

## THE MYANMAR CRISIS: INTERROGATING THE LIMITS OF ASEAN'S CONSTRUCTIVE ENGAGEMENT AND NEW PATHWAYS TO PEACE<sup>1</sup>

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### **Abstract**

The paper is structured in three parts. First, it presents briefly the history of the concept of Constructive Engagement (CE) which emerged as a foil for the Association of Southeast Asian Nations (ASEAN) to address the Cambodian conflict. CE was premised on ASEAN's diplomatic culture of norm-setting and norm socialization via the *ASEAN Way*. The paper posits that ASEAN, as a regional entity, embeds inter-state constitutive and prescriptive norms with an imperative to regularly seek new modalities of intramural conflict management. ASEAN's plurality and diversity of membership predisposes it to medium and long-term processes of norm-setting as the means to address regime legitimacy and accountability within the constraints of the *ASEAN Way*. An obvious question arises as to whether the Myanmar crisis presents itself as the extreme or limiting case to date of the efficacy of ASEAN's CE approach as a subset of its diplomatic culture to manage recalcitrant states. ASEAN's current engagement via its Five-Point Consensus approach to deal with the Myanmar crisis has yielded few positive outcomes four years after the military coup of 2021. The paper examines Malaysia's active engagement with Myanmar under the CE rubric dating to Myanmar's membership of ASEAN in 1997. In more recent years, Malaysia has also borne the brunt of the massive impact of Rohingya migration to its shores as a fallout of the Myanmar crisis. This predisposes Malaysia to play an important role, especially in 2025 as Chair of ASEAN. Finally, the paper explores a constructivist pathway out of the Myanmar impasse for ASEAN. It argues that innovative processes beyond ASEAN's Five-Point Consensus approach to the Myanmar crisis are needed to return Myanmar to a situation of sovereign accountability. Beyond state-to-state engagements, non-state actors could also play a significant role regionally on respective national terrains. In its current situation of civil war, this calls for ASEAN to recognise and engage with all the key stakeholders of the Myanmar Resistance.

*Keywords:* Constructive Engagement, Myanmar crisis, norm-setting, norm socialization, the *ASEAN Way*, sovereign accountability.

### **Introduction**

The notion of "Constructive Engagement" (CE) with Myanmar, the ninth member of the regional body, emerged as a subset of its diplomatic culture (the *ASEAN Way*)<sup>2</sup> which is anchored on the pillar of non-interference in the internal affairs of members. CE was a strategy of ASEAN expansionism and conflict resolution and management since the early 1990s when the regional body grew from five members to ten. The incorporation of the Indochina states into ASEAN was premised on an early version of CE, with the particularly difficult case of membership being that of Cambodia, which only joined the regional organization in 1999. While Myanmar had become a member earlier in 1997, ASEAN's continued constructive engagement with Myanmar has so far failed to produce a desired outcome, namely, a legitimate government recognised by all ASEAN member-states.

After the February military coup of 2021, it is notable that Myanmar qua state has been deprived of enjoying full member privileges in the regional group. A special foreign ministers' meeting (with Myanmar present) in October 2021 restricted Myanmar's attendance at the 38th and 39th ASEAN Summits in November 2021 to a "non-political representative." (Thuzar, 2021). Thus, following this, leading officials of the current Myanmar regime known as the State Administrative Council (SAC) have been barred from top-level ASEAN meetings. Lower-level officials do however attend ASEAN meetings. Such deprivation to a member-state is unprecedented in ASEAN. It clearly is a much milder action than suspension of membership or at the extreme end, expulsion. However, the step taken by ASEAN does remain within the ambit of its diplomatic culture. It remains to be seen if a legitimate government to be recognized by the ASEAN states will emerge in the current phase of ASEAN's constructive engagement with the Myanmar state, and not just with the SAC but also with all other legitimate stakeholders.

### ASEAN Norm-Setting and Socialisation

If ASEAN remains hobbled by the Myanmar crisis, this raises the question from a theoretical perspective that Myanmar is the *limiting case* (or extreme case) that vitiates the efficacy of ASEAN's current diplomatic culture and its norm socialization in managing inter-state (or intramural ASEAN relations) in Southeast Asia. Norm setting and socialisation has typically been aimed at regional goals rather than at intramural relations among ASEAN states. An important aspect of such socialisation for regional actors is the ASEAN-constituted norm of "ASEAN centrality" (Yoshimatsu, 2023), which is targeted at ASEAN's management of its regional environment, especially in recent times, in response to the developments in the Indo-Pacific. The ASEAN Outlook on the Indo-Pacific (AOIP) in direct response to the new geopolitics since the first Trump presidency emphasised the importance of ASEAN centrality in addressing these developments (Saravanamuttu, 2022). However, ASEAN's claim to such "centrality" lacks a robustness of legal or even institutional structures (Cabellerao-Anthony, 2022). An argument may be made that ASEAN's norm socialization so far has largely focused on actors external to the ASEAN social formation rather than on ASEAN's own intramural relations, which is itself a function of a diplomatic culture centred on the *ASEAN Way* of non-interference in the internal affairs of member-states. This major lacuna of a lack of norm-setting and socialisation raises a major problem with respect to pathways for determining regime legitimacy of recalcitrant members. Currently, its norms only socialise members for norms related to external relations of the body as a criterion for acceptance of new members. There are no intramural processes for determining regime legitimacy, a point not fully interrogated by established constructivist scholars.<sup>3</sup> That is not to say that intramural norms do not at all exist. For example, significant for ASEAN intramural relations were constructs such as the 1976 Treaty of Amity and Cooperation (TAC), the ratification of which is a necessary step to ASEAN membership. However, once a member goes "rogue" or is not able to maintain some level of regime legitimacy, there are no procedures to evaluate such recalcitrant behaviour to re-validate or review its membership. Most forms of engagement with a rogue state is thus usually confined within the bounds of ASEAN's rigid and toothless non-interference principle of intramural relations.

ASEAN took a further step towards the legal constitution of its norms when the ASEAN Charter came into force in 2008. However, Article 2 states that "ASEAN and its Member States shall act in accordance with: (a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States and (b) shared commitment and collective responsibility in enhancing regional peace. Some have argued that the ASEAN Charter merely codifies its existing *modus operandi*. While ASEAN has practised flexibility in its consensual decision-making, such as adopting the ASEAN minus X modality, the ASEAN Charter paradoxically also makes unanimity an imperative (Tan, 2017: 81-82). I would argue that as ASEAN matures, its diplomatic and security culture must open doors to overcome the intramural gridlock anchored on the non-interference principle. Or rather, as it has been suggested before, some enhancement of forms of soft-to-harder

intervention in states should be acceptable. For example, quiet diplomacy currently offers the main pathway to the conundrum posed by the ASEAN Way although with limited success (Hui 2021). Could there be sharper more efficacious interventions not tantamount to sovereign interference? The paper explores if certain avenues of constructivism could be advanced to obviate the hardness of the non-intervention principle through certain innovative strategies, including non-state centric escape routes out of the Myanmar impasse.

ASEAN constructive scholars have not adequately addressed either the character or the kind of norm socialisation that ASEAN undertakes at the sub-state or non-state levels of engagements which could enhance ASEAN socialization. A point of departure for addressing this question is the seminal article on *norm entrepreneurship* by Finnemore and Sikkink who suggest that there are three types of norms; regulative, constitutive and prescriptive (constraining, creative, evaluative) in the manner state and non-state actors could advance policies and actions (Finnemore and Sikkink, 1998: 891). This work can be used for interrogating the limits of ASEAN state-centric norm socialisation and norm-setting, which fall within the constitutive and prescriptive type rather than the regulative. If as a legal entity ASEAN member-states appear somewhat powerless to intervene in the internal politics of member states, such a scenario should open the door to non-state actors to enact important socialization roles at the national and regional spheres. Non-state actors are not strictly subjected to ASEAN's constraining and restrictive diplomatic culture. The idea that norm diffusion has been facilitated by track two diplomacy has been explored by writers before (Capie, 2011). One could further posit that non-state actors at different national and regional tracks could also wield agency in diffusing and advancing security and peace-oriented norms while ultimately being subject to the decision-making authority of the ASEAN body.

## **From Constructive Engagement to Flexible Engagement**

### *ASEAN and the Indochina States:*

Constructive Engagement (CE) was introduced in 1991 as a part of the agenda of membership enlargement and it thus became a subset of the *ASEAN Way* to socialise ASEAN diplomatic culture and practices among its members. In retrospect, whether deliberately or not, CE was an important avenue to advance ASEAN norms of peace-building based on its principle of non-intervention in internal affairs in the conflict-ridden Southeast Asian region.

As noted by Amer (2010:1037-38), one could view early CE as the process of rapprochement and gradual expansion of ASEAN which brought an end to the animosity between the ASEAN five and the Indochina states after the end of the Vietnam War in 1975 and the long and protracted resolution of the Cambodia conflict from the late 1970s till the 1990s. The impasse over the legitimacy of the Cambodia state was resolved very gradually. Thailand's premier Chatichai Choonhavan initiated an Indochina policy which came to be known by its dictum of "turning battlefields of Indochina into markets." (Saravanamuttu, 2021: 224 ) With the warming up of relations with Vietnam, ASEAN was able to conduct "proximity talks" which morphed into the "Jakarta Informal Meetings" (JIM) initiated in July 1987 by Indonesia and Vietnam. The Paris Peace Agreements of 1991 closed the chapter on the Indochina wars and it could be argued that it was ASEAN's agency that was paramount in leading to the resolution of the Cambodia civil war. ASEAN was able to resolve Cambodia's legitimacy question which allowed for the eventual membership of all the Indochina states into the regional body by 1999.

With respect to Myanmar, Amer (2010:138) is of the view that its relations with ASEAN were not characterised by any animosity nor by confrontation as it had tended to have isolationist policies with little interaction with outside states. Moreover, Myanmar's support for ASEAN's stand on Cambodia in the General Assembly of the United Nations in 1979 and throughout the 1980s endeared it to the regional body. Thus the incorporation of Myanmar into ASEAN differed significantly from that

between ASEAN and Cambodia as well as Vietnam and Laos (Amer, 2010:138). For the most part of the 1990s, the TAC was ASEAN's foil for managing inter-state disputes, which in practice proved to be a code of conduct to be observed over time as a pillar of ASEAN intramural relations. What Amer illustrates is that each case of constructive engagement would rest on different contexts and conditions pertaining to the country in question. However, one could also argue that as a modality of ASEAN constructive engagement, the Cambodian case provides some important insights into ASEAN's regime recognition processes and as the prime example that could be adapted to apply to Myanmar legitimacy and accountability as will be argued later.

#### *Constructive Intervention and Flexible Engagement:*

As noted by an analyst, ASEAN's non-interference principle was somewhat disrupted in 1997 by the Malaysian Deputy Prime Minister, Anwar Ibrahim. In an interview with *Newsweek International* he floated the idea of "Constructive Intervention" and "Constructive Involvement" with respect to Cambodia. He said that "ASEAN must now move from being a largely reactive organisation to one that is proactive" and that the regional group should take instant steps before the situation in Cambodia erupted into a full-blown crisis. He also said that intervening in countries in conflict would also be a moral and humanitarian obligation to avoid loss of life and restore peace and security (Fuad 2012:128-129).

In June 1998, the Thai Foreign Minister, Surin Pitsuwan, revived Anwar's proposal in a speech he gave at the Thammasat University. Pitsuwan argued that changing its passive policy would give ASEAN the "constructive role in preventing or resolving domestic issues with regional implication." Pitsuwan proposed using the term "Flexible Engagement", which was presented at the ASEAN Annual Ministerial Meeting in July the same year. At the AMM meeting, after considerable discussion, only the Philippines supported this idea, but the ASEAN members came to a compromise and agreed to yet another terminological change, that of "Enhanced Interaction", which implied that ASEAN had gone well beyond quiet diplomacy (Haacke, 1999). Many names have been given to the generic strategy of CE till the present but in my view this shows the evolving nature of ASEAN processes and norm socialisation. Thus one could say that ASEAN whether directly or indirectly in fact intervenes in soft, unobtrusive and non-confrontational ways in the internal affairs of other member states. However, the question is, how else could intramural norms socialisation be deepen?

The ASEAN Foreign Ministers in 2002 reaffirmed the usefulness of informal, open and frank dialogue to address issues of common concern and as Fuad (2012:131) notes: "The fact that ASEAN members resist institutionalising a change in the approach to the discussion of internal matters relating another member clearly shows the uphill task faced and the inability of ASEAN to change its original formula of non-interference." However, the point is that ASEAN seemingly opened a new avenue to discuss thorny issues allowing the non-interference principle to be interpreted in a more flexible way but, as is its wont, did not follow up with any binding decisions. ASEAN's predilection for taking somewhat more positive steps to engage in intramural questions had been fueled by the fallout of the 1997-1998 Asian economic meltdown, the problem of the trans-boundary haze, drug trafficking and trans-boundary crime. It would not be stretching constructivist thinking to argue further that neo-functional spillover effects from such non-security areas were relevant to the learning curve of ASEAN's diplomatic and security culture.

A critical take of the rationale for why CE was deployed in the first place with Myanmar was interventionism as was advanced by Jones (2008). Jones holds that CE was initially devised by Thailand's foreign ministry to normalise its relations with Myanmar after "decades of interference" there. Jones also suggests that Thailand's flexible engagement downplayed the rights and benefits of ASEAN membership while prioritizing "responsibilities for engagement, that is for contributing to the achievement of common regional goals and for managing bilateral differences or improving bilateral

relations” such as that between Thailand and Myanmar (Jones, 2008: 275). Unlike Jones, I do not see this is necessarily diminishing ASEAN socialisation. Bilateral relationships can often add to norms of the larger community as long as they do not deviate substantially or vilify regional precepts.

Interestingly, Jones does provide an insight into ASEAN norm socialisation when he cites Sukumbhand Paribatra, Surin’s then deputy, as saying: “States or groups of states which hope to play an influential role in the international political arena may not wish to conform to [Western] norms and values, and in many cases get away without having to do so.” But Sukumbhand added that they however cannot blatantly and cynically ignore or violate them on a sustained basis. He later explained that in order “to shift from a culture of sovereign impunity to acceptance of the principle and practice of sovereign accountability, ASEAN members have, I believe, the right to encourage fellow members to become more accountable to the region and to the international community.” (Jones, 2008: 275).

The Myanmar conundrum for ASEAN is indeed the question of *sovereign accountability*. When ASEAN as a regional body in its diversity of political regimes has admitted states as members with varying ideologies and political structures, the principle that Sukumbhand refers to is an important basis for the recognition of what ASEAN accepts as legitimate entities to be socialized into the norms structured around the *ASEAN Way*. We will return to this in discussing ways out of the current Myanmar impasse.

### **Malaysia’s Constructive Engagement with Myanmar 1988-2025**

We now turn to Malaysia’s engagement with Myanmar to throw further light on the Myanmar impasse. In the wake of Myanmar’s more open policies after 1988, Malaysia’s engagement intensified under premier Mahathir Mohamad, who pushed for Myanmar to be a member of ASEAN by 1997, thus leading to the forging of a strong economic relationship with increased trade, Petronas involvement in gas exploration and the influx of Malaysian investments (Sidhu, 2008: 82).

During Mahathir’s tenure, Malaysian diplomat Razali Ismail was appointed as the UN Special Envoy to Myanmar and he succeeded in negotiating the release of Aung San Suu Kyi (ASSK) from house arrest by the military regime (2000-2006). By his own account, Razali saw his efforts as somewhat futile and not yielding much dividend. He was particularly disappointed that he could not get the Myanmar premier Than Shwe to meet with Mahathir nor for him to see ASSK (Razali Ismail 2014: 345). Certainly, matters got much worse after the 2007 “Saffron Revolution” which led to killings and detentions of regime opponents and thereafter saw Ibrahim Gambari take over as the UN Envoy in 2007. Malaysia’s then Foreign Minister Syed Hamid Albar, who straddled the Mahathir and Ahmad Abdullah premiership years, had already been openly critical of Myanmar’s intransigence by 2006. Malaysian relations soured further when the military regime continued to renege on earlier policies while also failing to meet ASEAN demands. It may be true that the disastrous 2008 Cyclone Nargis, which saw more than 140,000 deaths, triggered sympathy and an avalanche of regional and global humanitarian aid. It took some time before the ensuing period of open politics in Myanmar witnessed a general election in 1990, leading to ASEAN’s so-called long ‘road map’ for a transition to a civilian politics. Under the watch of President Thein Sein, the period 2011-2016 saw ASSK transition into the leadership of Myanmar and was the honeymoon phase of ASEAN’s constructive engagement with Myanmar.

For Malaysia, however, the 2012 disturbances in the Rakhine state, coupled with the subsequent expulsion and killing of Rohingyas in 2016 and 2017 caused a massive deluge of refugees out of Myanmar. ASSK’s silence on the atrocities perpetrated on the Rohingyas was roundly condemned by

Malaysia and the global community and she was stripped of her Nobel Laureate award. An estimated 745,000 Rohingyas found their way to refugee camps in the Cox's Bazar of neighbouring Bangladesh. Malaysian groups, along with other global human rights organizations, have accused the Myanmar military of perpetrating a genocide.<sup>4</sup> At the time of writing, almost 90% of registered refugees and asylum seekers in Malaysia are from Myanmar, totaling 171,450.<sup>5</sup> This has created a major impact on domestic and foreign policy, including reports of many boat refugees being turned away from its coasts. Compounding the problem is the fact that Malaysia is a non-signatory to the Refugee Convention of 1951 and its 1967 Protocol, thus it does not officially accept asylum seekers nor does it subscribe to the principle of *non-refoulement* which guarantees protection of refugees. However, Malaysia has cooperated with the United Nations High Commission on Refugees (UNHCR) to be a transit point to repatriate IDPs.

At the international level, at the 2022 General Assembly of the United Nations, the then Malaysian Prime Minister Ismail Sabri Yaakob expressed his disappointment with the Security Council (SC) over its response to the continuing political crisis in Myanmar. Ismail said that the SC had not taken “any serious action” in dealing with the situation in Myanmar and described the response as “very saddening”. He opined that the SC appeared to have washed its hands of Myanmar handing the matter over to ASEAN and that Malaysia saw no meaningful progress in the implementation of the ASEAN Five-Point Consensus (5PC) by the Myanmar junta.<sup>6</sup> The 5PC of April 2021 had called for 1) an immediate cessation of violence in Myanmar 2) constructive dialogue among all parties concerned to seek a peaceful solution 3) a special envoy of the ASEAN Chair to facilitate mediation of the dialogue process 4) humanitarian assistance through the AHA Centre<sup>7</sup> 5) the ASEAN Special Envoy and its delegation to meet with all parties.

Malaysia had pressed ASEAN to engage with the National Unity Government (NUG) established by the elected politicians and has also called for the generals to be removed from power. The Malaysian prime minister Ismail Sabri said that the 5PC was failing while millions of refugees from Myanmar languished in refugee camps in Bangladesh. He added: “Although Malaysia is not a signatory to the 1951 Convention on the Status of Refugees and the 1967 Protocol, Malaysia, on humanitarian grounds, accepted nearly 200,000 Rohingya refugees.”<sup>8</sup> I would like to suggest that the kind of positioning that Malaysia took vis-à-vis Myanmar was a form of soft intervention which put the accent on sovereign accountability.

Speaking to reporters during the General Assembly in New York on 22 September 2022, Malaysia's then Foreign Minister Saifuddin Abdullah called for the release of all political prisoners, including Aung San Suu Kyi and a review of the 5PC.<sup>9</sup> However, on 11 November 2022, the ASEAN leaders at their Summit Meeting re-affirmed the document, asserting that Myanmar remained an integral part of ASEAN, while calling upon the UN and other external parties to assist ASEAN in implementing its 5PC.<sup>10</sup>

Writing in the Jakarta Post on 12 January 2023, Saifuddin was candid in his remarks that the military junta's proposed “sham election” would only prolong the Myanmar crisis (Saifuddin, 2023). While he was still caretaker Foreign Minister pending the general election of 19 November 2022, he reiterated several points he made in an article disseminated to the Press on the “end game” for the Myanmar crisis. Stressing that he had himself met with representatives of the NUG and the National Unity Consultative Council (NUCC), he suggested meeting the different layers of stakeholders to manage the situation was an imperative for ASEAN.

Malaysia no doubt was concerned that the Myanmar crisis could affect Malaysia's overall domestic interests although this has not been explicated by any of its current spokespersons since the openly critical views expressed by former Foreign Minister Saifuddin Abdullah. Malaysia would want to see

that Myanmar return to a situation of political normalcy, where one legitimate government holds the reins of government and manages not least of all its outflow of its refugees and asylum seekers. A rapprochement between the civilian parties and the military regime would be Malaysia's utmost priority in consonance with ASEAN's overall position on the Myanmar crisis. However, this is most unlikely in the near and medium term.

In February 2023, the Anwar Ibrahim government gave notice that it will "carve out Myanmar for now", that is, it would not let the Myanmar issue displace the larger goals of pursuing peace, security and prosperity in ASEAN.<sup>11</sup> However, neither the premier Anwar Ibrahim nor his former Foreign Minister Zambry Abdul Kadir as well as the latter's successor Mohamad Hasan made any contradictory statement to Saifuddin's stance.<sup>12</sup> The Anwar government will stay put with 5PC and for the ASEAN Special Envoy to advance its objectives under its previous chair, Laos. The Foreign Minister has indicated that Malaysia as ASEAN Chair in 2025 will follow the "troika mechanism" implemented by Indonesia, the former chair. He thus indicated that Indonesia, Laos and Malaysia will ensure continuity in the handling of the Myanmar issue.<sup>13</sup> Earlier, during an official visit to Thailand in February 2023, the Malaysian premier called on Thailand to be more proactive vis-à-vis Myanmar. The suggestion seemed to be that mainland ASEAN states in contrast to maritime states should play a more prominent role vis-à-vis the Myanmar issue. In his speech to the Asia-Pacific Round Table (June 4, 2024), Anwar said that Malaysia will work with other ASEAN member states and dialogue partners to push for peace, more effective humanitarian mechanisms and the eventual political engagement of all relevant stakeholders in Myanmar.<sup>14</sup>

Malaysia as Chair of ASEAN in 2025 has appointed the Special Envoy to Myanmar, Othman Hashim, a senior diplomat, who has begun engagement with various groups and stakeholders. The Foreign Minister Mohamad Hasan has indicated that Malaysia does not support the SAC's proposal to hold elections given Myanmar's current turmoil.<sup>15</sup> The Anwar government will stay put with the 5PC and for the ASEAN Special Envoy to advance its objectives following under the outgoing chair, Laos. Foreign Minister Mohamad Hasan has indicated that Malaysia, as chair in 2025, will ensure continuity in the handling of the Myanmar issue.<sup>16</sup>

### **The Imperative for Multiple Tracks of Engagement**

The idea of having multiple tracks of engagement on policy issues could dovetail with a constructivist approach to addressing the ASEAN intramural failure with respect to the Myanmar impasse. Agency in foreign policy need not depend solely on government-to-government relations but also on people-to-people relations. In the first instance, government actions could be supplemented or backed up through second track diplomacy and in the latter situation, civil society groups and other non-state actors could play a significant complementary role. Interestingly, ASEAN has not been averse to such second and third track engagements, given the active role of the ASEAN Parliamentarians on Human Rights (APHR) in addressing the Myanmar crisis as will be mentioned later.

At the point of writing, more than four years have lapsed since the 1 February coup of 2021. Significant national, regional, global stakeholders and pertinent groups have made dire assessments of the Myanmar crisis after the junta extended its emergency rule and martial law in 37 townships. Developments in 2024 till early 2025 indicate a massive loss of territorial control by the military particularly in the Rakhine and Shan states while the State Administrative Council (SAC) has been pushed into implementing the unpopular measure of conscription of youth aged 18-35 years.<sup>17</sup> Disingenuously, the SAC has continued the empty promise of conducting national elections. Earlier, the UN Ambassador, Kyaw Moe Tun of the NUG, had said the people will not accept the proposed "sham election" originally planned to be tried out in August 2023. He noted the regime was "illegitimate" and that more than 2,000 pro-democracy civilians have been killed battling the military junta. More than 1.4 million people have also been internally displaced since the coup.<sup>18</sup> The UN Special Rapporteur

on Human Rights, Tom Andrews, echoed this view noting one cannot have elections “when the Opposition is arrested, detained, tortured and executed”.<sup>19</sup> The then UN Special Envoy to Myanmar, Noeleen Heyzer, who gave an interview to Channel News Asia (CNA) on the coup’s second anniversary, suggested that an election could trigger more violence and had argued for the implementation of the following measures: 1) the regional protection framework on the agenda of ASEAN to monitor the degree of violence and reduce it 2) engagement with the ethnic and democratic leaders to convene a humanitarian forum 3) engagement with the Organisation of Islamic Cooperation (OIC) and other partners to improve and upscale the education of the Rohingyas 4) advancing the women’s peace and security agenda so that women’s agency and leadership can reduce the governance deficit.<sup>20</sup> These suggestions remain germane to the present situation of Myanmar in 2025.

It is evident from the above narrative that multiple tracks of engagement are necessary in addressing the Myanmar impasse, even with the regime still stubbornly resisting engagement with both internal and external interlocutors.

#### *Track One:*

Four years after the coup, Malaysia’s engagement with post-coup Myanmar regime is symbolic of the failure of ASEAN as whole to move beyond its 5PC which has yielded no real dividends till date. Thus far ASEAN has appointed four Special Envoys, under the respective chairs, to engage with the SAC since the announcement of its 5PC, the first being Erywan Yusof, second foreign minister of Brunei, followed by Prak Sokhonn, the deputy premier of Cambodia, Alounkeo Kittikhoun, former Laotian UN ambassador, and in 2025, Malaysia’s Othman Hashim, a former secretary-general of the Foreign Ministry. Indonesia, as chair in 2023, had set up a Special Envoy Office under its watch.<sup>21</sup> A former Thai foreign minister, Kasit Piromya, has opined that the Special Envoy rotation approach has failed and that a full-time and permanent Special Envoy should be appointed, who can work closely with ASEAN foreign ministers and senior officials. The Special Envoy should be tasked with engaging both the military regime and Opposition in Myanmar (Piromya, 2022).

ASEAN engagement with the Myanmar junta, which is ultimately to restore a politically recognised and legitimate government in Myanmar, had met a dead end thus far. As suggested earlier a soft intervention, non-coercive strategy remains as the main option for ASEAN. However, a much sharper edge to this could be given via engagements with opposition political groups and national entities such the NUG and NUCC. Former Malaysian Foreign Minister Saifuddin has unofficially advocated a number of potential escape routes out of the Myanmar impasse which are worth considering. He has been known for arguing that the ASEAN principle of non-interference should not imply “non-indifference.”<sup>22</sup> Saifuddin argues that ASEAN needs to have a framework with an “end game” in view, laying out the matters and processes required to achieve this, namely, “a democratic, inclusive and just, peaceful and harmonious, prosperous Myanmar whose civil and political rights are guaranteed by the constitution.” This accords with the idea of *sovereign accountability* mentioned earlier.

Saifuddin added that ASEAN also needs to have accurate and up-to-date information by obtaining it directly from the all the involved parties. It should follow up with “an inclusive and fair consultation by all key stakeholders, sitting at the same table, in a safe setting, “to find a way to implement this framework, including on matters/processes such as a fair and transparent humanitarian aid, transition plans and implementing parties (ceasefire, stabilisation and transition), a people’s constitution and an election that is free and agreed upon by all.” ASEAN needs to play the role of a facilitator together with the UN Secretary-General’s Special Envoy to Myanmar, with participation and support from the international community.<sup>23</sup> These suggestions fall within the rubric of pathways for restoring Myanmar’s sovereign accountability although Saifuddin does not use the term. The ASEAN governments need to take on board a broadened CE package of tactics and strategies with the aim eventually of arriving at the recognition of a legitimate Myanmar government.

*Track Two and Three:*

ASEAN track two diplomacy seems to have lost its gloss in recent years. Capie (2011) writes about the waning influence such track two diplomacy. He notes that the two most prominent track two groups, ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS) and the Council for Security Cooperation in the Asia Pacific (CSCAP) have evinced little influence or activity in recent times.<sup>24</sup> Moreover, it should also be noted that track three activities have also receded. The ASEAN People's Assembly (APA), organised by ASEAN-ISIS, was held seven times from 2000 to 2009, and the ASEAN Civil Society Conference (ACSC), organised by the Solidarity for Asian People's Advocacy network met nine times. However, such non-state level engagements seem to have fizzled out in recent years (Gerard, 2013).

What is particularly disappointing is that Myanmar does not seem to feature at all in track two diplomacy. There is no evidence that ASEAN think-tanks are collectively addressing the question. Simon Tay, the chairman of Singapore-based Institute of International Affairs (which is a member of the ASEAN-ISIS group) is among the most active of these think-tanks leaders on the Myanmar question. He has opined that the expulsion of Myanmar would be counter-productive, suggesting that some channels must be found to speak to the generals with certain conditions imposed by ASEAN. He holds that ASEAN is already in engagement with Myanmar and has called for the engagement of all stakeholders with Myanmar and not just the military junta.<sup>25</sup>

Beyond the more conventional second track engagement, one could look at the example of the ASEAN Parliamentarians for Human Rights (APHR), which is endorsed by 384 civil groups. The group has recently stated that: 1) the ongoing crimes against the Rohingya underscore the importance of the NUG as the legitimate government of Myanmar 2) the NUG, the National Unity Consultative Council (NUCC) and the Committee Representing Pyidaungsu Hluttaw (CRPH) must immediately amend the discriminatory 1982 Citizenship Law by removing all discriminatory articles and clauses and repeal the racist and xenophobic four "Race and Religion Protection Laws" and the National Verification Process that has long been used as a tool for genocide 3) it is time that the NUG translates its policy into actions in solidarity with the Spring Revolution.<sup>26</sup> It should be stressed that this parliamentary group is not just critical of the Tatmadaw but also expects whichever government-in-waiting to address important unresolved national issues.

Tracks of engagement directly or indirectly could operate at different national levels. An example is the work of the Kuala Lumpur-based Geutanyoë Foundation. The foundation engages with Malaysian policy makers (including Wisma Putra) and think-tanks to facilitate humanitarian assistance and set up protection modalities for refugees. The foundation periodically acts as the secretariat for the bipartisan Malaysian parliamentarians group addressing this issue. Its director Lilianne Fan intimated to me the multiple domestic and external ramifications of the Rohingya refugee crisis which Malaysia and ASEAN need to address. Malaysia still has no firm domestic policy on the situation of Rohingya and ad hoc deportations are occurring even as the global landscape on refugees has changed as acceptance rates declines in the West. Malaysia's National Security Council Directive 23 includes possible access to apply for work permits is an ongoing process as yet implemented.<sup>27</sup> Malaysia, along with ASEAN, needs to have coordinated policies and minimum standards on humanitarian policies for the region. ASEAN may ultimately have to suspend the military junta from the regional organisation if they show no signs of fulfilling the ASEAN 5PC. Fan argues that the junta must suffer consequences of non-compliance to ASEAN policies. The Malaysian government should continue the foreign policy position of the former foreign minister and even take it further and work towards a regional legal framework on the refugee crisis.<sup>28</sup>

ASEAN more than any other body has the *locus standi* to deal with Myanmar. Internationally, the UN would be the most legitimate body to handle major aspects of the crisis. ASEAN should mount multi-track efforts, that is, continue its constructive engagement and work with humanitarian groups and civil groups to address the most pressing issues confronting Myanmar. In his engagements with minorities and civil groups, Francis Loh noted that these groups appreciated the informal engagement with them by Saifuddin Abdullah, Malaysia's former Foreign Minister.<sup>29</sup> Loh suggests the ethnic minorities, who have fought for decades for separate states and independence, are increasingly becoming more engaged with the national process via the National Unity Council (NUCC), a body representing resistance groups, which emerged after the 2021 coup. He opined that ASEAN parliamentarians also play an important role beyond what is carried out by civil society organisations as they will count as 'semi-official' to internal groups.<sup>30</sup>

### **A Pathway to Address Sovereign Accountability**

Finally, let me return to the issue of sovereign accountability and how it may provide the clue out of the Myanmar crisis. Post-coup Myanmar since May 2021, has led to effectively two claimants to political legitimacy, namely the military junta running the state and the National Unity Government (NUG), which continues to claim Myanmar's UN seat.<sup>31</sup> ASEAN has suspended the Myanmar state from its normal activities and has appointed Special Envoys and deployed its troika mechanism to engage with the military junta as well as other national stakeholders. As the past chair of 2023, Indonesia conducted more than 265 engagements.<sup>32</sup> I would argue that at the government-to-government plane, the modality of ASEAN constructive engagement with Cambodia in the 1980s with appropriate variations could be deployed.<sup>33</sup> In the Cambodian case, the interesting strategy that was enacted involved facilitating a reconciliation process of the two main claimants to legitimacy of the state, a government in power and a government in exile. The Coalition Government of Democratic Kampuchea (CGDK) had held on to Cambodia's UN seat for the most part of 1982-1990, thanks to ASEAN's support. Malaysia was particularly instrumental in the process through the efforts of the then Foreign Minister Ghazali Shafie in setting up the CGDK, which was formalised on June 22, 1982 in Kuala Lumpur, with Prince Sihanouk as President, Khieu Samphan as vice-president and Son Sann as Prime Minister (Saravanamuttu 2010: 198). The resolution of the Cambodian impasse came by way of the Paris Peace Agreements (1991) which had witnessed ASEAN playing a significant role via the earlier Jakarta Informal Meetings (1987) that facilitated a Vietnam-Cambodia reconciliation over the state legitimacy issue.

In Myanmar's case, ASEAN members in fact deprived the SAC and its political representatives of legitimacy by not allowing them to enjoy the privileges of full ASEAN membership. A former Malaysian foreign minister has engaged with the NUG, a potential government-in-waiting. The official website of the NUG lists all their current leaders, and those heading the different ministries.<sup>34</sup> ASEAN's current policy falls short of expulsion the military junta which in theory could be the ultimate card of the regional body. The difficulty of the expulsion option for ASEAN is that it could vilify ASEAN's own *raison d'être* and certainly devalues the efficacy of its own diplomatic culture. Thus, the best ASEAN could affect at the government-to-government level would be to establish some processes and procedures for Myanmar to show proof of its sovereign accountability and responsibility over a period of time.

Beyond the NUG, the other highly important structure of the Myanmar resistance groups, is the National Unity Consultative Council (NUCC), which was launched by a committee of elected parliamentarians, the CRPH (*Committee Representing Pyidaungsu Hluttaw*). Space does not afford a lengthy discussion of the highly complex internal dimensions of the current Myanmar resistance, but suffice it to say, that the political moment ushered in by the Spring Revolution has given rise to a political moment in Myanmar when resistance to the military regime is at its most highly organised historical juncture.<sup>35</sup> The NUCC is in the process of deliberating and drafting a Federal Democratic Charter together with

political representatives of ethnic minorities and the Ethnic Armed Organisations (EAOs). This is unprecedented in Myanmar history. In the current complex and fluid situation, ASEAN through its special envoys managed, to its credit, to engage with NUCC groups as key stakeholders of the Myanmar state. This alone sends a significant message to the SAC that its current legitimacy does not go unchallenged.

Myanmar is in a deep rut of civil strife not dissimilar to the situation in Cambodia of the 1980s, with two crucial differences, no doubt. First, a military regime, not a civilian government, holds firm power in Myanmar and second, Myanmar is already an ASEAN member while Cambodia was not. The ASEAN membership carrot is thus absent and the ASEAN deprivation stick is a soft one. However, I would argue that the broad modality of determining regime legitimacy pertains *à fortiori* to Myanmar today as it did to Cambodia in the 1980s. At the point of writing, the NUG is the *de facto* UN representative of Myanmar at the UN but with no official imprimatur. However, its role could be reinforced by ASEAN endorsement and support. In that manner the military junta could become even more isolated, brought to heel, and could at a future time be persuaded eventually to agree to a *modus vivendi* involving all the major domestic stakeholders.

At some immediate stage of the current crisis, all parties of the Myanmar conflict should be brought to the negotiation table under the auspices of ASEAN as was carried by Indonesia via JIM with respect to Cambodia. This modality could initially involve some ASEAN states as was the case with Cambodia. Such a move would not pose an issue in terms of securing the support of Western powers nor should it earn the ire of China and Russia, the two major powers currently engaged with Myanmar's SAC. Other important regional stakeholders, such as India and Bangladesh, two states which arguably suffer some of the most deleterious consequences of the military's actions, must also be brought into the equation of a Myanmar regional reconciliation process. ASEAN's main dialogue partners such as the United States the European Union and Japan should clearly also ultimately be brought into the equation of a political settlement of the Myanmar crisis.

## Conclusion

There is no denying that thus far ASEAN's approach of constructive engagement with Myanmar, introduced since 1997, has in its current phase of the 5PC approach yielded no significant outcomes after the ascendancy yet again of full-fledged military rule since 2021. The military junta is facing an unprecedented Myanmar Resistance of forces which has deprived it of much territorial control. At the time of writing, a government-in-waiting and the Resistance movement has instituted alternative political structures and processes which are robust and ongoing. While ASEAN has proffered no new strategy to transcend its own self-imposed principle of the non-intervention, this essay argues that the principle is not necessarily cast in stone. One ultimate action to overcome the Myanmar impasse could be to sanction economically, suspend or even expel the current military regime. However, this could be self-defeating for the regional body's own decades-long diplomatic and security culture and its strategy of socializing and diffusing ASEAN norms of regional peace for a member-state. ASEAN is stuck between the proverbial rock and a hard place.

As argued above, the Myanmar crisis has many parallels with the Cambodian impasse of the 1980s and 1990s in that an ASEAN role of engagement activated a national reconciliation process which led to the sovereign accountability and recognition of a Cambodian government and ASEAN membership. What remains somewhat insurmountable in Myanmar is the presence of a military regime which has shown no appetite yet of engaging in a national reconciliation process with its opponents, let alone relinquish power. Indonesian President Jokowi had proposed the fanciful idea that an unnamed general to Myanmar could undertake a mission with the notion that the Indonesian transition from military to

civilian rule could be emulated by Myanmar.<sup>36</sup> It is patently obvious that ASEAN leaders have to think beyond the constraints of its diplomatic culture to achieve a pathway to peace in Myanmar.

The Myanmar case, along with the ASEAN experience with Cambodia, presents the regional organisation with the risk of vitiating the *ASEAN Way* which clearly lacks robust intramural norm-setting and norm socialisation strategies and procedures to deal with a recalcitrant member-state. Myanmar presents the first and limiting case illustrating this poor capacity to handle such a state through the ASEAN modality of constructive engagement. At an earlier period of ASEAN history, historically favorable developments in Cambodia allowed ASEAN to deploy its norm socialisation to some effect in bringing about the resolution of the Cambodian conflict in Southeast Asia, thereby allowing it to become its 10<sup>th</sup> member. Myanmar presents a different case as it was already a member of the regional body when ASEAN's approach of constructive engagement was deployed in 1997. The trajectory to democratic change met with the rude setback of a military coup in 2021 and since then ASEAN's 5PC has proved to be a weak instrument to deal with the Myanmar crisis. As analysed in the preceding sections, a harder edge and more innovative steps must be introduced into ASEAN's current strategy of constructive engagement via the 5PC to move it on a successful trajectory of conflict resolution and peace in Myanmar.

ASEAN must resolve the issue of instituting more efficacious processes and steps in the direction of establishing a legitimate Myanmar state and establish more robust procedures and rules to validate the sovereign accountability of a member-state. This will also add a new dimension to its norm socialisation in intramural relations. In relation to Myanmar, a multi-stage, multi-track and non-state-centric constructive engagement should be a valuable added pathway pertinent to addressing the many dimensions of its current crisis to return it to eventually to a situation of sovereign accountability. Doubtless, such process will have a steep learning curve and will take time but with the history of its previous conflict resolution and management in Cambodia, the Myanmar impasse is not completely insurmountable.

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<sup>1</sup> This paper has benefited from my association with the Expert Group on Myanmar, appointed by the Asia-Europe Institute (AEI), University of Malaya, and also from the closed-door workshop on the Myanmar crisis held in Kuala Lumpur on 21-22 November 2024, sponsored by the International Development Research Centre of Canada, under the aegis of the AEI. There are too many individuals to name, including Myanmar activists and academics, who have been of important influence in my comprehension of the Myanmar crisis. On the Malaysian perspective, my conversations with the former Malaysian Foreign Minister Saifuddin Abdullah were of great benefit. Let me especially mention the names of the AEI expert group; Francis Loh, Roy Anthony Rogers, Moe Thuzar, Lilianne Fan and Thomas Daniel, all of whom have helped deepened my understanding of the Myanmar crisis. Needless to say, none of those mentioned should be held accountable for the content of this paper, for which I am solely responsible.

<sup>2</sup> The concept has been advanced, analysed and also critiqued by constructive scholars. Three well-known ASEAN scholars who have frequently deployed the term are Haacke (2003), Acharya (2014) and Caballero-Anthony (2022).

<sup>3</sup> One rare example of a focus on ASEAN internal norms is by Yukawa (2017:13), who concludes prior to the current Myanmar crisis: "ASEAN's norms today consist in pointing to the norms for human rights and democracy and leaving the situation there, without providing any way for such norms to be put into effect. Future consideration of such matters in ASEAN will likely focus on building specific mechanisms for furthering such norms, whether the mechanisms take the form of monitoring or of actual sanctions, in the face of stubborn opposition from Myanmar and the other more conservative countries."

<sup>4</sup> The United States Congress has been convening hearings on "Genocide of the Burmese Rohingyas" and in 2019, Gambia, with the backing of the 57 members of the OIC, submitted a case on this at the International Court of Justice. See <https://www.hrw.org/news/2019/12/10/myanmar-hearings-begin-genocide-case>.

<sup>5</sup> Of the 171,450 persons, 112,320 are Rohingyas, 28,070 Chins, and 31,050 other ethnic groups

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(<https://www.unhcr.org/my/what-we-do/figures-glance-malaysia#:~:text=As%20of%20end%20February%202025,or%20fleeing%20persecution%20in%20Myanmar>).

<sup>6</sup> See: <https://www.aljazeera.com/news/2022/9/24/malaysian-pm-laments-lack-of-un-action-on-myanmar-crisis>.

<sup>7</sup> ASEAN Coordinating Centre for Humanitarian Assistance. See its website: <https://ahacentre.org/>.

<sup>8</sup> Ibid.

<sup>9</sup> Cited in <https://www.reuters.com/world/asia-pacific/un-mulls-myanmar-action-malaysia-pushes-asean-review-peace-plan-2022-09-20/>.

<sup>10</sup> *Asean Leaders' Review and Decision on the Implementation of the Five-Point Consensus*, Phnom Penh, Cambodia, on 11 November 2022 (<https://asean.org/asean-leaders-review-and-decision-on-the-implementation-of-the-five-point-consensus/>).

<sup>11</sup> Statement of the Foreign Minister on 10 February 2023. See <https://www.kln.gov.my/web/guest/-/malaysia-remains-firm-in-supporting-the-asean-five-point-consensus-for-peaceful-and-sustainable-solution-to-the-myanmar-situation?inheritRedirect=true&redirect=%2Fweb%2Fguest%2Fpress-releases>.

<sup>12</sup> In a cabinet reshuffle on 12 December 2023, Mohamad Hasan assumed the post of Foreign Minister while Zambry Abd Kadir became the Minister of Higher Education.

<sup>13</sup> Cited in <https://en.antaranews.com/news/305328/indonesia-laos-msia-troika-continues-to-seek-end-to-myanmar-crisis>.

<sup>14</sup> See <https://www.isis.org.my/apr37/>.

<sup>15</sup> See <https://www.aljazeera.com/news/2025/1/19/asean-tells-myanmar-military-rulers-peace-should-be-priority-not-election>.

<sup>16</sup> Cited in <https://en.antaranews.com/news/305328/indonesia-laos-msia-troika-continues-to-seek-end-to-myanmar-crisis>.

<sup>17</sup> See the following reports: <https://myanmar.iiss.org/updates/2024-03>;  
<https://www.irrawaddy.com/news/burma/myanmar-junta-begins-conscription-early.html>;

<https://www.channelnewsasia.com/commentary/myanmar-military-service-law-anger-flee-resistance-4225331>

<sup>18</sup> See <https://www.channelnewsasia.com/asia/myanmar-junta-sham-general-election-un-ambassador-3246431>. In April 2023, it was reported that some 100 villagers were killed and more than 50 injured when the Tatmadaw's aircraft bombed a crowd of hundreds attending a ceremony in Sagaing. See <https://www.rfa.org/english/news/myanmar/sagaing-air-strike-04112023045350.html>.

<sup>19</sup> CNA News on 1 February 2023 (recorded by author).

<sup>20</sup> Ibid.

<sup>21</sup> This was announced by its Foreign Minister Retno Marsudi. See <https://www.rfa.org/english/news/myanmar/myanmarseasean-01112023142741.html>.

<sup>22</sup> See <https://thediplomat.com/2021/10/malaysian-fm-calls-for-soul-searching-over-asean-non-interference/>

<sup>23</sup> See <https://www.thestar.com.my/opinion/columnists/across-spaces/2022/07/31/end-game-for-the-myanmar-conflict>.

<sup>24</sup> See also Gerard (2013) for an account of the role of the ASEAN-ISIS group and civil society organisations ASEAN engagements.

<sup>25</sup> Interview with CNA. See <https://www.channelnewsasia.com/watch/myanmar-expulsion-asean-would-be-counter-productive-expert-3030326>.

<sup>26</sup> <https://aseanmp.org/tag/rohingya/>. The Spring Revolution refers to protests begun in early 2021 in opposition to the coup d'état on 1 February, staged by Min Aung Hlaing, head of the country's armed forces, the Tatmadaw. The military junta has named itself the State Administrative Council (SAC).

<sup>27</sup> The Malaysian Human Rights Commission, SUHAKAM, has called for the government to be more transparent about this directive, approved in June 2023. It also calls on the government to enact a Refugee and Asylum Act and to ratify the 1951 Refugee Convention. (<https://www.freemalysiatoday.com/category/nation/2025/02/17/why-is-mkns-directive-on-refugees-kept-confidential-asks-suhakam/>).

<sup>28</sup> Ms Fan mentioned the effective management by Turkey of its refugee crisis as a modality for ASEAN to emulate (Interview with Ms Lillian Fan, 4 January 2023).

<sup>29</sup> Interview with Dr Francis Loh Kok Wah, 11 January 2023. Loh works with the Forum of Federations (<https://forumfed.org/senior-advisors/>) on the Myanmar issue. See his recent article on Myanmar, Loh (2021).

<sup>30</sup> Interview with Dr Francis Loh Kok Wah, 11 January 2023.

<sup>31</sup> See <https://mizzima.com/article/nug-representative-un-accepted-myanmar-junta-nominee-rejected>.

<sup>32</sup> See footnote 10.

<sup>33</sup> A similar argument is made by Nair (2021) who suggested such a strategy at the rather early stage after the military coup of 2021 when perhaps developments were still rather fluid.

<sup>34</sup> See <https://www.nugmyanmar.org/en/>.

<sup>35</sup> This argument is captured more comprehensively in an unpublished policy paper of the Myanmar Experts Group (appointed by AEI) entitled "Pathways to Peace: Malaysia's Role in the Myanmar Crisis as ASEAN Chair 2025".

<sup>36</sup> See <https://thediplomat.com/2023/02/indonesia-to-send-general-on-special-mission-to-myanmar-jokowi-says/>.

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