

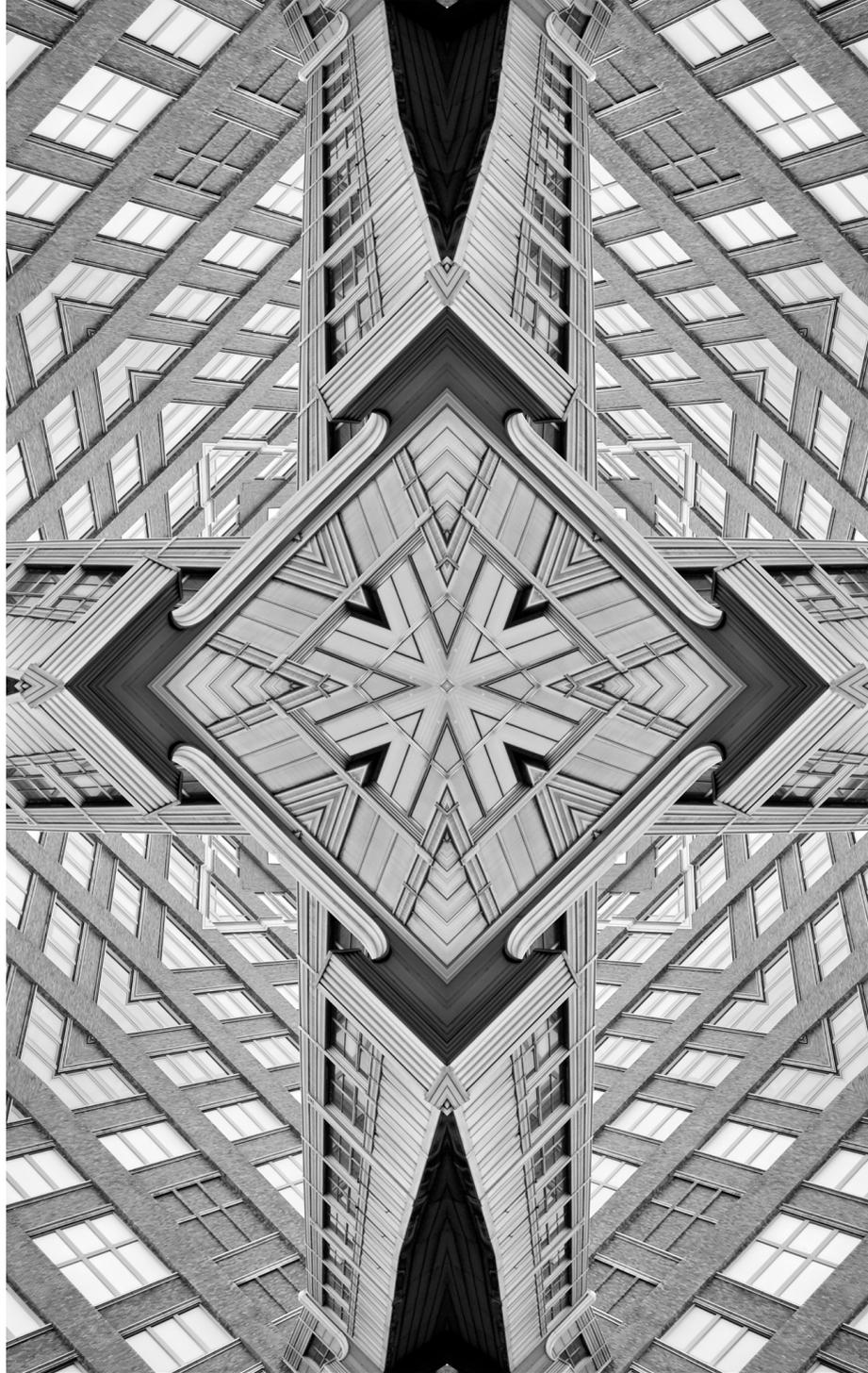
# Issue

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# Brief

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# The Enduring Challenges to Democratic Transition in Myanmar

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## **Abstract**

After days of disputing the 2020 election results and claiming widespread fraud in the polls that gave the National League for Democracy a second term, Myanmar's military, the Tatmadaw, staged a coup on 1 February 2021. The coup supposedly ended a decade of inadequate democratic reforms in Myanmar, which came after almost five decades of oppressive military rule. Ironically enough, the military regime itself had set the course of reforms post-2010. This brief explores the most crucial impediments to democratic consolidation in Myanmar, highlighting the pivotal role of civilian-military relations.

The third wave of democratisation,<sup>a</sup> spanning the last quarter of the 20<sup>th</sup> century, transformed the global political landscape.<sup>1</sup> While the details varied across nations and regions, almost all of them shifted away from dictatorship and towards more democratic forms of governance. However, there has been rising concern about the substance of democracy in the recently transitioned countries. Studies have pointed out that while nearly 100 countries are deemed as “transitioning,” most are settling into new forms of semi-democratic yet authoritarian systems, instead of true democracy.<sup>2</sup> Moreover, the formal democratic institutions established in most nations, such as elections, continue to suffer serious deficits.<sup>3</sup>

The onslaught of the COVID-19 pandemic has intensified a trend of escalating authoritarianism across the globe.<sup>4</sup> Several nations have slid down the democracy scale, Myanmar being the latest. A fledgling democracy,<sup>b</sup> Myanmar witnessed a coup in February 2021, as the armed forces, the Tatmadaw, refused to accept the results of the 2020 elections that gave the National League for Democracy (NLD) a second term.

Against this backdrop, this brief explores the challenges to democratic consolidation in Myanmar, with a focus on NLD–military relations. The first part analyses the factors that led to a change from autocratic to democratic regimes in 2011. The second part examines the dynamics between the NLD democratic leadership and the military junta, to understand how it has shaped Myanmar’s struggle for democracy in recent years. Finally, the brief considers the key factors that are weakening Myanmar’s prospects of stable democracy.

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a A group of transitions from nondemocratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite directions during that period of time. According to Samuel Huntington, the third wave began from 1974 onwards.

b A system or an institution that is not yet developed.

# Myanmar's Shift to Democracy: 2010 - 15

## The Military as an Institution

Analysts have offered various explanations to Myanmar's post-2010 democratic reforms—from the country's military government wanting to resist the growing influence of China, to growing public demands for democracy. For the most part, political changes in Myanmar are driven by the willingness of military leaders to implement them. American political scientist Samuel Huntington, in his theory on democracy, says that the most common form of transition from a military regime to democracy is “transformation”—this occurs when the military regime itself initiates the shift.<sup>5</sup> Such transitions are peaceful but often transient, as military regimes have the capacity to reacquire power through non-democratic means if they disapprove of the direction of the transformation.

In most such cases, military leaders do not define themselves as the permanent rulers of the country, instead claiming to briefly assume power to “save the country” from instability. Thus, for military rulers, the return to civilian rule is always a political possibility. In Myanmar, too, the military had claimed that once the country became stable, it would leave its temporary stint and return to its previous military duties.<sup>6</sup> As Huntington theorised it, three factors can accelerate the military's decision to withdraw from power: (i) a guarantee that there will be no prosecution of military officers for acts they committed while they were in power, (ii) guarantees about the preservation of the autonomy and role of the military, and (iii) the attitude of the opposition.

The democratisation process, meanwhile, is shaped by interactions between three groups of actors: (i) reformers within government; (ii) those who resist reform; and (iii) members of the opposition.<sup>7</sup> Within these groups, there are diverse opinions on the possibilities and prospects for reform, with the constitution of each group and the relationship between them subject to change throughout the process. For example, those within the military who oppose the reforms may come to accept democracy if their suspicions about it are not confirmed. Members of opposition groups initially opposed to government-led reforms may accept opportunities to participate if they are convinced of the intentions of the military government.

# Myanmar's Shift to Democracy: 2010 - 15

## Post-2010 Reforms

Since 2010, many of these interactions have unfolded in Myanmar, as amendments were made to the election laws, the ban on the NLD was lifted, and Aung San Suu Kyi was released from house arrest.<sup>c</sup> Freedom of speech was restored, and the ban on social media platforms was revoked. Consequently, both the Opposition and the general public began to accept Thein Sein as a reformer open to democratic changes.

At the same time, Thein Sein and fellow reformers reassured the military about its continuing independence and power, in keeping with the 2008 Myanmar Constitution's emphasis on the centrality of the armed forces in the new life of the country, and the provisions relating to the non-prosecution of army officers. Thus, the 2008 Constitution is a tool designed to ensure the military's prominence at all times, whether elected or not. Further, it acts as a roadmap to "disciplined democracy," and dictates the parameters and extent of reforms during a regime change. Ultimately, the playing field remains heavily tilted toward the military-dominated party.

In 2011, the NLD and its leader, Aung San Suu Kyi, made the critical decision to accept the government's approach to working together to attain the goal of multiparty democracy. The new government's strongest claim to credibility, both internally and externally, was Aung San Suu Kyi's endorsement of the government's path of reform and her evident faith in Thein Sein. That there was no insistence on accountability for the acts of the former military rulers indicated that the Opposition, i.e. the NLD or Aung San Suu Kyi, would behave "reliably" in the transition to democracy. In the past, Suu Kyi had openly confronted the government by arranging rallies and organising campaigns for civil disobedience.<sup>8</sup> However, aware that such tactics could hinder the progress towards democracy and lead to a return to power by hardliners, or else a substantial increase in the power of the military, the NLD subsequently adopted policies of moderation and cooperation with the government. It also agreed to be involved as a junior partner in the process of democratic reform. This culminated in the seamless and peaceful transition to a democratic government in 2015.

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<sup>c</sup> Giving in to domestic and international pressures, the military government called an election in 1990, which the NLD won by a landslide. The generals, however, refused to recognise the result and instead placed Aung San Suu Kyi under house arrest. They argued that the country lacked a constitution through which a proper transfer of power can be conducted.

# Post-2016 Civil-Military Relations

Since coming to power in 2016, the NLD government has sought to maintain an amiable relationship with the junta. This was evident in the softer stance it took towards the military's actions in the matter of the ethnic conflicts within the country.

In May 2016, the NLD government set up the “Central Committee on the Implementation of Peace, Stability, and Development of the Rakhine State”.<sup>9</sup> It also established an advisory commission, with former UN Secretary-General Kofi Annan as Chair, to provide recommendations on the complex challenges facing Rakhine. However, the meetings held and studies organised to understand the situation did little to prevent the conflicts between the junta and militant groups fighting for autonomy in the Kachin and Rakhine regions, such as the Arakan Army, Arakan Rohingya Salvation Army (ARSA), and Kachin Independence Army (KIA). The conflicts have resulted in the displacement of millions of people, severe food shortages, and loss of livelihoods. For its part, the NLD government has done little else beyond appealing to the military to practice restraint, choosing to focus on other agendas instead.

Similarly, in the ongoing case of the Rohingya ethnic cleansing, both the NLD government and Aung San Suu Kyi have not only refrained from intervening against the inhuman treatment of the stateless people, but also categorically denied wrongdoing and imposed media censorship on the issue.<sup>d</sup> Indeed, international spectators expressed concerns over the ex-state counsellor shielding the military's action and calling the situation an “internal matter,” despite millions being forced to cross the border to live in neighbouring nations.<sup>10</sup> In the face of censure from the international community, Aung San Suu Kyi maintained her stance, standing for the junta in the International Court of Justice in 2019 and denying all accusations of genocide.<sup>11</sup>

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d The Rohingyas are a minority Muslim community who have lived in the Rakhine State of Myanmar for centuries. In recent years, they have become a brutally oppressed, “stateless” community as the state of Myanmar continues to deny them citizenship under the country's nationality law of 1982.

# Second Transition and Rising Conflict

According to theorists, a transition from military regime to democracy is often followed by a second transition—towards the effective functioning of a democratic regime.<sup>12</sup> During the first transition, the “military challenge” for members of the Opposition is to inaugurate a democratic government without military resistance. During the second transition, the challenge is to establish functional institutions of civilian control over the military.

## Bringing the GAD under Civilian Rule

While the NLD government sought to balance its civilian-military relations, it slowly attempted to create powerful civilian positions in otherwise militarised institutions. This step was deemed essential to establishing functional units of civilian control. In a pivotal move, in 2019, the NLD sought to bring Myanmar’s main public administration body, the General Administration Department (GAD), under civilian control. The GAD has traditionally operated under the military-controlled Ministry of Home Affairs (MoHA). Designated as the “bureaucratic backbone of the country,” it directly controls all state bureaucracy at the local level, including in the districts, townships, and village tracts. Its 36,000 staff members, many of whom are transferred military personnel, are responsible for issuing licenses, handling land management and disputes, and collecting taxes. Since April 2011, the GAD has also handled the increased engagement from international aid donors.

Thus, placing the GAD under the civilian Ministry of the Office of the Union Government will be an important step in breaking the military dominance. The reform is aimed at stimulating decentralisation and is necessary for any real progress towards peace and stability. To be sure, such a reform may not lead to immediate changes to local administration. However, it can allow state- and region-level civil services to emerge in the long run, beyond the exceptional municipal offices.<sup>13</sup>

## Amending the Constitution

The 2008 Constitution is the biggest source of military power in Myanmar. In addition to granting the military a prominent role in politics, it ensures that state institutions reflect the ideology advocated by the Tatmadaw. This ideology draws from Tatmadaw's three national clauses: the non-disintegration of the Union, the non-disintegration of national unity, and the perpetuation of national sovereignty.<sup>14</sup> To safeguard the implementation of these clauses, the Constitution allocates 25 percent representation of unelected military officers in Myanmar's Parliament. This provides them with veto power, as articles 436 (a) and (b) require more than 75 percent of members to vote in favour of approved amendments. The Constitution also grants sovereign powers to the commander-in-chief of the armed forces during emergencies,<sup>e</sup> including rights to exercise control over the executive, legislature, and judiciary. These provisions have allowed the military to maintain its position as "guardian" over a steady process of democratisation, and to protect its core ideological and private interests. Thus, any amendments to the Constitution can severely damage the Tatmadaw's grip on the Myanmar government.

While the NLD had been vocal about the undemocratic nature of the Constitution since 2007, it took little initiative to modify it after assuming office in 2016. After losing the 2018 by-elections, however, it returned its focus to amending the Constitution. In January 2019, a parliamentary Charter Amendment Committee was set up, consisting of 149 lawmakers—50 from the military, 50 from the NLD, 26 from Union Solidarity and Development Party (USDP), and the remainder from ethnic parties. They took part in the debate, which spanned seven days. The structure of the Parliament included the NLD holding 59 percent of the seats, the ethnic minority parties 11 percent, the USDP five percent, and the military its constitutionally mandated 25 percent.

The proposed amendments focused on reducing the military's influence. Some of the proposals from NLD included scrapping the military's veto over constitutional change, limiting its parliamentary seats, reducing its political leadership role, and revoking army chiefs' right to assume power during an

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<sup>e</sup> In Myanmar, an emergency is defined as any situation that could lead to the nation's disintegration, loss of sovereignty, or attempts to forcefully take power through insurgency.

# Second Transition and Rising Conflict

emergency. The NLD has proposed changing the requirement for approving a charter amendment from more than 75 percent of Parliament to “two-thirds of elected representatives,” excluding the military appointees. It also proposed gradually reducing the military’s share of seats from 25 percent to 15 percent after the 2020 election, 10 percent after 2025, and five percent after 2030. A quarter of all seats in the national and regional legislatures are occupied by unelected military officers under the Constitution’s Article 14 and related provisions. The military generals strongly objected to this proposal, with the commander-in-chief calling the amendments discriminatory and asserting that such demands could harm national unity and civilian-military relations.<sup>15</sup> The NLD also proposed amending Section 59 (f), which bars Aung San Suu Kyi from becoming president, since her husband and sons hold British citizenship, and Section 59 (d), which requires military experience. However, these proposals failed to garner the required vote in the assembly. According to one junta official, senior positions should steer clear from any foreign influence.<sup>16</sup>

In total, the NLD proposed 114 amendments to the Constitution, of which only minor ones concerning changes in the language of clauses pertaining to the appointment of state and regional ministers were approved. One can argue that the NLD’s objective for attempting to introduce such a large number of changes was to improve its public image, by convincing the populace that the military and the USDP stood in the way of the party’s efforts to bring about democratic reforms.

The strategy did not go unnoticed by the army or the USDP, and to combat this narrative, the Tatmadaw and the USDP proposed amendments of their own. The military bloc proposed revising Article 261 by electing regional chief ministers through local legislatures instead of being appointed by the Central government through the president. Such an amendment primarily seeks to make the nation-state federal in structure, by distributing more powers among peripheral regions. While this contradicts the Tatmadaw’s previous stance against federalism, where it equated federalism with the disintegration of the country,<sup>17</sup> analysts contend that the underlying motive is to take advantage of the ethnic minorities’ growing disillusionment with the NLD.<sup>f,18</sup>

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f The ethnic minorities are reportedly unhappy with the state of affairs and the centralised approach of the NLD that goes against the spirit of federalism that the centre had promised to uphold.

# Persistent Obstacles to Democracy

**I**n addition to the discontent of the military generals at the NLD's growing intent to achieve democratic consolidation—which would result in the power shifting to the civilian government—a few other factors have affected the growth of stable democracy during NLD's tenure.

## **NLD's Centralised Character**

Under the 2008 Constitution, the NLD has the right to choose the central and local governments at all levels of the legislatures. Following its 2015 victory, the NLD, instead of acknowledging nationality parties in the ethnic states, appointed its own representatives and party members as the chief ministers of all the states and regions—even where the NLD had won a minority of state seats—with no prior consultation with its once-allied ethnic parties.

The Arakan National Party (ANP) and Shan Nationalities League for Democracy (SNLD) are two prominent ethnic parties in Myanmar. A veteran Rakhine politician, U Aye Tha Aung, was approached to act as the vice-speaker of the Upper House (Amyotha Hluttaw) in the national parliament. But this decision was made without transparent discussion or agreement with the ANP.<sup>19</sup> Similarly, the NLD refused to grant administrative power or representation to SNLD, its former ally at the state level. Instead, party officials suggested that the SNLD consider the position of an “Ethnic Affairs Minister.” Such acts alienated ethnic groups and damaged the NLD's image. The party's imposition of political hegemony through ‘Burmanisation’ and the centralisation of projects further exacerbated negative sentiments amongst the ethnic groups. For example, the erection of statues of General Aung San in Kayah and other states with sizeable ethnic minority populations sparked opposition and protests, which the NLD's local officials chose to handle in a largely violent manner. There were also protests in Mon state, when the NLD decided to change the name of a bridge in Mawlamyine to General Aung San Bridge.<sup>20</sup>

Disillusioned by these trends, some NLD members along with other pro-democracy leaders, formed their own parties before the 2020 elections, such as

# Persistent Obstacles to Democracy

the People's Pioneer Party, Union Betterment Party, and People's Party.<sup>21</sup> The military leveraged this development against the NLD during the deliberations on the amendment of the Constitution.

## Weakness of Democratic Political Leadership

Following the 2015 elections, the NLD party grew in strength. Before 2015, its membership had predominantly been symbolic and solidaristic, and the increase in party members created concerns regarding the new members—who tried to maximise their power and status—in the absence of a stable democratic ideology. Further, selecting ground leaders became a challenge, as people voted for Aung San Suu Kyi instead of specific local candidates. Consequently, leaders at the local levels were decided after the party office won the election, reflecting the disjointed power dynamics within the NLD.<sup>22</sup>

Since the NLD government was new and inexperienced in governance, it failed to invest in the training of party members and next-generation leaders. Of the existing leadership, few personnel are trained professionals, and the majority lack management experience. While the management styles of some party members are consistent with the democratic culture and genuine policy openness, most are concerned only with modes of behaviour and control akin to socialist centralisation.<sup>23</sup>

## Faultlines of National Reconciliation

Throughout its rule and as the defence authority during the NLD tenure, the junta had continued to rely on a divide-and-rule tactic for monitoring the ethnic militant groups. During the 1990s, the military managed to integrate some into their force, but those who did not acquiesce remain in a state of constant war with the state. The junta orchestrates and controls the entire process by fighting against some groups while entering into ceasefire agreement with others—selectively allowing some groups to keep their arms and territory, tax their constituents, build state-like structures, and profit from legal and illegal businesses.<sup>5</sup> Its tactics are facilitated by the failure of the armed groups to

<sup>g</sup> In 2015, eight groups signed a "Nationwide Ceasefire Agreement" (NCA) with the government, and two more joined in 2018. Five others have bilateral ceasefire agreements. However, as of October 2020, four important groups stood without any such agreement: the Arakan Army (AA); Kachin Independence Army (KIA); Ta'ang National Liberation Army (TNLA); and Myanmar National Democratic Alliance Army (MNDAA). For two years, from December 2018 to November 2020, the Tatmadaw focused on fighting the AA, while mostly avoiding clashes with the others. In November 2020, right after the national elections, the Tatmadaw and AA agreed on an informal, temporary ceasefire.

# Persistent Obstacles to Democracy

act in unison instead of learning from each other's experiences. Thus, using ceasefire politics, the Tatmadaw has established itself as the most powerful military, political, and economic actor in the borderlands. Furthermore, by entering into joint ventures with the local leaders or "elite groups" of ethnic minorities, the military exploits and extracts from the borderlands' natural resources, in mining, logging, and agriculture. This has allowed the military to exercise power in areas where it had no previous influence and profit from ethnic armed groups, without ever fully meeting their demands. To turn such a situation around would require the government's sustained effort, driven by a vision for peace. Since the armed groups have overlapping territorial claims, and conflicting goals, and failed to successfully align their military and political strategies, the onus of peace-making must be on a representative Union government. In 2020, the International Crisis Group rightly recommended that the government engage in political dialogue and negotiations with all the country's ethnic groups, and establish participatory institutions where each group could work for its goals. However, this could not be implemented at the time due to the shifting civil-military relations.

## **Misplaced Security Priorities**

For the last five years, the central purpose of Myanmar's security and justice institutions has been to defend the state either from local resistance or to maintain order while protecting their own economic interests. The criminal justice apparatus has been geared primarily towards disciplinary action against political dissidents, while non-traditional security threats, such as drug abuse and human trafficking, have only received curbs and routine punishment.<sup>24</sup> Moreover, since the security institutions are dominated by Bamar Buddhists, the judiciary is independent only on paper: it remains full of juries and magistrates who previously served within the military or under the former military government.<sup>25</sup>

To be sure, the transfer of powers from the military to civilians does not automatically create more just and peaceful outcomes. Reforms in the justice system must be carefully planned and executed, including service orientations of the military and police, skill training for enhancing tactical approach without the use of extreme violence, people-oriented mechanisms, gender inclusivity and sensitivity, rehabilitation of the prison system, and overall inclusivity. Research organisations have highlighted the three steps needed to democratise Myanmar's autocratic system:<sup>26</sup>

# Persistent Obstacles to Democracy

1. Giving more power to elected civilians as representatives of the people
2. Transforming the security culture
3. Protecting and building civic space

So far, the civilian government has been unable to take any action, due to the reservations of the junta.

The factors discussed in this section are responsible for the lack of democratic progress in Myanmar. However, while the military leaders had hoped to capitalise on the NLD's poor performance to garner support, the public's trust in Aung San Suu Kyi as a protector who would act as a bulwark against the possible return of military rule remains strong, and much of the mistrust is directed at the military regime that is viewed as despotic.<sup>27</sup> Indeed, the USDP declined into electoral irrelevance in the 2020 polls, and the landslide victory of the NLD government substantially reduced the influence of the military over the legislative branch. Going forward, the NLD is likely to introduce more reforms to the Constitution, resulting in further erosion of the military's influence. While this will fortify the NLD's position,<sup>28</sup> an open challenge to the junta's sovereignty as an institution may lead to another coup.

Scholars who study regime transitions in different parts of the world agree that the democratisation of a country depends not only on electing a new government through free, fair, and competitive elections, but also on a comprehensive political refurbishment. The new political leaders must enjoy sufficient effective power to govern. The transformation of authoritarian civil-military relations is, therefore, a key element of any regime transitioning from authoritarian to democratic rule. However, since the prerequisites of this transition are set by the military rulers from a position of strength, they often continue to exercise substantial control over the process and outcomes, and the armed forces retain their acquired entitlements.

A successful democratic transition requires establishing functional institutions of civilian control over the military, which is especially difficult in countries with a strong legacy of militarism and where the military is able to secure political and institutional privileges. While international mediation can be useful in such instances, Myanmar has previously been called a “diplomatic graveyard,”<sup>h</sup> due to the UN’s failure to successfully intervene—from providing humanitarian assistance to facilitating national reconciliation between the junta and their democratic opponents.

Despite the progress made by the NLD in establishing democratic processes in Myanmar, the military coup of February 2021 showed that the government had failed to exercise civilian control over the junta. The coup has pushed the country and its future into uncharted territory, and how the conflict will play out will depend on the public protesters and the military’s response to them. 

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<sup>h</sup> The six UN special envoys—starting with Japanese diplomat Sadako Ogata, who was appointed in 1990 as an independent expert of the UN Commission on Human Rights, to the Malaysian businessman Razali Ismail, the UN secretary-general’s second special envoy to the country—quit their job in deep frustration. Their missions to Myanmar were routinely rebuffed by the Junta, and at least one of the diplomats, the UN’s second special rapporteur, Mauritian Rajsoomer Lallah, wasn’t even allowed to enter the country because of his sharp criticism of the regime.

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