

Briefing Paper: The response so far of United Nations political bodies to the unlawful military coup in Myanmar

9 September 2021

1. Overview

Since the 1 February 2021 coup in Myanmar, three political bodies of the United Nations (UN) have discussed the situation and passed resolutions or adopted statements that include expressions of support for democratic processes and calls for the immediate release of political detainees. However, to date there have been no legally-enforceable actions.

This Briefing Paper by the Special Advisory Council for Myanmar (SAC-M) provides an overview of these political institutions of the UN and describes the types of activities taken in them following the coup. The purpose of this is to assist interested people to understand the different processes underway, including to inform engagement with them.

2. Background

The UN is a political institution comprised of all States (countries) of the world, which together form what is called the “international community.” New York in the United States (US) is the primary headquarters of the UN, and Geneva in Switzerland is its secondary headquarters, the focus of its human rights work.

The UN Secretary-General, Antonio Guterres, has consistently condemned the military coup in Myanmar for being unacceptable, including by declaring that “we cannot live in a world where military coups become a norm.”¹ To date, however, he has not taken any further action, or sought to travel to Myanmar himself.

Political bodies of the UN

The UN has three particularly relevant political bodies: New York hosts the 193-member UN General Assembly and the 15-member UN Security Council, while Geneva hosts the 47-member Human Rights Council. All Member States are represented in the General Assembly. The Security

Council rotates ten non-permanent members alongside the five permanent members, each with veto powers: China, France, Russia, the United Kingdom (UK) and the US. The Human Rights Council, technically a subsidiary of the General Assembly, also rotates its members and no member can serve more than two consecutive terms.

Myanmar is not currently a member of the Human Rights Council or the Security Council, yet its representative is generally invited when Myanmar is under discussion. Given New York is the primary headquarters of the UN, a State’s political representative in New York is its highest-ranking diplomat to the UN.

Other entities and mandates

Many different agencies, organisations, tribunals, peacekeeping missions and mandated-individuals operate under the authority of the UN Charter, which established the institution in 1945. Some of these agencies have established offices and activities in Myanmar. Currently there are also several special UN mechanisms dedicated to Myanmar: the Special Rapporteur on the situation of human rights in Myanmar (since 1992); the Special Envoy of the Secretary General for Myanmar (since 2018 in its current form, with others prior to 2018); and the Independent Investigative Mechanism for Myanmar (since 2019). In the past, there have been other UN mechanisms specifically focused on Myanmar, including the Independent International Fact-Finding Mission (2017-2019).

The International Court of Justice is also part of the UN system and is currently hosting proceedings under the Genocide Convention related to the situation in Myanmar. The International Criminal Court (ICC) is not part of the UN system but has links to it.

3. What has the UN done about the current situation in Myanmar?

The UN Security Council

The New York-based UN Security Council has held many formal and informal meetings in which the situation in Myanmar has been discussed. For most of the formal meetings, members have heard an update from the UN Secretary-General's Special Envoy for Myanmar. Representatives of the National Unity Government (NUG) and civil society have appeared in informal meetings. No representative of the junta has participated in Council meetings on Myanmar. While a meeting does not constitute meaningful action, it does suggest that the situation under discussion is considered by many States as being important to the responsibilities of the Security Council, which is primarily the maintenance of international peace and security.

On 4 February 2021, a "Press Statement" was issued by the Security Council President, expressing concern at the situation in Myanmar and calling for the release of detainees.² Then on 10 March 2021, a "Presidential Statement" was issued by the Security Council, which reiterated previous demands while also condemning violence used against protestors.³ "Press Elements" were issued in April 2021 following discussions in the Council.⁴ Note that a "Presidential Statement" becomes part of the official record of the UN and so carries greater political weight than a "Press Statement" which does not. Presidential Statements require support from Security Council members, including the "Permanent Five," and so are widely considered to be important as statements of Council views and policy. However, these statements are not legally binding, unlike resolutions of the Security Council. The type of resolution passed in June 2021 by the General Assembly (see below) could only be legally enforceable if passed by the Security Council. The Security Council has not passed a resolution on Myanmar.

The Security Council has not exercised the significant powers available to it to address the impunity enjoyed by Myanmar's military and to

stop the flow of weapons and cash to it. It is within the powers of the Security Council to refer the situation in Myanmar as a whole to the ICC, to institute an arms embargo required by international law, to introduce multilateral sanctions on military leaders, and to take other actions including under the "Responsibility to Protect" doctrine.⁵ For example, the Security Council can refer a situation to the ICC if it constitutes a threat to international peace and security. This authority comes under Chapter 7 of the UN Charter, read with Article 13(b) of the Rome Statute of the ICC.⁶ A referral requires a majority vote with no opposing vote from any of the five permanent members. For example, in 2011 the UNSC referred the situation in Libya to the ICC.

The lack of concrete action on Myanmar so far reflects political paralysis often found in the Security Council, particularly in response to situations in countries where powerful States perceive their interests to be competing. This was also the case in the Security Council's response to the Myanmar military's campaign of violence against Rohingya civilians in late 2017, which involved crimes under international law and resulted in mass displacement to Bangladesh.⁷

Nonetheless, the multiple Security Council statements following the coup carry significance, even if only for the fact that the statements constitute rare actions, given that most military coups occurring elsewhere in the world do not come to the attention of the Security Council.

The UN General Assembly

Also, in New York, on 18 June 2021 the UN General Assembly passed a resolution on the situation in Myanmar.⁸ Among other issues addressed, it called for the military to end the state of emergency and respect the results of the November 2020 general elections, as well as to release political detainees and cease violence against protestors. The resolution also called upon States to prevent the flow of arms into Myanmar. The resolution was adopted after Belarus forced a vote, with the result: 119 for (including Myanmar), 1 against (Belarus) and 36 abstentions. (While there are 193

UN Member States, some did not vote this time, which is not unusual.)

This resolution is not legally binding on States but it is a politically significant expression against the coup by the overwhelming majority of States which make up the UN. In the last three decades following the end of the Cold War, there have been only three other General Assembly resolutions that similarly condemned military coups: Haiti in 1991, Burundi in 1993 and Honduras in 2009.⁹ There are many other examples of military coups and forms of non-democratic takeover, including for example in Myanmar's neighbour Thailand, that have not been subject to such a rebuke. Another important outcome is that most States evidently do not consider the junta to be the legitimate government of Myanmar, with potential implications for the question of who represents Myanmar in the UN.¹⁰

The UN Human Rights Council

Each year there are three regular sessions of the Human Rights Council in Geneva, and sometimes a "special session" is held to address an urgent situation. Two of the last four special sessions concerned Myanmar, in December 2017 and in February 2021.

Often at regular sessions, the authors of UN reports on Myanmar deliver a short presentation on their findings. The political representative of Myanmar has an opportunity to respond, and then the representatives of other States offer comments and questions. Civil society representatives usually have an opportunity to speak too. These "interactive dialogues" are usually broadcast online. Over the years, they have been unique opportunities to bring human rights issues in Myanmar to the attention of the world.

The Geneva-based UN Human Rights Council held a "special session" on 12 February 2021 to discuss the situation in Myanmar in light of the coup. At this session the representative of Myanmar spoke on behalf of the junta leaders.¹¹ At its conclusion the Council passed a resolution calling for the coup to be reversed, through restoration of the elected government and releasing persons arbitrarily detained.¹² On 24 March, at the conclusion of the 46th regular session of the Council, another

resolution was passed on human rights in Myanmar, containing the same calls included in the earlier resolution.¹³ Then on 12 July 2021 in the 47th regular session of the Council, a resolution on the "situation of human rights of Rohingya Muslims and other minorities" in Myanmar was adopted,¹⁴ although unlike the previous resolutions it contained few specific references to the coup.

All three resolutions were adopted without a vote, which is a move generally taken to indicate Council consensus on the content (although China expressed disagreement with the resolution of 12 July 2021).¹⁵ Human Rights Council resolutions are not legally binding.

At the 47th regular session of the Council in July 2021, both the National Unity Government and the coup leaders sought to appoint the representative of Myanmar. The Council's Bureau, consisting of the ambassadors of five Council member states, referred the issue to the General Assembly for a decision and did not seat any representative of Myanmar at the session. The Bureau decided to proceed with the High Commissioner for Human Rights and the Special Rapporteur on Myanmar presenting their reports to the Council. Extraordinarily, on 2 July 2021 there was a vote on whether the Council should allow "interactive dialogues" following the presentation of the reports, even though there was no representative of Myanmar to respond. States as a rule have a right to participate in dialogues when their country is the topic. However, in this case, the Council members voted for the dialogues to go ahead without the participation of Myanmar.¹⁶

Over the years, Myanmar has been the subject of an unusually large number of Human Rights Council resolutions. The content of resolutions since the military coup has likely influenced the procedural decision in June 2021 to deny the junta an opportunity to represent Myanmar there, until the GA resolves the issue of Myanmar's political representation at the UN generally (this is the subject of a separate SAC-M Briefing Paper).¹⁷

4. What happens next?

The Special Advisory Council for Myanmar continues to call for a resolution of the UN Security Council. This should include a global arms embargo, targeted sanctions on coup leaders and military businesses, and a referral of the situation in Myanmar to the ICC. SAC-M refers to this as the “three cuts” strategy: cut the weapons, cut the cash, cut the impunity. These actions can be taken under the doctrine of R2P, which people in Myanmar have been calling for since the early stages of the coup.¹⁸

The General Assembly will convene for its 76th session in New York from 14 September 2021. The General Assembly will need to decide whether the current representative of Myanmar to the UN and the appointee of the NUG retains his seat.¹⁹ During the session, the Special Rapporteur on the situation of human rights in Myanmar will present a written report to the General Assembly’s Third

Committee. The report will also be submitted to other relevant UN bodies for their consideration and appropriate action.

The Human Rights Council will meet for its 48th regular session from 13 September 2021. The Council will hold an interactive dialogue on the report of the IIMM and will hear oral reports on Myanmar from the High Commissioner for Human Rights and from the Special Rapporteur. The adoption of Myanmar’s Universal Periodic Review has been postponed to the 48th regular session of the Human Rights Council in March 2022, pending a decision by the General Assembly on Myanmar’s representation in the UN.

The Special Advisory Council for Myanmar is a group of independent international experts, who came together in response to the February 2021 military coup in Myanmar, to support the peoples of Myanmar in their fight for human rights, peace, democracy, justice and accountability. For information about SAC-M and details of our work, please visit <https://specialadvisorycouncil.org/>

¹ See: Rick Gladstone, “U.N. General Assembly Demands Myanmar Junta End Coup and Stop the Killings,” 18 June 2021, New York Times, available at: <https://www.nytimes.com/2021/06/18/world/asia/un-myanmar-coup-condemned.html> (accessed 23 June 2021). See also: “Statement attributable to the Spokesperson for the Secretary-General on Myanmar,” 12 May 2021, available at: <https://myanmar.un.org/en/126738-statement-attributable-spokesperson-secretary-general-myanmar> (accessed 2 August 2021).

² “Security Council Press Statement on Situation in Myanmar,” 4 February 2021, UN Doc. SC/14430, available at: <https://www.un.org/press/en/2021/sc14430.doc.htm> (accessed 2 August 2021).

³ “Issuing Presidential Statement, Security Council Expresses Deep Concern about Developments in Myanmar,” 10 March 2021, UN Doc. SC/14462, available at: <https://www.un.org/press/en/2021/sc14462.doc.htm> (accessed 2 August 2021).

⁴ See for example: “UN Security Council Press Elements on Myanmar,” 2 April 2021, available at: <https://myanmar.un.org/en/123792-un-security-council-press-elements-myanmar> (accessed 2 August 2021).

⁵ See: SAC-M, “The Responsibility to Protect (R2P) in Myanmar,” available at: <https://specialadvisorycouncil.org/briefings/>

⁶ The Rome Statute is the international treaty that established the International Criminal Court.

⁷ “Security Council Press Statement on Security Council Visit to Bangladesh, Myanmar,” 9 May 2018, United Nations, available at: <https://www.un.org/press/en/2018/sc13331.doc.htm> (accessed 24 June 2021).

⁸ "Resolution adopted by the General Assembly on 18 June 2021: The situation in Myanmar," UN Doc. A/RES/75/287, available at: <https://undocs.org/en/A/RES/75/287> (accessed 2 August 2021).

⁹ According to analysis attributed to the Richard Gowan, UN Director of think-tank the International Crisis Group, cited in: Edith Lederer, "UN General Assembly condemns Myanmar coup, calls for arms embargo," 19 June 2021, The Sydney Morning Herald, available at: <https://www.smh.com.au/world/asia/un-general-assembly-condemns-myanmar-coup-calls-for-arms-embargo-20210619-p582ek.html> (accessed 22 June 2021).

¹⁰ See: SAC-M, "Myanmar's representation in the United Nations," 2021, Briefing Paper, available at: <https://specialadvisorycouncil.org/briefings/>

¹¹ "Representation in the UN," citation above.

¹² "Resolution adopted by the Human Rights Council on 12 February 2021: Human rights implications of the crisis in Myanmar," UN Doc. A/HRC/RES/S-29/1,

available at: <https://undocs.org/A/HRC/RES/S-29/1> (accessed 2 August 2021).

¹³ "Resolution adopted by the Human Rights Council on 24 March 2021: Situation of human rights in Myanmar," UN Doc. A/HRCRES/46/21, available at: <https://undocs.org/A/HRC/RES/46/21> (accessed 2 August 2021).

¹⁴ "Resolution adopted by the Human Rights Council on 12 July 2021: Situation of human rights of Rohingya Muslims and other in Myanmar," UN Doc. A/HRCRES/47/1, available at: <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session47/Pages/ResDecStat.aspx> (as of 2 August 2021, the final resolution was not yet available on the UN website).

¹⁵ See: AFP, "UN resolution calls for reconciliation in Myanmar," 13 July 2021, Frontier Myanmar, available at: <https://www.frontiermyanmar.net/en/un-resolution-calls-for-reconciliation-in-myanmar/> (accessed 14 July 2021; paywalled).

¹⁶ See: UN Human Rights Council, twitter post, 2 July 2021, available at: https://twitter.com/UN_HRC/status/1410926234486415362 (accessed 14 July 2021).

¹⁷ "Representation in the UN," citation above.

¹⁸ "The Responsibility to Protect (R2P) in Myanmar," citation above.

¹⁹ "Representation in the UN," citation above.