

Briefing Paper: Myanmar's representation in the United Nations

11 August 2021

1. Summary

- Both the National Unity Government (NUG) and the military junta seek to represent Myanmar in the United Nations.
- A “Credentials Committee” of nine UN Member States will review this issue from mid-September, when the General Assembly (UNGA) opens its session. This Committee reviews the “credentials” of representatives from each Member State, and then facilitates “accreditation” to enable their participation in meetings and voting.
- Before making recommendations to the UNGA on who should represent Myanmar, the Committee will consider various issues. Some are technical: The State needs to ensure the credentials and names of the delegation are sent by the Head of State or Government (President or Prime Minister) or by the Foreign Minister. Other issues are legal: The Committee and the UNGA must ensure decisions conform to the UN Charter.
- The decision on Myanmar's representation will occur in the UNGA, by vote if necessary. It will affect Myanmar's representation in all UN forums, including at the International Court of Justice.
- By December 2021 at the latest, the UNGA is expected to have come to a decision. It could “accept the credentials” of the NUG or the junta, enabling one to represent Myanmar in the UN. But it could be a more complicated outcome, such as a deferred decision. Note, acceptance of credentials is not the same as expressed recognition of a government.
- Ultimately, the junta might be disadvantaged as the basis of its claim is an armed coup, not an election, and particularly as the coup is not a *fait accompli*. The NUG might benefit from having its representative as the incumbent, if the UNGA

preserves the “status quo,” but this is not guaranteed.

- This Briefing Paper by the Special Advisory Council for Myanmar (SAC-M) outlines the processes of the Credentials Committee and possible scenarios in the current case of Myanmar.

2. Background

At the UN General Assembly in New York, Myanmar is currently represented by Permanent Representative Kyaw Moe Tun, who has held the position since 2020. Now affiliated with the NUG,¹ on 26 February 2021 in the UNGA he called on States not to recognise or legitimise the military coup of 1 February.²

The junta has sought to replace Kyaw Moe Tun,³ yet the UN Secretariat has deferred any action to the UNGA's Member States.⁴ They will be guided by the UNGA Credentials Committee, which convenes in September, and provides recommendations to the UNGA.

At the UN Human Rights Council in Geneva, Myanmar is currently not represented. Junta-aligned officials twice addressed the Council, on 12 February and on 12 March 2021.⁵ Then by June, Myanmar's missions to Geneva and New York had sent the Council conflicting information about who represents the country in the UN. In response to this situation, the Council did not issue any of the accreditations required for representatives to enter and take Myanmar's seat for the Council session in June. Myanmar's “Universal Periodic Review” on human rights was postponed as a result.⁶

Also, in Geneva, the World Health Organization did not accredit any Myanmar representative to the World Health Assembly held in May.⁷ The International Labour Organisation did the same for

the International Labour Conference in June.⁸ Both organisations had received competing credential applications for these events. Other examples of this appear to exist, including at the International Court of Justice in the Genocide Convention case involving Myanmar.⁹ The WHO and ILO have deferred to the UNGA on the issue of representation, and the ICJ currently appears to be doing the same.

3. Submission of credentials by States

For participation in the UNGA, each State is required to annually submit “credentials” of its representatives, and those individuals can then receive “accreditation” from the UNGA for a period of one year. There are procedures and protocols in place to ensure representatives are the right people, and that they can participate in UN forums.

Each year before the UNGA’s annual meeting in September, States submit a communication with the credentials of their delegation to the UN Secretary-General (the UN Secretariat Office). This should include the names of up to five representatives, including Ambassadors to the UN offices in New York and Geneva, up to five alternative representatives, and advisers.¹⁰

Under UN rules, “credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs.”¹¹ As an interim measure, the existing Permanent Representative to the UN can provide credentials, as a provisional step prior to the UNGA session.¹² States are usually expected to send credentials at least one week before the UNGA opens.¹³ The 2021 session starts on 14 September.

In 2008, candidates elected in Myanmar’s 1990 national election had sought representation in the UN. But no action was taken in the UN because their letter to the Secretary-General was not submitted by one of the required authorities as outlined above.¹⁴

4. The UNGA Credentials Committee

The “Credentials Committee” oversees the accreditation process and reports to the UNGA, which makes the procedural decision to accept or reject credentials (infrequently, decisions are deferred). Usually this process is relatively straightforward and uncontentious.

Each year on the first day of the UNGA session, the President of the UNGA¹⁵ proposes the nine Member States for the Credentials Committee. Typically, this is approved automatically, without a vote. As an established practice, membership always includes China, Russia and the United States. Uruguay has been included in three of the last four years.¹⁶ The remaining States are approached by the UN Secretariat, on the basis that they do not have poor relations with other States and are likely to act neutrally.¹⁷ The UN Secretariat requests that these States keep their nomination confidential until the UNGA starts, to avoid possible lobbying if there are disputes.

The Committee reviews all the credentials submitted and develops a report for the UNGA with recommendations on the issuance of accreditations to State representatives. The Committee can receive assistance from the “good offices” of the President of the General Assembly, the UN Office of Legal Affairs and the UN Department for General Assembly and Conference Management.¹⁸

The Committee Chairperson presents the report to the UNGA, with recommendations on the acceptance or rejection of credentials.¹⁹ While the Committee’s recommendations are usually agreed by consensus, members can vote if they are split on an issue.²⁰ If there is a split, a vote in the UNGA is required in order to adopt the Committee’s report. Even if there is consensus, any State can still call for a vote.²¹ A simple majority is required in either case.

Normally however, the report is tabled without discussion, and the UNGA adopts the Committee’s report without a vote. This process tends to take ten to 12 weeks from the opening of the UNGA session.²² In the meantime, existing

representatives can remain in place, or new representatives could have provisional accreditation for the session.

In extraordinary circumstances involving a dispute regarding a State's credentials, any State could raise a "point of order" in the UNGA requesting that the Committee review the issue and report back with urgency (see below). Meanwhile, the incumbent remains, unless there is a successful "challenge" to their credentials, which is unusual (see below).²³

5. Disputes over UNGA representation

"Competing Credentials" of rival delegations

Disputes over a State's political representation in the UNGA can manifest in different ways. The main way is if "competing credentials" are submitted for rival delegations from the same State, as part of the annual accreditation process of the Credentials Committee. This is how the dispute over Myanmar's representation is expected to play out in 2021.

Likely processes for handling the dispute

There are two possible processes for handling the issue of Myanmar's competing credentials.

The regular process would be for the dispute to be considered as part of the production of the Credential Committee's report to the UNGA, usually delivered after ten to 12 weeks.

A speedier process would be if any State raises the issue as a "point of order," requesting the Credentials Committee to prioritise the case by taking a quick decision and reporting back to the UNGA. This could happen at any time in the opening UNGA session, including on the first day. While the Committee would not have a specific timeframe to report back, it is normally required to do so "without delay."²⁴ They may be inclined to respond within a week, before the "High-Level General Debate" involving Heads of State, from 21 September.

In either case, upon receiving the report and recommendations, the UNGA would respond according to the procedures outlined above. In the meantime, the status quo would prevail.²⁵

The Credentials Committee report

The Committee's function is to recommend the acceptance or the rejection of credentials required to participate in the UN. This is generally technical in nature. For example, checking that a State's credentials have been submitted by the competent authority (Head of State or Government, or Foreign Minister).²⁶

The Committee will include draft text in its report which recommends that its report be adopted as a UNGA resolution. If there is a dispute, such as in the Myanmar case, the Committee may include draft text recommending that the UNGA accept the credentials submitted by a certain named entity. Or it may propose a deferral of a decision, subject to conditions.

The Committee is not tasked with sorting out whether a particular government or leader will be recognised by other States. However, in cases of competing credentials, as well as in situations where a government was overthrown by invasion or insurrection, the Committee does have to consider key political and factual issues. These are: the *effective control* exercised by each authority; the *democratic legitimacy* held by each authority; and also, their *adherence to international law*.

[For a discussion of these concepts, and their application to Myanmar, see SAC-M's Briefing Paper, "Recognition of Governments".]²⁷

In its deliberations, the Committee should keep in mind a UNGA resolution of 1950, recommending that disputes regarding representation "should be considered in light of the Purposes and Principles of the Charter and the circumstances of each case."²⁸ It may also recall a Legal Opinion the UN Secretariat issued in 1970, which stated that the rejection of credentials should be avoided, if the outcome is a State's suspension from the UN, which would be contrary to the UN Charter.²⁹

“Credentials Challenge”

Another way that a dispute can manifest is if one or more States raise a “credentials challenge.” This takes place outside the annual credentials process that is outlined above; it means reopening an issue previously ruled on by the Credentials Committee. This happens when a State proposes that the Committee reconvene to review the existing accreditation of the incumbent representative of a certain State. To do this, two-thirds of the UNGA must vote in favour of the proposal for reconsideration.³⁰ This has not happened in relation to Myanmar, and under the current circumstances it is not envisaged to happen.

6. Scenarios for Myanmar representation

Broadly there appear to be four possible outcomes of the upcoming credentials process in late 2021. These are listed below, in no particular order. All would of course be subject to the voting procedures summarised above.

Any of these scenarios is possible, even if members of the Credentials Committee place a “reservation” or vote abstention that distances them from support for the recommendation without voting against it, or if members of the UNGA do similar.

Scenario A: the NUG’s credentials are accepted

The first scenario is that the credentials of the NUG are accepted. In this case, the Committee could recommend the UNGA accept the credentials submitted by the NUG.³¹

In October 1991 the UNGA responded to a military coup in Haiti by adopting a resolution that strongly condemned “the attempted illegal replacement of the constitutional President of Haiti,” declared as “unacceptable any entity resulting from the illegal situation,” and demanded “the immediate restoration of the legitimate Government.”³² Likely guided by this, in its 1992 report the Committee recommended that the UNGA accept credentials

submitted on behalf of the constitutional government.³³

In 1997, following a military coup in Sierra Leone in May, the Committee accepted the credentials of the incumbent representative who did not represent the military junta.³⁴

In response to the June 2009 military coup in Honduras, the UNGA promptly adopted a resolution which condemned the coup and “[decided] to call firmly and unequivocally upon States to recognize no Government other than that of the Constitutional President.”³⁵ The Committee’s decision that December, to accept credentials of the constitutional government rather than the military junta was no doubt instructed in part by this resolution.³⁶

Note too that, while at face value the example of the Khmer Rouge representing Cambodia in the UNGA from around 1979 to 1991 may appear relevant, in fact that situation emerged from geopolitics particular to the Cold War; and the presence and role of a foreign power, Vietnam, in the change of governments.³⁷

Scenario B: the junta’s credentials are accepted

A second scenario is that the UNGA accepts the credentials of the military junta. This would likely require a recommendation by the Credentials Committee, and an adoption of this by the UNGA. That seems very unlikely in light of the widespread support recently for a relatively strong UNGA resolution on the situation.³⁸

It would be unprecedented for the UNGA to accept the credentials of the military junta so soon after a violent effort to depose a democratically elected government, and when the coup itself is not a *fait accompli*, especially given the competing credentials situation.

Scenario C: Deferral, retaining the incumbent

A third scenario is that a decision is deferred, with the incumbent representative retaining accreditation to participate in the UNGA.

A precedent is when the UNGA in 1997 adopted the Committee’s recommendation “to defer a

decision on the credentials of representatives of Afghanistan on the understanding that the current representatives of Afghanistan accredited to the UN would continue to participate in the work of the General Assembly.”³⁹ Following the Taliban’s violent capture of the State, competing credentials had been submitted in 1997, by the Taliban leadership and the President of the Government driven from the capital in late 1996.⁴⁰

In this situation, the UNGA declined to reward a persistent and gross violator of human rights for its violent take-over of State institutions. The UNGA accepted this recommendation each year until the Taliban was deposed in 2001. The representative of Afghanistan effectively continued on a provisional basis.⁴¹

Scenario D: Deferral, with no representation

The fourth scenario is a deferred decision, with the expressed understanding recognised by the UNGA that this would result in no one occupying Myanmar’s seat at the UNGA.

An “empty seat” means that a country is effectively expelled from participating in the UN, likely in violation of the UN Charter.⁴²

The only possible precedent is from 1997 when the UNGA adopted the recommendation of the Committee “to defer a decision on the credentials of Cambodia on the understanding that... no one would occupy the seat of that country.”⁴³ The issue, which was of competing credentials, soon resolved itself when the two parties entered a coalition government, and Cambodia retook its seat at the UNGA in 1998.

Despite this exceptional case, there still appear to be no grounds for a deferral that results in a State losing its right to representation. In 1997, the two rivals were in negotiations to resolve the issue prior to the general election then held in 1998. The good prospect of an impending political resolution

in Cambodia was a prevailing factor in the Committee’s exceptional decision.⁴⁴

Note that, while South Africa’s seat in the UNGA was empty for around two decades, that was not the outcome of a deferral. The Committee recommended that the UNGA reject credentials of the Apartheid regime, which ultimately could not muster the majority of Member State votes required to allow its continued participation in UNGA.⁴⁵

7. Conclusion

There are various possible routes to these outcomes, and all are subject to the UN rules. The circumstances of each case are different, and precedent does not sufficiently indicate how the Credentials Committee or the UNGA will address Myanmar’s representation.

A UNGA acceptance of the military junta’s credentials in the current circumstances would be unprecedented. Furthermore, any action fully depriving the State of representation would likely be contrary to the UN Charter. The two most plausible scenarios seem to be an acceptance of NUG credentials, or a deferral enabling ongoing representation by the NUG.

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 Kyaw Moe Tun is Myanmar’s Permanent Representative to the UN. In his 26 February address to an informal meeting of the UNGA, he attributed remarks to the Committee Representing the Pyidaungsu Hluttaw (Union Parliament). He aligned himself with the NUG, after its establishment on 16 April 2021 by the CRPH. The CRPH was established by a group

of parliamentarians elected in November 2020, after soldiers physically prevented the scheduled session of the new parliament on 1 February 2021. An initial purpose of the CRPH was to establish the NUG, which now constitutes the executive branch of government. An ongoing purpose of the CRPH is to represent elected parliamentarians.

² Michelle Nichols, “Myanmar’s U.N. envoy makes emotional appeal for action to stop coup,” Reuters, 26 February 2021, available at: <https://www.reuters.com/article/us-myanmar-politics-un/myanmars-u-n-envoy-makes-emotional-appeal-for-action-to-stop-coup-idUSKBN2AQ2FX> (accessed 2 August 2021).

³ Edith M. Lederer, “Myanmar’s military again seeks to replace its UN ambassador,” Associated Press, 21 July 2021, available at: <https://apnews.com/article/europe-myanmar-united-nations-united-nations-general-assembly-3a463feb101e1fb975888349483e91bc> (accessed 2 August 2021).

⁴ Kyaw Moe Tun remains Myanmar’s most senior representative to the UN, higher in the hierarchy than the Permanent Representative and other staff of the Myanmar Mission in Geneva. His credentials would normally only come up for review each September, when the Credentials Committee meets and then reports to the UNGA in the following weeks. Outside this process, UN credentials can only be revoked early if there was a vote initiated in the UNGA and it was supported by a two-thirds majority of Member States.

⁵ On 12 February 2021 in Geneva, in a Special Session of the Human Rights Council entitled “The human rights implications of the crisis in Myanmar,” Myanmar’s Geneva-based representative Myint Thu presented comments justifying the coup. The following month, in a regular session of the Council on 12 March 2021, Myanmar was again represented by a coup-aligned official, this time a junta’s Foreign Ministry staffer via camera feed from Nay Pyi Taw. It is not fully clear what happened to the status of Myint Thu, who was appointed to the position in Geneva only in October 2020, following the reassignment of Kyaw Moe Tun from Geneva to New York. An apparent copy of a notification issued on Foreign Affairs Ministry letterhead, dated 23 February, and shared on Twitter by a Myanmar journalist, states that Myint Thu was reassigned from his post following his Human Rights Council appearances on 12 February. See:

https://twitter.com/mrattkthu/status/136448511944525004_8/photo/1 (accessed 22 June 2021). For further discussion, see: Larry D. Johnson, “What’s wrong with this picture? The UN Human Rights Council hears the military Junta as the legitimate government of Myanmar,” 31 March 2021, EJIL Talk: Blog of the European Journal of International Law, available at: <https://www.ejiltalk.org/whats-wrong-with-this-picture-the-un-human-rights-council-hears-the-military-junta-as-the-legitimate-government-of-myanmar/>; and Rebecca Barber, “The General Assembly should provide guidance to the UN system on the question of who gets to represent Myanmar,” 7 June 2021, EJIL Talk: Blog of the European Journal of International Law, available at: <https://www.ejiltalk.org/the-general-assembly-should-provide-guidance-to-the-un-system-on-the-question-of-who-gets-to-represent-myanmar/> (accessed 30 July 2021).

⁶ As of July 2021, the UPR had been postponed to the September 2021 session of the Human Rights Council. If the credentials dispute is not resolved by that time, the UPR may be postponed further. The following regular session of the Council is scheduled for March 2022.

⁷ AFP, “WHO Excludes Myanmar from World Health Assembly, Cites Pending Guidance from UN,” 26 May 2021, News18,

available at: <https://www.news18.com/news/world/who-excludes-myanmar-from-world-health-assembly-cites-pending-guidance-from-un-3778871.html> (accessed 24 June 2021).

⁸ See the report of the International Labour Organisation’s Credentials Committee (not to be confused with the separate Credentials Committee of the UNGA): “Reports on credentials: second report of the Credentials Committee,” 7 June 2021, International Labour Conference – 109th Session of 2021, available at: https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_799699.pdf (accessed 27 July 2021).

⁹ It is understood that in May 2021 both the junta and the NUG submitted rival reports to the ICJ as per the Court’s order for Myanmar to periodically submit progress reports on its adherence to and implementation of “provisional measures” to adhere to the Genocide Convention. In a separate example, apparently assisted by the peculiar teleconferencing arrangements in place as a result of the pandemic, the junta managed to be represented in some forums, such as in the 77th session of the UN Economic and Social Commission (ESOC) for Asia and the Pacific. Note that the UN ESOC technically has its own procedure for the submission of credentials. See: Global New Light of Myanmar, “Myanmar delegation participates in 77th session of UNESCAP,” 28 April 2021, available at: <https://gnlm.com.mm/myanmar-delegation-participates-in-77th-session-of-unescap/> (accessed 2 August 2021). See also: “Rules of Procedure of the Economic and Social Council,” UN Doc. E/5715/Rev.2, rules 16 and 17, available at: <https://undocs.org/en/E/5715/Rev.2> (accessed 2 August 2021).

¹⁰ Article 9 of the UN Charter states that: “1) The General Assembly shall consist of all the Members of the United Nations; and 2) Each Member shall have not more than five representatives in the General Assembly.”

See also: “The GA Handbook: a practical guide to the United Nations General Assembly,” 2017, Permanent Mission of Switzerland to the United Nations, p 28, available at: https://www.unitar.org/sites/default/files/media/publication/doc/un_pga_new_handbook_0.pdf (accessed 27 June 2021).

¹¹ “The credentials of representatives and the names of members of a delegation shall be submitted to the Secretary-General if possible not less than one week before the opening of the session. The credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs.” “Rules of Procedure of the General Assembly,” United Nations, rule 27, available at: <https://undocs.org/pdf?symbol=A/520/Rev.19#page=33> (accessed 24 June 2021). See also: “Credentials of representatives to the 25th session of the General Assembly: scope of “credentials” in rule 27 of the rules of procedure of the General Assembly: statement by the Legal Counsel submitted to the President of the General Assembly at his request,” 11 November 1970, UN doc no. A/8160, available at: <https://digitallibrary.un.org/record/820021?ln=en> (accessed 28 June 2021).

¹² This could be a letter or note verbal, but will be considered to be a provisional submission, and should be followed by a

formal submission before the end of that December. See for example: "Report of the Credentials Committee," 23 November 2020, paragraphs 6 and 7, available at: <https://digitallibrary.un.org/record/3892577?ln=en> (accessed 24 June 2021). However, if a point of order is raised in the first week of the UNGA, it is possible that the formal submission will be required immediately, and that the absence of a formal submission could have bearing on the Credentials Committee's deliberations and decision.

¹³ "The credentials of representatives and the names of members of a delegation shall be submitted to the Secretary-General if possible not less than one week before the opening of the session. The credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs." "Rules of Procedure of the General Assembly," United Nations, rule 27, available at: <https://undocs.org/pdf?symbol=A/520/Rev.19#page=33> (accessed 24 June 2021).

¹⁴ See: Edith M. Lederer, "UN rejects request for Myanmar junta's seat," 27 September 2008, Associated Press, available at: <https://www.taiwannews.com.tw/en/news/749467>; and "Daily press briefing by the offices of the spokesperson for the Secretary-General and the spokesperson for the General Assembly President, 26 September 2008, available at: <https://www.un.org/press/en/2008/db080926.doc.htm> (both accessed 2 August 2021). For further discussion, see: Duxbury, A, "The challenge of universality – the League of Nations and the United Nations," in *The Participation of States in International Organisations: The Role of Human Rights and Democracy*, 2011, Cambridge University Press, pages 118-19.

¹⁵ Elected annually by States, in September 2021 the UNGA President will be the Foreign Minister of the Maldives.

¹⁶ As well as China, Russia and the US, the additional members have been, for example: in 2020, Cameroon, Iceland, Papua New Guinea, Trinidad and Tobago, the United Republic of Tanzania and Uruguay; in 2019, Barbados, Botswana, Mauritius, Nepal, San Marino and Uruguay; in 2018, Antigua and Barbuda, Chile, Finland, Ghana, Palau, and Sierra Leone; and in 2017, Cabo Verde, Dominica, Indonesia, Ireland, Uganda and Uruguay.

¹⁷ Several individuals provided very helpful information and advice to inform this Briefing Note.

¹⁸ "The GA Handbook," op cit., p 29.

¹⁹ The following Permanent Representatives to the UN have been the most recent chairs: of Tanzania (2020); Barbados (2019); Palau (2018); and Ireland (2017).

²⁰ For example, this happened in September 1974 when members of the Credentials Committee were not in agreement on a proposal to reject the credentials submitted by South Africa's Apartheid regime. See UN Doc A/9779, available at: <https://digitallibrary.un.org/record/855635?ln=en> (accessed 28 July 2021).

²¹ Note that even without proceeding to a vote, any State retains the option of dissociating from any part of the resolution, which for instance the US has done in 2019 and 2020 in relation to Venezuela.

²² Based on a review of reports from the four-year period, 2017 to 2020. This schedule allows additional time for States who have not yet submitted the formally required letter to the

UN Secretariat from the Head of State/Government or Foreign Minister; many States submit an initial letter signed by a lower ranked official, to allow for accreditation for the session, and then submit the formal letter later.

²³ This would constitute a challenge to existing credentials, rather than involving a dispute between two new competing applications.

²⁴ Rule 28 related to the Credentials Committee reads as follows: "Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision." "Rules of Procedure of the General Assembly," United Nations, citation above.

²⁵ This should mean the incumbent, Kyaw Moe Tun, remains in place. Rule 29 related to the Credentials Committee reads as follows: "Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision." "Rules of Procedure of the General Assembly," United Nations, citation above.

²⁶ A Prime Minister would normally be considered the Head of Government if that is provided for in the country's constitution or in interim arrangements in place in transitional situations. In Myanmar, for several decades there has been no Prime Minister position. Under the 2008 Constitution, which the junta consistently refers to as remaining applicable, there is no Prime Minister position contemplated. However, note that under the 2021 Federal Democracy Charter, section 3(8) states that "The governance system of the Federal Union is a Parliamentary System led by the Prime Minister. It is a system where a Head of State or President of the Union is in the parliamentary system." The Federal Democracy Charter was developed following the coup, involving and including as its members: Elected parliamentarians; Political Parties; Civil Disobedience Movement (CDM), forces of General Strike Committee, activists CSOs including Women and Youth Organizations; and Ethnic Armed Organizations (see Chapter II of the Charter).

²⁷ SAC-M, "Recognition of Governments," 2021, Briefing Paper, (forthcoming as of August 2021), will be available at: <https://specialadvisorycouncil.org/briefings/>

²⁸ "Recognition by the United Nations of the representation of a Member State," UN General Assembly Resolution 396(5), 1950, doc no. A/RES/396(V), available at: <https://digitallibrary.un.org/record/209556?ln=en> (accessed 27 June 2021).

²⁹ "Credentials of representatives to the 25th session of the General Assembly : scope of "credentials" in rule 27 of the rules of procedure of the General Assembly: statement by the Legal Counsel submitted to the President of the General Assembly at his request," 11 November 1970, UN doc no. A/8160, available at: <https://digitallibrary.un.org/record/820021?ln=en> (accessed 28 June 2021). For a discussion of this issue, including reference to other views, see: Rebecca Barber, "Could the General Assembly Exclude Myanmar from the UN by Refusing to Recognise the Credentials of its Ruling Military Junta?," 26

February 2021, Blog of the European Journal of International Law, available at: <https://www.ejiltalk.org/could-the-general-assembly-exclude-myanmar-from-the-un-by-refusing-to-recognise-the-credentials-of-its-ruling-military-junta/> (accessed 30 July 2021).

³⁰ On certain important issues, a two thirds majority vote is required to pass a resolution of the UNGA; the reopening of a previous resolution adopting a Credentials Committee report is one such issue.

³¹ Note that when the Committee moves to “accept” the credentials of one party in a competing/rival credentials situation, it is their practice to not expressly “reject” credentials of the other party. That rejection is implied already, and in any case appears unnecessary.

³² “The situation of democracy and human rights in Haiti,” 11 October 1991, UN Doc. A/Res/46/7, available at: <https://digitallibrary.un.org/record/133636?ln=en> (accessed 2 August 2021).

³³ See: “First Report of the Credentials Committee,” 9 October 1992, UN Doc. A/47/517. The UNGA adopted the recommendation in the related resolution of that year. Note however that the Committee report does not make clear whether rival credentials had actually been submitted by the military. Several articles reviewed

during research for this Briefing Note state that the 1992 outcome was a rejection of the military’s credentials, however the authors do not provide clear evidence of that in their text. News articles referred to at the time were not available for review during research for this Briefing Note. “World in Brief: UN scorns Haitian credentials,” 22 September 1992, *Reuter / the Globe and Mail* (article viewed by and on file with Briefing Note author). See: Matthew Griffin, “Accrediting Democracies: Does the Credentials Committee of the United Nations Promote Democracy through its Accreditation Process and Should It?” 1999, *New York Journal of International Law and Politics*, page 746, *supra* note 69.

³⁴ Report of the Credentials Committee,” UN Doc. A/52/719, 11 December 1997.

³⁵ Report of the Credentials Committee,” UN Doc. A/RES/63/301, 30 June 2009.

³⁶ Report of the Credentials Committee,” UN Doc. A/64/571, 17 December 2009.

³⁷ Griffin put it this way: “The fractious debates from 1979 to 1991 regarding the right of the Khmer Rouge to occupy Cambodia’s General Assembly seat are better understood as an expression of the ideological and strategic tensions

between the United States, the Soviet Union, and China, rather than as a debate about the application of Credentials Committee rules,” citation above, page 726. See further discussion there.

³⁸ “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).

³⁹ UN Doc. A/52/719, 11 December 1997, para 10.

⁴⁰ While a dispute was discussed in proceedings of the Credentials Committee in 1996, the UN Secretariat’s Legal Counsel advised that the Taliban had not submitted any credentials for the UNGA session, and so this was not a case of competing credentials. The following year, the Taliban also submitted credentials. See: UN Doc. A/51/548, 23 October 1996

⁴¹ In this and other scenarios, the status of accreditation may be considered as being “provisional” rather than (fully) “accepted.” This may determine what procedures apply, for example regarding voting in the UNGA, if another State subsequently launched a “credentials challenge.”

⁴² See: 1970 Legal Opinion of the UN Secretariat, *op cit*.

⁴³ See: “Report of the Credentials Committee,” 11 December 2017, paragraphs 5, available at: <https://digitallibrary.un.org/record/247946?ln=en> (accessed 27 June 2021). Note this was one of several disputes that have occurred over the years related to the political representation of Cambodia, but the only one resulting in an empty seat at the UN.

⁴⁴ In a 1999 review of situations involving deliberations by the Credentials Committee, Matthew Griffin notes that several diplomatic tools were used in an effort to address the situation in Cambodia at that time. These included a decision of the Association of South East Asian Nations (ASEAN) to defer the accreditation of Cambodia to the regional body, as well as penalties put in place by international financial institutions and donors, which may have contributed to bringing a

political resolution to the problem that had led to competing credentials being submitted to the UN. See: “Accrediting Democracies,” citation above, p. 784. See also: CNN, “ASEAN nations disagree on admitting Cambodia,” 15 December 1998, available at: <http://edition.cnn.com/WORLD/asiapcf/9812/15/asean.03/index.html> (accessed 3 August 2021).

⁴⁵ This issue was procedurally contentious at the time, and should not be viewed as precedent-setting. While South Africa was ultimately barred from participation in the UNGA for most of this period yet its membership status in the UN remained formally unchanged.