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THE CONSTITUTION IN THE SHADOW OF A GUN: HISTORICAL AND LEGAL VIEWS ON MYANMAR'S COUP D'ÉTAT

ABSTRACT

The Tatmadaw's military takeover in Myanmar on the 1st of February has marked a significant step back in the country's path towards democracy. Several doubts are raised as to why the military has decided to dismiss the institutional changes that it agreed to grant the country after the Saffron Revolution of 2007 in the first place. This paper seeks to examine the current military takeover in Myanmar through the lenses of its complex post-colonial history, marked by the continuous evolution of various intra-state stakeholder's interactions, such as the Sangha, the Tatmadaw and the students. Subsequent to the historical analysis, we provide a legal outlook combing through the salient constitutional provision on the division of powers, aiming to understand if the balance thereof has been seen as an existential threat undermining the military's hegemonic position over time. Finally, we aim to offer an account on why western expectations regarding Aung San Suu Kyi as a representative of Western liberal democracy could not be factually met. We conclude that the 2007 constitution institutionalized a political system that allowed wiggle room for non-military stakeholders to obtain further democratic concessions, that could result in a significant threat to the Tatmadaw's rule. Such approach sheds outlook on the causes of the coup d'état and allows projections for the near future.

Keywords: Myanmar, Regime Change, Tatmadaw, Constitution, Democracy, Aung San Suu Kyi

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1. INTRODUCTION

Myanmar's troubled path towards democracy has long raised the attention of journalists and researchers. Featuring a steadily weak economic growth over time, a Theravada Buddhist majority often at odds with some of the different ethnic groups, and a strong presence of the Tatmadaw in internal politics, Myanmar presents itself as a multi-layered polity placed at the main junction of several powerful neighbors: China, India, Bangladesh (Ferguson, 2015, p.12). The history of its quest towards democracy is dense and complex, and worth analyzing in depth. From 1988 to today, Myanmar has undergone two major anti-government demonstration moments, has changed three regimes, four governments and embraced a new constitution. The analogous initial pattern of two pivotal moments of protest, namely the 1988 uprising and the Saffron revolution, is also very interesting. The recent events on February 1st 2021, when a large number of congresspersons from the National League for Democracy (NLD) and the country's state counsellor Aung San Suu Kyi were either incarcerated or put under home detention, raise doubts on labeling Myanmar a success story of democratic transition (Thwin, 2012). Following a significant defeat of the military in parliamentary elections and a sweeping victory of the NLD, soldiers have seized the main roads of Nay Pyi Taw. They subsequently blocked the major domestic media channels and broadcasters, and disrupted information technology countrywide while declaring that the executive power had passed to general Min Aung Hlaing (Thwin, 2012).

Such events have in fact turned the tide of a winding, yet continuous path towards democracy. It is challenging to understand the profound motivations of such military overtake: in 2011 the army willingly gave way to a hybrid political system with a new constitution setting forth a prevailing role of the parliament while at the same time safeguarding the political clout of the army. The constitution effectively set forth the right of the Tatmadaw to oversee state security by electing the ministers of defense, interior and border control, and gives the 15% of the parliamentary seats to military representation (The Economist, 2021). What are the historical, constitutional and political reasons for which the military has decided to use force to regain effective control? In the paper, we aim to give a nuanced picture of what lies behind Myanmar's swinging path towards the empowerment of its people. We firstly analyze the history of Myanmar since decolonization, highlighting the role of the main actors in the struggle for power: the State, the religious institution of the Sangha, the military junta, the students and the people. Secondly, we undertake a legal analysis on how the new 2008 constitution balances the interest of the various domestic parties while allowing a democratic opening. Thirdly, we analyze Burma's salient foreign policy turns and its controversial relationship with western democracies.

2. MYANMAR'S HISTORICAL PERSPECTIVES

Since the achievement of independence of Aung San's liberation movement from Britain in 1948, the Union of Myanmar was led by the charismatic figure of U NU. The first premier was the first to implement social policies that would build a rudimentary welfare state. U NU was also known for his deep attachment to Buddhism and he often described the "Hinayana" tradition of Burmese Buddhism as the great source that would unify the country. U Nu called on the Burmese people to revitalize their Buddhist upbringings against the secularity aspired

by general Aung Sang before the dawn of the independence. The political transformation under premier U Nu in the 1950's played a key role in reviving the importance of Buddhism in post-independent Myanmar's politics. Such transformation reflects how Buddhism became an identical factor with constitution-making (Kaddy, 1953, p.34).

U NU's rule was progressively substituted by General Ne Win's. The general firstly established himself as a government caretaker, then waging a coup d'état in 1962 and transforming the parliamentary democracy into a one-party State. Ne Win implemented the so-called Burmese Way to Socialism, following a national plan of industry nationalization to reach its objectives. The political mismanagement in implementing the socialist policies turned out to engender a sluggish economic growth for the Burmese economy. By 1985, Myanmar's immense national public debt consumed more than a third of the country's GDP solely with its annual interest payments (Thwin, 2012). Due to the economic instability of the country, Ne Win tried to refer to Burmese traditions to find a solution for what he perceived to be a grim omen, and relied on his astrological counselor's advice to demonetize 60 to 80 percent of the currency value, the Kyat, to issue currency bills in multiples of nine, considered by many a sacred number and a positive karma bringer (Shah, Toft, 2012, p.21). Ne Win's policies significantly affected Myanmar's poorest social stratum as it increased transaction costs, increased inflation and worsened the economic crisis. Seeing all their savings at risk, many university students started demonstrating through acts of arson and vandalism near the Rangoon University of Technology. The government's overreaction to such minor protests blended with economic unease and led students of other universities in Rangoon to join in a fully-fledged protest led by students as well as the working class that was announced on the first week of August 1985 (Thwin, 2012). The protests were so widespread that many Buddhist monks participated. In response to the uncompromising government intervention, from 1965 onwards, the Burmese Sangha's normative shift in political theology resulted in an accentuated disengagement from politics via oaths of allegiance to the government with a commitment to spiritual, otherworldly activities (Bechert, 1995). However, the monks' disengagement from politics was a double-edged sword: since the monks took part in the protests though openly forbidden to, they undermined the government's legitimacy in an even more efficacious way. Seeing the unpopularity of the regime's moves, Ne Win promised to resign. Meanwhile, the widespread demonstrations reached their peak into what is nowadays known as the student uprising on 8 August 1988 (Thwin, 2012). The aftermath of such movements has been the creation of a new military rule, formed by 19 senior army officials, that crushed the student movements: The State Law and Order Restoration Council (SLORC). The organ used the excuse of the protests and the strong grip of the army to establish temporary martial law and rule by decree (Matthews, 1993, p.30).

Since the failed student uprising, the National League for Democracy (NLD) embodied the civil dissent to the military junta's rule. Led by the former dissenter generals Aung Gyi, Tin U and San Suu Kyi, the party managed to gather most of the politically marginalized and disenfranchised electorate under the wide umbrella of democracy. The figure of Aung San Suu Kyi was pivotal in drawing a parallel consensus to the SLORC. Suu Kyi was the daughter of a national hero, a representative of the most appealing side of western democracy because of her long study period in the UK. The SLORC well understood Suu Kyi's threat and decided to put her under house arrests charging her with subversion of public order (Thwin, 2012, p.23). At the same time, to finally appease the steadily growing public unrest to the military

junta's government, the new head of the military junta Saw Maung called public elections for the May 1990 constituent assembly, confident of winning public consensus. The odds were not in the general's favor, and the NLD party won 392 seats out of 492 in a landslide victory. Saw Maung's refused to step down from prime-minister ship, publicly clarifying that the constituent assembly was gathered only to understand trends in the general will of the people. The voice of the people, promised Saw Maung, would be heard and seriously taken into consideration by the government which would enact it through the gradual implementation of reforms (Lubina, 2019).

Small protests of monks and students burst out again in Rangoon and other major cities and were followed by the usual firm reaction, in which the *tatmadaw* shot a monk to death along with several students. The religious community was so outraged of the disrespect shown by the government that the major religious leaders called for a boycott in which monks were forbidden to accept alms from soldiers and government officials. The boycott was a deeply symbolic move and can be associated to the western conception of a political regime's religious delegitimization through excommunication. The occurrence marked the beginning changes in the Sangha's political theology: The Sangha would start leaning towards a more politically engaged role in society. As a consequence, from 1995 the SLORC tightened its control over the Buddhist community issuing a strict standard of conduct for the monks, and decreed in 1992 that the only legitimate Sangha organization would be the Union of Myanmar Sangha Organization, nominated directly by the government (McCarthy, 2019). While regulating the religious institution, the SLORC also financed and promoted cooperation between the military and the *sangha*: the government started an epic propaganda campaign of Buddhist nationalism, spending large amounts of money in the upkeep and construction of pagodas² and providing funds for Buddhist education and training. This way the government hoped to create a sense of national identity based on the state promotion of Buddhist religious value in civil society, which overlapped with a de facto support for the military government (Cheesman, 2003).

3. RESULTS AND DISCUSSION

In 1997, the SLORC changed its name into State Peace and Development Council (SPDC), hinting at the newly achieved social order. To celebrate the newly acquired equilibrium and tie itself to the ancient kingly traditions, the SPDC initiated an intense program of public infrastructure building to realize the construction of the future capital that would replace Rangoon: Naypyidaw, or also "Kingly residence" (Udin, 2017). The continuation of the ancient pre-colonial traditions was a politically astute move for the SPDC, aware that equating its rule with a restoration of the old Kingdom ensured legitimacy, popularity and even entitlement to tightly regulate religion. (Smith, 1965, p.41). The expenditures for the ambitious capacity building program were again the main cause of great economic indebtedness for the country: 2% of the GDP was employed overall to cover the building expenses, becoming an increasing burden on the shoulders of the lower strata of the population. Because of mass indebtedness and due to several IMF admonitions, the SPDC tried to reduce its public debt through an increase in indirect tax revenue by intervening on the prices of domestic goods such as oil, jade, timber and gas.

The economic intervention brought about a similar situation like the one in 1987 where natural gas prices increased six-fold, the price of fuel and diesel doubled and the price of the other goods far outreached the budget of the average citizen (McCarthy, 2019, p.299). The protests were again initially led by the members of the 1988 generation student movement, in which some 500 activists marched in Rangoon, and were repressed as usual by the police force, who detained several students and activists. Things however unfolded in a different way than in 1988, as religious-led pacific demonstrations against the unbearable cost of living outburst in Pakokku, a very well-known Buddhist enclave. The Tatmadaw (Matthews, 1993, p.38) response was overwhelming: the army stormed in the enclave, attacking unarmed monks. The public outrage for the mistreatment of the traditionally highly estimated Buddhist clergy allowed a real religious opposition movement to gain momentum: almost every Sangha in the country gathered in the Alliance of All Burma Monks (ABMA). On the 15th of September, ABMA declared a religious boycott, which consisted in forbidding the monks to accept alms and subsidies from the army. The act of overturning the bowl (*pattam nikkyjjana kamma*) is very symbolic in the politics of the country and has its roots in ancient Burmese traditions. The Burmese culture envisions the religious community as the maintainers of the karmic equilibrium and granter of merit and depicts the act of giving charity to the begging monks as the highest act of blessing and good fortune (Udin, 2017). The protests reached a third phase when a numerous group of Buddhist monks were mistakenly allowed by the military to visit NLD leader San Suu Kyi's on the 22nd of September. A few days later, hundreds of thousands of monks and secular civilians, activists and dissenters marched in all the major cities of the country, marking the greatest challenge to the military regime since its creation in 1962. On 26th of September 2007, the Tatmadaw opened fire on the protestors and raided monasteries, civilian homes and public venues. Thousands of monks were detained and at the same time a great propaganda campaign was launched, questioning the sanctity of the protesting monks (Rogers, 2008, p.117).

In 2007, the Tatmadaw managed to successfully ward off the subversion of the wide- scale protests. However, they came out of the political battle with a weakened credibility, legitimacy and popularity: the incoherence of decades of fostering the religious community did not logically fit with the repressive, patronizing attitude towards them in the revolution (McCarthy, 2008). However powerful the military response, the Saffron ushered in democratic change. In 2008 a referendum for a new constitution was set forth. The subsequent constitution was accepted by the 92% of the population, its preamble containing liberal principles shared by contemporary western democracies: the ultimate sovereignty of the people, the reiteration of the existence of a multi- party regime and of the legitimacy of democratic elections, support for racial and social equality, the commitment to values of freedom and justice (Selth, 2008, p.292). Although the statements of the preamble are very general and vague in their practical application and notwithstanding the arbitrary reservation of one quarter of the parliament seats for the military, the constitution was deemed a great democratic leap forward. It indeed paved the way for the twilight of the SPDC and more concrete steps towards fair and open elections. An interim civilian government was elected in 2011 with Thein Sein, one of the former generals of the Tatmadaw rule, as president. Unexpectedly, Sein's mandate acquiesced to the will of the people for liberal and democratic reforms and enacted them with quiet determination and overall spontaneity: he allowed the liberation of thousands of dissidents previously imprisoned, brought the NLD back to the official political arena, pledged in 2012

at the UN to pursue a road of “irreversible change” towards reforms. Thein Sein’s actions culminated in the elections held on the 8th of November 2015, in which Aung San Suu Kyi’s National League for Democracy achieved an overwhelming victory. The vote, considered generally fair, ended nearly 50 years of military authoritarian rule and gave the NLD the possibility to choose a president in full autonomy (Fisher, 2015).

THE CONSTITUTION IN THE SHADOW OF A GUN

The public agitation filled with mass protests and led by Buddhist monks and followed up by students in 2007 paved the path to some structural changes in Myanmar in 2008, and the SPD played a major role in drafting the new constitution. The whole design of the constitution was problematic as the new legal document needed to carefully balance the partial opening to democratic reforms with the preservation of the core interests of the Tatmadaw. Thus, the constitution legitimized the powers of the military and allocated the 25% of parliament’s seats to military officers (Steinberg, 2012, p.223). While drafting the constitution, the Tatmadaw made sure to ward off against charismatic leaders who could marginalize the prevailing role of the military in state stewardship. An Article 59(f) was thus introduced to bar anyone from becoming president if their spouse, either of their parents or any of their children had a genuine nationality link with a foreign country. The article has been considered by many a palpable attempt of thwarting Aung San Suu Kyi’s ambition to become president, as her children and late husband were British. The constitution of 2008 has set forth the balance of the strongly upheld interests of the military in government while granting the State the possibility of having a political executive. In other words, the military strongly lobbied to put the other actors in a position where they would have been *de facto* unable to further politicize the executive (Roberson, 2015).

On the other hand, the constitution ensured that the religious institutions had a fair share of recognition. The special status of Buddhism was reaffirmed by article 361, which states that “the Union recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the union” and the following article of the constitution has guaranteed the freedom for other religious practices in Myanmar. To the biggest dismay of the Sangha, the 2008 constitution affirmed that it could not be abused by using for political gain or promoting feeling of hatred among the religious or ethnic communities. Such provision certainly displeased the Sangha as they believed it was designed by the military to reduce their political participation over state affairs. The overarching problems arising from the balancing of the constitutional rights of the Sangha and the Tatmadaw have been challenging. From 1947 to 2008 the aforementioned relationship between the Sangha and state authorities has been a cause for mutual suspicion (Cheesman, 2009). To some extent, the constitution has been seen as a tool to compartmentalize and regulate religious communities. On the other side, it has prevented the Sangha from posing a threat to state power (Crouch, 2019). Such constitutional dilemma plays a pivotal role in understanding how the Burmese way towards democracy is ripe with hurdles.

A salient feature that one can easily identify in examining the constitutional building process of Myanmar under the military rule is that the whole process was driven by the military’s footprint. The idea of drafting a constitution for Myanmar firstly circulated in 1993 and it took 15 years for the completion thereof (Crouch, 2019). In the drafting session, the military reserved 25% of parliament seats for its functionaries and then included a provision

stating that any constitutional amendment requires a 75% support from the legislature. From a constitutional law point of view, the whole drafting process has been akin to give away as much unnecessary power to a political government that could be chosen by the people, while at the same time holding on to key decision-making stances (Cheesman, 2013). With such project in mind, the SPDC handpicked 54 members to draft the constitution and gave them limited drafting time and narrow wiggle room to settle incompatibilities between the various actors, that gave way to various constitutional ambiguities in the text (Chambers, 2014). Overall, the constitution reflected a presidential system with a bicameral legislature featuring a Pyithu Hluttaw (lower house) and an Amyotha Hluttaw (upper house). Ostensibly, the structure of the union was a balance proportion representing all the ethnic communities in Burma, but de facto, the military held on to the core levers of power. The whole trajectory of new democratic reforms in Myanmar was dithering between a partially political system that would accommodate key military interests. Notwithstanding the willingness shown by the Tatmadaw to abdicate some of the powers they enjoyed, the core powers were still vested in their hands (Chambers, 2014).

On the other hand, the choice of some of the key provisions in the constitution was palpably intended to prevent Aung San Suu Ki from entering the active political arena. The article 59 (f) was crafted under the clear intention of removing Suu Ki and her children from Burmese politics as it prohibits from presidency any person whose children are citizens of another country. The military furthermore ensured a privileged status by including a clause regarding the indispensable status of the military under the “Basic Principles”. To this end, an article 6 (f) in the Constitution stated “enabling the Defense Services to be able to participate in the National political leadership role of the state”, while the following article 7 disciplined the multi-party democratic system. Given the asymmetrical status between the military and the political parties enshrined in the constitution, the expectations of a fully-fledged democratic governance seemed out of reach. With the same strategy in mind, the military achieved a de facto monopoly over the use of force securing the ministry of home affairs, border control and defense in an article 232 (b) II of the Constitution (Crouch, 2019). Finally, the mechanism for constitutional amendment was purposefully rendered very demanding to activate, allowing the Tatmadaw to have a veto power in all scenarios. The inclusion of Article 420 was the simple Shmithian version in Myanmar due to its reference to the Commander in Chief of the Defense Service as the responsible person who would restrict or suspend one or more fundamental rights during the state of emergency (Chambers, 2014).

In a nutshell, the democratic features enshrined in the 2008 drafted constitution in Myanmar were highly stifled by the military’s effort to hold on to key decision-making sectors. After the release in 2010 from her house arrest, Aung San Suu Kyi often remarked that the democratic system in Myanmar could not be established or sustained without the willingness of and cooperation from the Tatmadaw (Myat, 2019) whose support she understood to be critical for the establishment of a quasi-political government. Suu Kyi even made a strong attempt in 2011 along with her other loyal supporters from NLD to gain public support via long petition to seek more democratic constitutional changes, but her efforts were not met as the military-dominated parliament explicitly denounced the campaign (Phy Taw, 2008).

The major conclusion stemming from the constitutional experience of Myanmar shows that the Tatmadaw successfully gave some parts of their power away in a way which did not undermine their monopoly over the use of force and maintained their political clout intact.

The creation of the 2008 Constitution can be seen as the Tatmadaw's effort to give in to international pressure while at the same time preserving their privileged role in decision making. It is however worth noting that the 2008 constitution paved the way for many major changes in Myanmar which resulted in Aung San Suu Kyi's political victory in 2015. Many of the western scholars in the field of constitutional law believed in the Myanmar's 2008 constitutional experiment as a progressive step toward democracy regardless of its major flaws (Aung Myoe, 2014, p.233). Needless to say, however democratic the constitution claimed to be, it still rooted in military dominance, that is antithetical to a genuinely democratic society. The militarized constitution of 2008 has constitutionalized the continued participation of the military in Myanmar while relegating the people to a position where they may never constitutionally depose the army. Noah Feldman has aptly described it as "drafted and adopted in the shadow of a gun" (Feldman, N, 2016). Such anomalies were less helpful in fostering any constitutional mindset or consensus in Myanmar; thus, the whole design of the Constitution of Myanmar can be viewed as an instrument that provided an easy path to the military takeover.

FALLEN FROM GRACE AND POWER: THE REASONS BEHIND AUNG SAN SUU KYI'S INABILITY TO MEET INTERNATIONAL EXPECTATIONS

Since Aung San Suu Kyi's release from house arrest in 2010, up to her ascendancy to power as the state councilor in 2015, the international community regarded Suu Kyi as the epitome of democracy. In her quest towards premiership and until the 2015 election, Suu Kyi's image in the West was filled with a reverence proper to a champion of democracy. Such image firstly took shape by her winning the Nobel Peace Prize in 1991 for her activism. In the aftermath of such event, the western media zealously portrayed her political triumph in 2015 as the long-awaited moment to democracy (Udin, 2017). However, the violence against the Rohingya Muslim community followed by continued state oppression definitely diminished Suu Kyi's image and finally she fell from grace to become a global pariah. The Rohingyas represent the largest percentage of Muslims in Myanmar who have claimed their descendants of the Arab merchants. Their own language and culture have distinguished them from majority of Burmese Buddhists as a different ethnic group, but the reluctance of Burmese governments in the aftermath of independence to recognize them as an ethnic community in Myanmar made their lives vulnerable. When the Tatmadaw intensified their ethnic cleansing against the Rohingyas in 2017, the international community expected Suu Kyi to take a strong stance against it. On the contrary, she went on to describe the Rohingya as a problem imposed upon Burma by the British prior to the independence and making such a claim severely diminished her credibility in the West (Udin, 2017).

In order to understand the deep political roots of the current military takeover of Myanmar which ousted Suu Kyi from power, one needs to examine why Suu Kyi failed to address the wider expectations from the international community. After her first house arrest in 1988, the significant international reputation gained by Suu Kyi hinged on the western expectation that she could bring liberal democracy to Myanmar. After the fall of the Berlin Wall and the end of Bipolarism, the West emerged victorious. As a consequence, a gust of ideological exuberance pervaded the academia, with Francis Fukuyama at the forefront coining his End of History thesis which apotheosized "liberal democracy" as the final form of government which would be inevitably adopted universally (Fukuyama, 1992). In the backdrop of the West's sanguine hopes on liberal democracy in Myanmar, Suu Kyi came into power,

but many argued that her political persona was filled with arrogance, which symbolized her Buddhist political heritage. In writing his timely work "*The Moral Democracy: The Political Thought of Aung San Suu Kyi*" Michal Lubina argues that the biggest drawback of Suu Kyi was rooted in reluctance to relinquish her queen style rule (Lubina, 2019). Lubina states:

"She governs like a mandate of heaven holder, authoritarian matriarch who preaches, declares and orders from her celestial position, who makes politics behind the closed doors in the Royal capital, who micromanages everything, who needs to consent every decision, who does not tolerate any dissident voices and does not listen to any outside ones, who limits parliamentary and party democracy as well as freedom of speech" (Lubina, 2019, p.41).

The above-mentioned description belonging to a western political scientist simply portrays how a champion of liberal democracy had gradually transformed into an authoritarian leader driven by her oriental upbringings. From a vantage point, Suu Kyi's political campaigning and speeches prior to the 2015 elections gave a clear sign that her conduct would not faithfully meet Western expectations. Instead of focusing on specific institutions in the way of governance, all of her appealing speeches had strong empathy on the desire to return to the people through an elected leader. Burmese historian Thant Myint U claims that such scenario reflects a specific moment that exposes the political chicanery of Aung Sang Suu Kyi. To the biggest dismay of the international community and the NGO activists Suu Kyi failed to collaborate with all the communities in Myanmar (Desaine, 2018). The surprise emerged from the international community toward Suu Kyi was further worsened by the subsequent events in Myanmar. Especially, her lethargic reaction before the abominable ethnic cleansing carried out by the military against the Rohingya Muslims was a notable factor which raised vehement criticisms from the international community. In one instance Aung San Suu Kyi empathetically ignored the Rohingya crisis as a problem generated by Rohingya's inability to integrate into mainstream Myanmar society and refused to acknowledge that lives of Rohingya people were at stake. After 2015 the power transition of Myanmar, Suu Kyi's political party failed to frame a solid proposal addressing the pertinent issues in the society. The NLD did not present a single candidate from ethnic minorities to the parliament as a populist move to secure their voting base in rural Burmese Buddhists. Moreover, the cabinet chosen by Suu Kyi became the most long-lasting one in Burmese history which consisted of her older NLD loyalists and of former generals (Iwanek, 2019)

The atrocities committed in Myanmar in the period from 2015 to 2017 raised international condemnation. In the occasion, the Gambia filed a case before the ICJ alleging that Myanmar's atrocities against Rohingyas violated the Genocide Convention of 1948. The case became significant as it was the first time that a country without any direct link to the alleged atrocities used its membership in the Genocide Convention to bring a case before the ICJ (Bowcott, 2019). In doing so, the Gambia filed a request from the court for an order to the provisional measures to safeguard the lives and rights of the Rohingya community. The Gambia pointed out that the court should consider with urgency to order Myanmar to take immediate measures to prevent the genocide acts. In defending Myanmar, its legal team to the ICJ was headed by Aung San Su Kyi as the State Counsellor and at that time Tatmadaw declared it would cooperate with Su Kyi in defending the national interests of Myanmar. The international community expected that Su Kyi would admit the state responsibility of Myanmar in an attempt to recognize the issue of the violation of the rights of the Rohingya.

On the contrary, Su Kyi went on to deny that such large-scale atrocities were perpetrated. From a legal point of view, Su Kyi's speech was a legal defense intended to argue against the attribution of the wrongful act to the state of Myanmar. In her defense, she was cautious to not using the term "Rohingyas" indicating the sheer reluctance of Myanmar state apparatus to even acknowledge the existence of that ethnic community (Bowcott, 2019). Her speech was mainly driven by her traditional Burmese Buddhist nationalist sentiments which portrayed the Rohingyas as a militant group. Her remarks describing Rohingyas as "Muslims" controlled by the "Global Muslim Power" gave rather visible signs of a xenophobic, Islamophobic sentiments, which stroke a heavy blow to her image in the international world as a champion of human dignity and democracy (Simons, 2019). It is indeed not an exaggeration to state that her presence at the ICJ was the darkest hour of Aung San Suu Kyi. Yet, Su Kyi she took the plunge by justifying the military and defending the national interests. Her act was widely perceived as an effort to secure the Tatmadaw's support so that the NLD could uphold its political presence in Myanmar. Also, she was well aware of the fact that overwhelming majority voters in Myanmar would support her despite all the international allegations on committing atrocities against the Rohingya (Peterson, 2018).

4. CONCLUSIONS

A question arises as to why a human rights defender and Nobel peace laureate respected by the international community could not seize the given opportunity of giving Myanmar momentum for more liberal reforms. The answer can be found in the analysis which we offered regarding the constitutional ambiguity of Myanmar where the indispensable power balance of the military's interest and the Sangha's has affected the whole statehood. Furthermore, it needs to be highlighted that the Myanmar's Buddhist majority did not call for a leader who would stand for the whole western liberal democratic values, many of which, like secularism or multiculturalism, have been deeply at odds with the Burmese traditions. On the contrary, the prevailing opinion of Myanmar has been to lean toward the archaic Burmese notion of the *Bodhisattva* ruler who would promote and protect Buddhism as nation's unifier. As a matter of fact, the West could not understand that the governing style of Suu Kyi was rooted in her firm belief in protecting the country's unity and values than upholding liberal democratic values. The chasm between her initial quest for human rights and the way she addressed them after coming into power in 2015 has irked western expectations. On the other hand, in the constitutional power struggle, Suu Kyi's and her party's main motives have aimed to delegitimize the Tatmadaw to secure their political power. In doing so, Suu Kyi opted for the common Asiatic practice of pleasing the majoritarian religious sect for the preservation of political power from the opponents. Despite the asymmetry of power, the political scenario in Myanmar since 1988 has been an open competition between the Tatmadaw and Aung San Suu Kyi. Having known the persistent threat of the former, Suu Kyi and the NLD built a relationship with the Sangha in the post 2015 context as a general appeal to Burmese Buddhists. However, Suu Kyi's defense of the Burmese Buddhist majoritarian attitude and persistent denial of the Rohingya issue in Myanmar were driven by the need to sway the general public opinion by the NLD's side exploiting the hostility of the Theravada's majority Islam.

To conclude, the February 2021 coup d'état has been the result of years of unresolved tensions between Myanmar's various interest groups. The military, though securing the monopoly over the use of force in Myanmar and a consistent political representation, decided to take a step back from today's status quo that they reluctantly conceded after the Saffron Revolution after the NLD landslide victory brought Suu Kyi close to be able to amend the constitution in parliament. The sudden change in circumstances should lead to the understanding that the Tatmadaw gave up a significant amount of power, that in the right circumstances might have seriously threatened their rule. At the same time, Aung San Suu Kyi's recent political performance that has severely tarnished her international reputation should instead be seen with realist lenses: the political leader understood the necessity to appease the military in light of the constitutional power it retained even after the democratic opening. Suu Kyi's deviation from the western expectations result from her attempt to reconcile the unstable equilibrium of a plethora of actors: the Tatmadaw, the Sangha, the people, with a pragmatist glance to the likely fact that, if the military felt threatened, it would have broken the status quo. For what concerns the forecasts of the consequences of the coup d'état, further studies should be conducted in the Myanmar-China relations, understanding to what extent the regional hegemon supports the military junta.

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