued to restore normal relations with Myanmar. On September 14, 2016, he released Presidential Proclamation 9492, which restored Myanmar’s eligibility for the benefits of the U.S. Generalized System of Preferences. On September 28, 2016, the administration issued a presidential determination fully waiving the prohibitions on relations with Myanmar (as well as Iraq and Nigeria) under the Child Soldiers Prevention

37 Author’s communications with advisers to Aung San Suu Kyi, September 2016.
38 Author’s communications with persons in attendance at the meeting.
40 Ibid.
Act of 2008. Shortly after, on October 7, 2016, Obama released Executive Order 13742, eliminating most of the remaining restrictions on relations with Myanmar. Obama’s final act to remove restrictions on relations with Myanmar came with the issuance of Presidential Determination 2017–04, which terminated restrictions on bilateral assistance. Although these decisions were not made without controversy, by the end of his presidency, Obama had effectively waived or terminated almost all of the economic and political sanctions on Myanmar.

Policy Drift during the Trump Administration

During his presidential campaign, Donald Trump was highly critical of foreign policy during the Obama administration. His Islamophobic rhetoric and sympathetic comments about dictators were viewed by Myanmar’s military leaders and militant Buddhist nationalists in the country as indications that a possible President Trump would be more lenient toward Myanmar than President Obama had been or a President Hillary Clinton would likely be. Ironically, Myanmar policy during the Trump administration was largely a continuation of Obama’s approach, albeit with less focus, sophistication, attention, or consistency. The response of the Trump administration to the 2020 election results, for example, was comparatively muted, “recognizing” the elections but pointing out reservations about how they were conducted. In part, this was due to a lack of clear leadership from either the White House or Secretaries of State Rex Tillerson and Michael Pompeo. While efforts continued within the State Department to raise awareness about human rights abuses and the lack of progress in Myanmar, these efforts received little support. In addition, President Trump, Secretary Tillerson, and Secretary Pompeo made serious diplomatic and policy mistakes that worsened the situation. The Trump administration’s response to the genocidal attacks on the Rohingya was one such example of its policy mismanagement. Only days after the launch of attacks on August 25, 2017, did State Department spokesperson Heather Nauert say that the Trump administration was “deeply

concerned by the troubling situation in Burma’s northern Rakhine State;” but she also “condemn[ed] deadly attacks on Burmese security forces.”

In his testimony at a hearing on the crisis before the House Committee on Foreign Affairs, Mark Storella, deputy secretary of state for Population, Refugees, and Migration, summarized the recent events as “attacks by militants, a disproportionate military response to those attacks, violence perpetuated by local vigilantes, and fear of a lack of protection for local populations.”

After mounting congressional and international pressure, eventually—on November 22—Secretary Tillerson posted on Twitter via a spokesperson and called the assault on the Rohingya a form of “ethnic cleansing,” an informal phrase that has no legal consequences. Although the U.S. ambassador to the United Nations, Nikki Haley, made repeated calls after the attack for the United States and the international community to take action, not just proffer words, the Trump administration did not impose any sanctions on Myanmar’s military leaders until nearly a year later.

By then, the damage of Tillerson’s words and the administration’s inaction had been done. In meetings held a few weeks after the genocidal assault on the Rohingya, several EAO representatives made it clear that they saw the Trump administration’s response as proof of its support of the Myanmar military, Aung San Suu Kyi, and the Bamar majority, as well as evidence of its lack of concern for human rights abuses committed against the non-Bamar population.

Some officials in the State Department were able to secure authority and funding to conduct interviews with Rohingya refugees in Bangladesh who claimed to have been subjected to human rights abuses by the Myanmar military. An extensive report of the findings of those interviews was written and circulated within the State Department, where it faced opposition from some officials. After a copy of an internal State Department memorandum about the report was obtained by the press, Pompeo quashed the report and allegedly forbade discussion of the issue. Haley provided some detail on the report in a statement before the UN Security Council on August 28, 2018, stating that

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48 Author’s interviews with EAO representatives, October 2017.

the findings of the U.S. study were consistent with those of a UN report.\textsuperscript{50} Eventually, the State Department posted a heavily edited version of the report online but issued no press announcement.\textsuperscript{51} The Trump administration never made a determination regarding the possibility of genocide, war crimes, or crimes against humanity having been committed in Rakhine state. On August 17, 2018, the U.S. Treasury Department added four Myanmar military officers and two military units to its sanctions list under the authority of the Global Magnitsky Human Rights Accountability Act of 2016.\textsuperscript{52}

Another example of the inadequacy of the Trump administration’s policy on Myanmar was its response to the criminal cases brought before the International Court of Justice (ICJ) and the International Criminal Court (ICC). On September 6, 2018, the ICC issued an affirmative decision on the Office of the Prosecutor’s request that the ICC determine if the court had jurisdiction “over the alleged deportation of members of the Rohingya people” from Myanmar to Bangladesh.\textsuperscript{53} On November 11, 2019, Gambia instituted a proceeding in the ICJ against the Myanmar government for alleged crimes committed against the Rohingya.\textsuperscript{54} In its filing, Gambia asked that the court impose provisional measures on Myanmar to ensure the protection of the Rohingya. The ICJ accepted the case and approved most of the requested provisional measures. As a result, international mechanisms were established to examine alleged criminal activities by the Myanmar military not only against the Rohingya but against all the country’s ethnic communities.

In general, the Trump administration was not supportive of either of these initiatives. The United States is not a member of the ICC and has a history of poor relations with the court. U.S. actions in 2019–20 unrelated to the Myanmar case further harmed relations between the ICC and the U.S. government and hindered cooperation. The Trump administration’s view of the ICJ case was less hostile than its treatment of the ICC, but it did not express active support. The United States was not among the 57 nations

\textsuperscript{53} International Criminal Court, “Decision on the Prosecutor’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute,” No. ICC-RoC46(3)-01/18, September 6, 2018 — https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_04203.PDF.
that sued Myanmar in the ICJ, but it did encourage Myanmar “to participate fully in International Court of Justice (ICJ) proceedings and to comply with court orders.”\footnote{“United States Continues to Call for Justice and Accountability in Burma,” U.S. Department of State, Press Statement, August 25, 2020.} Neither the White House nor the State Department issued a comment on Aung San Suu Kyi’s defense of the Myanmar government during the ICJ hearing.

**Congressional Inaction**

Throughout the decade following the creation of the hybrid government in Myanmar, Congress was generally deferential to the Obama and Trump administrations in setting U.S. policy on Myanmar. Although in 2012, Congress passed Public Law 112–163, which renewed the import restrictions in the Burma Freedom and Democracy Act, it subsequently let the restrictions expire. The only freestanding law about Myanmar passed by Congress between 2011 and 2020 was Public Law 112–192 in 2012, which gave the president the authority to waive restrictions on assistance to Myanmar by international financial institutions. Other legislation was introduced in the House and Senate during both administrations that would have altered U.S. policy in Myanmar—focused on addressing human rights and the status of political prisoners, prohibiting military assistance, creating a multiyear strategy for the country, limiting the types of international financial institution assistance, and addressing the Rohingya crisis—but those bills either died in committee or received little action in either chamber.

Congress did pass annual appropriation bills for the Department of Defense, State Department, and the U.S. Agency for International Development, but those bills did not significantly alter U.S. policy. Defense appropriation legislation largely restated existing restrictions on assistance to the Myanmar military, while appropriation acts for the State Department and U.S. Agency for International Development placed restraints on U.S. assistance in Myanmar consistent with existing sanctions.

In general, during this decade, Myanmar-related legislation received bipartisan support in the House of Representatives, but those bills were not possible to pass in the Senate. One of the major barriers to passage of relevant legislation in the Senate was Senator Mitch McConnell, who has a long history of involvement in U.S. policy in Myanmar and a close relationship with Aung San Suu Kyi. Few Republican senators would support a bill on
Myanmar unless Senator McConnell also supported it, making it difficult to move legislation in the Senate that would place restrictions on the country.

THE COUP AND ITS AFTERMATH

On February 1, 2021, Min Aung Hlaing and the Myanmar military detained Aung San Suu Kyi, most of her ministers, and many incoming members of parliament in a largely bloodless coup. Some members-elect escaped capture and found refuge with sympathetic EAOs. Myanmar’s hybrid civilian-military government had come to its end.

Min Aung Hlaing claimed the coup was legal under provisions in the 2008 constitution that allowed him to assume power in the case of a national emergency, although no such emergency had been declared prior to the coup. Rumors about a possible takeover arose soon after the results of the 2020 parliamentary elections were announced. The Myanmar military and the USDP supposedly had hopes that they would win the election, wrongly believing that people had turned against Aung San Suu Kyi and the NLD. Following the coup, the Myanmar military made unsubstantiated claims of widespread election fraud, similar to those made by Trump and his supporters about the 2020 U.S. presidential elections.

Almost immediately after the coup, a spontaneous civil disobedience movement rose up across the country. Led by an informal coalition of trade unions, university professors, students, and civil society organizations, the movement received widespread support and brought the nation to a halt. The military responded with violence—dozens of protesters were killed and hundreds were beaten and arrested. However, the violence did not break the resolve of the movement, and the protests continued.

The coup also energized some of the major EAOs to take the initiative against the military. In addition, volunteer people’s defense forces (PDFs) were formed in hundreds of villages and townships across Myanmar in opposition to the coup and the new military junta, which is known as the State Administrative Council (SAC). New and intensified fighting broke out across the country, including in Chin, Kachin, Kayah, Kayin, and Shan states. In the two years since the coup, the major EAOs and their affiliated PDFs have taken control of almost all of Chin state, much of Kachin state, and large portions of Kayah and Kayin states. The Chin National Front and the newly created Chinland Defense Force have extended their struggle against the SAC into the neighboring Magway and Sagaing regions. The Kachin Independence Army and its PDFs are also operating in the Sagaing region. The Karen National
Liberation Army and its PDFs are attacking SAC forces in Kayin state as well as in the neighboring Bago region.

Another important development was the creation of the Committee Representing Pyidaungsu Hluttaw (CRPH), which consisted of about 70 members-elect to the parliament before it was dissolved. The CRPH asserts that it is the basis for a legitimate government in Myanmar. Although this claim met with skepticism from the EAOs, the CRPH unilaterally announced the formation of the National Unity Government (NUG) on April 16, 2021, despite EAO objections.

Since the NUG’s creation, relations between the CRPH and the major EAOs have been difficult. While they share a common goal to defeat the SAC and dismantle the Myanmar military, the EAOs do not trust the NUG and its largely Bamar leadership. Efforts to continue discussions about the basis for a future federated government have stalled over fundamental issues. For now, the EAOs and the NUG express unity in their struggle to overthrow the SAC, but they have not agreed on what will happen after the military is defeated.

For the people of Myanmar, the war continues unabated, with no sign of who will emerge victorious. Hundreds of thousands of people have been displaced and an unknown number have been killed. The military treats unarmed civilians as its enemies, indiscriminately attacking and destroying villages.

The Myanmar military has superior weapons, but it is running out of soldiers to continue the war. The EAOs and PDFs have personnel but lack sufficient weapons to win. India and Russia reportedly continue to provide weapons to the SAC, while China provides arms to both sides of the conflict. The United States, the Association of Southeast Asian Nations (ASEAN), and the European Union have called on all nations to stop the provision of military supplies to Myanmar, but to little effect. Given the current balance of military power, Myanmar may be riven by civil war for several more years.

SUGGESTIONS FOR U.S. POLICY

The greatest danger facing the people of Myanmar is the civil war. The primary objective of U.S. policy toward Myanmar at this time should be finding a way to end this conflict. However, no side has indicated any interest in ceasefire negotiations. In April 2021, ASEAN and Min Aung Hlaing agreed to the Five-Point Consensus as a peace plan for addressing the crisis. The consensus called for an immediate end to violence, establishing a dialogue among all parties, appointing a special envoy, allowing humanitarian
assistance from ASEAN, and permitting an ASEAN special envoy to visit Myanmar to meet with all parties.\textsuperscript{56} However, the Five-Point Consensus has failed to achieve its aims, and for now, the war appears to be a fight to the finish. To bring the war to a quicker end, the U.S. government should consider providing limited military assistance to the EAOs and their affiliated PDFs.

The Burma Unified through Rigorous Military Accountability (BURMA) Act of 2021 provides for the delivery of nonlethal assistance, which can include military supplies and equipment that would help the EAOs and PDFs defend or warn their troops and local populations about air assaults. Such aid could include radar-jamming systems, drones, real-time satellite imagery, and other aerial surveillance systems. It could also include armored personnel carriers, trucks, and other vehicles to help relocate troops and internally displaced persons to safer locations.

Congress should pass legislation authorizing the provision of weapons to the EAOs under strict conditions and monitoring. The EAOs and the NUG have previously requested drones, shoulder-mounted anti-aircraft weapons, AR-15s or their equivalent, and ammunition. This legislation should require that U.S. officials coordinate the provision of weapons to the EAOs, provide that these forces are adequately trained on the weapons’ proper use, and that the EAOs recognize international codes of conduct during times of conflict. The legislation should also authorize the provision of the International Military Education and Training program and the Foreign Military Sales and Financing program to the NUG and the EAOs.

In addition, the U.S. government should increase its provision of humanitarian assistance to refugees in neighboring countries, including Bangladesh, India, and Thailand, and the internally displaced persons trapped in Myanmar. Aid should also be provided to help Myanmar’s political prisoners and defectors from the military. Given the current circumstances, assistance to internally displaced persons would be best managed primarily by local humanitarian organizations working from across the border with organizations in Myanmar. This may require changing the usual regulatory arrangements for awarding and monitoring assistance grants. The U.S. government should also apply greater pressure on its Indian counterpart and the incoming government in Thailand to permit and facilitate cross-border assistance.

Funding should also be provided to facilitate the establishment of local and state governments. The civil war has created local governance voids in

much of Myanmar, as SAC officials abandon their positions when villages and towns are “liberated” by the EAOs and PDFs, who often lack the skills and training to effectively run the local governments. The leadership changes in these communities also create an opportunity for the local population to establish a government of its own choosing rather than one imposed by the military. Local government assistance is a critical need while the civil war continues and can help establish a base for more stable and democratic postwar governments.

In addition, the U.S. government should facilitate discussions among the EAOs, the PDFs, the NUG, and civil society organizations about the future of Myanmar after the military is defeated. Even without the involvement of the military, it is unclear whether a consensus on the basic framework for a future federated state in Myanmar is achievable. There is a strong possibility that after the civil war is over, Myanmar will be divided into several independent nations. The Arakan Army and the United Wa State Army have already created de facto separate states. Some members of the Chinland Defense Force and the Chin National Front would like to establish the new nation of Chinland. The Kachin Independence Organization and the Karen National Union also have advocates for returning to the goal of independence.

The independence leanings within the EAOs and PDFs create risks for their struggle to overthrow the SAC and the restoration of peace in Myanmar. If an EAO successfully gains control of a territory, it may withdraw from the fight, leaving the other EAOs at a disadvantage against the military. In addition, some EAOs and PDFs view areas in neighboring regions or states as part of their homeland, raising the possibility of a post–civil war conflict over contested territory. The U.S. government could play an important role in fostering the peaceful resolution of overlapping territorial claims.

Another vital form of assistance that the U.S. government should provide to Myanmar is in gathering evidence and documenting alleged cases of both crimes against humanity and war crimes committed during the civil war. One of the top priorities of the refugees and internally displaced persons is accountability—they want some form of justice for the crimes committed by the military. The U.S. government has provided limited assistance in the past, including that related to the Rohingya investigation as well as other contributions made by the Biden administration to support the Independent Investigative Mechanism for Myanmar. The U.S. government should continue to help fund this mechanism and work with the ICC and ICJ as they pursue criminal cases against the Myanmar military. Consideration should also be given concerning if and how to establish an independent tribunal to adjudicate
alleged war crimes, crimes against humanity, and genocide committed during Myanmar’s civil war.

For the U.S. government to shift its policy on Myanmar, the Biden administration and Congress would need to reconcile the fact that the U.S. government misjudged the country’s trajectory since the 2011 formation of the hybrid government. While responsibility for the crisis in Myanmar lies primarily with the Myanmar military and the country’s own governments, the misunderstandings and overly optimistic assessment of changes in the country by the U.S. government and international community more broadly may have contributed to the intensification of the civil war and to Min Aung Hlaing’s decision to stage the 2021 coup. The actions of the Biden administration and Congress over the next few months will demonstrate whether they admit past mistakes and take action to rectify the crisis.