

Myanmar's Seat At ASEAN: A Charter-Based Reassessment

Hla Myet Chell¹

¹School of International Law, Southwest University of Political Science and Law, Chongqing, China, wb202503010931@stu.swupl.edu.cn
Corresponding Author: wb202503010931@stu.swupl.edu.cn

Abstract

Five years after the February 2021 state of emergency, ASEAN has shifted from an emergency response toward a sustained restriction of Myanmar's high-level participation whose legal coherence now warrants scrutiny. This article examines the tension between that practice and the legal architecture of the ASEAN Charter. Adopting a normative juridical method and drawing on primary instruments the ASEAN Charter, the Constitutive Act of the African Union, the Treaty on European Union, and the Vienna Convention on the Law of Treaties it asks whether the restriction is Charter-compatible and whether the Five-Point Consensus has sufficient legal character to ground it. Through comparison with the suspension regimes of the African Union and the European Union, the study finds that the restriction operates outside any formal Charter mechanism and that the Five-Point Consensus, as a non-binding political understanding, cannot supply the missing legal authority. It concludes that ASEAN should relocate its approach within the Charter through Article 48 amendment or authentic interpretation and restore functional engagement, since responsible engagement rather than prolonged exclusion is the more legally coherent course.

Keywords: ASEAN Charter; Five-Point Consensus; suspension mechanism; ASEAN centrality; sovereign equality.

A. INTRODUCTION

Myanmar has arrived at a critical juncture in its relationship with the Association of Southeast Asian Nations (ASEAN). Five years after the February 2021 state of emergency, what began as an emergency diplomatic response to exceptional circumstances has gradually solidified into a sustained regional posture whose legal coherence, strategic effectiveness, and institutional sustainability are increasingly subject to question. At the 48th ASEAN Summit

held in Cebu, the Philippines, from 6 to 8 May 2026, Myanmar was represented at the level of Permanent Secretary of the Ministry of Foreign Affairs rather than at head-of-government level, in accordance with the prevailing regional consensus. This recurring pattern now extending across multiple summit cycles raises a structural question that transcends immediate political considerations: whether ASEAN's current practice remains consistent with the institutional logic of its own founding Charter.

The question is neither trivial nor purely academic. ASEAN's institutional architecture rests upon a carefully negotiated legal framework that balances normative aspirations with the principles of sovereign equality and consensus-based decision-making. When institutional practice diverges from that framework over an extended period, the resulting tension produces consequences not only for the member state directly affected but for the legal foundations of the organization as a whole. As White (2016) has observed, regional organizations are defined less by how they respond to crises than by whether those responses remain anchored in the legal instruments that constitute their institutional identity. The issue, therefore, is no longer solely about Myanmar; it is increasingly about ASEAN itself: its interpretive boundaries, its legal consistency, and the durability of its institutional framework under conditions of prolonged internal conflict within a member state.

Previous scholarship has addressed important dimensions of ASEAN's response to the Myanmar crisis. Caballero-Anthony (2005) examined ASEAN's security architecture and its limitations; Jones (2012) analyzed the tension between sovereignty norms and intervention pressures within the organization;

and the International Crisis Group (2022, 2025) has documented the crisis's regional implications in detail. From within the region, Severino (2006) and Tan (2011) have illuminated, respectively, the institutional logic of the ASEAN community and the normative evolution of its human-rights architecture, while Kharisma and Widyautami (2024) have recently assessed the operation of the ASEAN Special Envoy mechanism. More recent analyses have engaged ASEAN's response to the post-2021 situation directly: Drajat (2022) traces ASEAN's ambivalent socialization of Myanmar before and after the February 2021 state of emergency, and Gunawan (2024) examines the gap between ASEAN's stated principles and its actual conduct during the crisis. These studies, however, predominantly adopt political-science, humanitarian, or institutional-historical frameworks and treat the legal-institutional dimension as secondary.

A notable gap thus remains in the literature: existing studies have not produced an integrated normative juridical analysis that systematically evaluates ASEAN's current approach against the Charter's own provisions while comparing its institutional practice with regional organizations possessing explicit suspension mechanisms. This article addresses that gap and, in doing so, makes three distinct contributions to the international institutional law literature. First, it fills the analytical gap by offering a systematic doctrinal evaluation of ASEAN's post-2021 practice toward Myanmar against the specific provisions of the ASEAN Charter, moving beyond the political-science and humanitarian framings that dominate existing scholarship. Second, it expands the comparative literature by situating that evaluation within a structured comparison of the suspension regimes of the African Union and the European Union, thereby clarifying, through the

method of contrast, the interpretive significance of the ASEAN Charter's silence. Third, it corrects a tendency in prior scholarship to treat ASEAN's response as a matter of policy or diplomacy alone, by integrating the Charter-based analysis with an assessment of the legal character of the Five-Point Consensus and showing how a non-binding political instrument has come to perform a quasi-constitutional function it was never designed to bear. The article's scholarly contribution, accordingly, is to supply the integrated normative-juridical account of ASEAN's practice that the institutional-law dimension of the crisis has so far lacked.

Accordingly, this article is structured around two specific research questions: (1) Is ASEAN's sustained restriction of Myanmar's high-level participation compatible with the legal architecture of the ASEAN Charter? and (2) Does the Five-Point Consensus possess sufficient legal character to serve as a valid basis for such a restriction of a member state's sovereign participation? A subsidiary question follows from these two: (3) What are the strategic and institutional implications of prolonged disengagement for ASEAN's credibility and centrality, and what legally coherent alternatives are available within the Charter framework? Research Question (1) is examined in subchapters 1 and 2, Research Question (2) in subchapter 3, and the subsidiary question in subchapters 4 to 6.

B. RESEARCH METHOD

This study employs a normative juridical method, focusing on the systematic interpretation of legal norms, treaty provisions, and institutional principles. The method is chosen because the central problem is doctrinal rather than empirical: it concerns the legal meaning of the ASEAN Charter and the legal character of the Five-Point Consensus, questions that can be resolved only through interpretation

of authoritative legal texts. Two approaches are combined, and the combination is deliberate. A statute (statutory-interpretation) approach is necessary to answer the first research question, which turns on the meaning of the Charter's own provisions; a comparative approach is necessary to answer it fully, because the decisive interpretive issue the legal significance of the Charter's silence on suspension cannot be assessed from the text alone but only against a benchmark of comparable instruments that do regulate the matter. The two approaches are therefore complementary: the first establishes what the Charter says, and the second establishes what its silence means. The primary legal materials comprise the ASEAN Charter (2007), the Constitutive Act of the African Union (2000), the African Charter on Democracy, Elections and Governance (2007), the Treaty on European Union (2012), the Vienna Convention on the Law of Treaties (1969), the Charter of the United Nations (1945), the Five-Point Consensus (2021), and the Report of the Eminent Persons Group on the ASEAN Charter (2006); the secondary materials comprise recent scholarly literature, including scholarship produced within Southeast Asia, official ASEAN Chairman's Statements, and reports of the International Crisis Group and the United Nations Office for the Coordination of Humanitarian Affairs. As to operationalization, (a) the comparative analysis selects the African Union and the European Union as comparators on three criteria each is a treaty-based regional organization of general competence, each has expressly codified a participation-restriction mechanism (Article 30 of the AU Constitutive Act and Article 7 of the Treaty on European Union), and each has an actual practice of applying that mechanism so that text and behaviour can both be compared, while regional bodies lacking either

a treaty-based constitutive instrument or a codified mechanism are excluded as offering no comparative leverage; and (b) the Vienna Convention principles are applied by reading the Charter's operative provisions (its purposes in Article 1, principles in Article 2, and decision-making rule in Article 20) under Article 31(1) in good faith, in their ordinary meaning, in context, and in the light of the Charter's object and purpose and by using the Charter's preparatory work under Article 32 as a supplementary means to confirm that reading, with the canon *expressio unius est exclusio alterius* deployed within, and not independently of, this framework. The legal materials were collected through documentary study and analyzed qualitatively to evaluate the alignment between ASEAN's institutional practice and its Charter-based legal foundation.

C. RESULT AND DISCUSSION

1. The Charter Framework: What It Provides and What It Does Not

The ASEAN Charter, adopted at the 13th ASEAN Summit in Singapore on 20 November 2007 and entered into force on 15 December 2008, constitutes the organization's foundational legal instrument. It establishes the juridical personality of ASEAN, defines the rights and obligations of its member states, and codifies the institutional architecture governing regional cooperation, conferring on ASEAN a legal personality and the status of a subject of international law (Koh et al., 2009; Woon, 2016; Chesterman, 2008). As a treaty registered with the United Nations under Article 102 of the UN Charter, it is subject to the interpretive principles of the Vienna Convention on the Law of Treaties, which require that treaty terms be interpreted in good faith in

accordance with the ordinary meaning to be given to the terms in their context and in the light of the treaty's object and purpose (United Nations, 1969).

Article 2(2) of the ASEAN Charter affirms several core principles that constitute the normative foundation of the organization: respect for the independence, sovereignty, equality, territorial integrity, and national identity of all member states; non-interference in the internal affairs of member states; the right of every member state to lead its national existence free from external interference, subversion, and coercion; and enhanced consultation on matters seriously affecting the common interest. These are binding treaty obligations, ratified by the member states through their respective constitutional processes. The principle of sovereign equality, in particular, constitutes a foundational norm of international institutional law (White, 2016). In the Nicaragua case, the International Court of Justice affirmed that sovereign equality is a cornerstone of the international legal order, entailing that no state may be subjected to institutional measures absent a clear legal basis (International Court of Justice, 1986).

It must be acknowledged that the Charter is not silent on normative aspirations beyond sovereignty and non-interference. Article 1(7) identifies among ASEAN's purposes the strengthening of democracy, the enhancement of good governance and the rule of law, and the promotion and protection of human rights and fundamental freedoms, with due regard to the rights and responsibilities of member states; Article 2(2)(h) affirms adherence to the rule of law, good governance, and the principles of democracy and constitutional government. These provisions reflect genuine normative commitments that

emerged through extensive negotiation during the drafting process and represent a significant evolution in ASEAN's institutional identity, even as their enforcement has remained constrained (ASEAN Eminent Persons Group, 2006; Tan, 2011; Bui, 2016).

However, purpose clauses and structural enforcement mechanisms operate at fundamentally different levels within a treaty's legal architecture. As the International Law Commission (2011) has recognized, the purposes and principles of an international organization inform the interpretation of its constitutive instrument but do not independently create powers not otherwise conferred by that instrument. The canon *expressio unius est exclusio alterius* the expression of one thing implies the exclusion of others is a recognized principle of treaty interpretation (Jennings & Watts, 1992): where a constitutive treaty specifies certain institutional powers and procedures while remaining silent on others, that silence carries interpretive significance.

Critically, the ASEAN Charter contains no provision authorizing the suspension, expulsion, or restriction of a member state's participation on the basis of domestic political developments. No article establishes a procedure by which a member state's right to high-level representation may be curtailed; no mechanism provides for conditional membership based on internal political arrangements; no voting threshold is specified for such a decision; and no procedural safeguards such as a right to be heard, a temporal limitation, or a review mechanism, are provided. Article 20 provides that, as a basic principle, decision-making in ASEAN shall be based on consultation and consensus, a principle that itself presupposes the full participation of all member states.

Even the dispute-settlement provisions of Chapter VIII do not contemplate the restriction of a member state's participation as a permissible outcome (Woon, 2016).

An alternative interpretive position nonetheless exists within contemporary scholarship. Proponents of a more dynamic institutional interpretation may argue that ASEAN's purposes under Articles 1(7) and 2(2)(h) imply a limited institutional discretion to respond to situations perceived as fundamentally inconsistent with the organization's normative identity, so that the restriction of high-level participation is not a formal suspension but an extraordinary diplomatic measure intended to preserve institutional credibility. This argument cannot be dismissed lightly, for international organizations frequently develop practices that extend beyond the strict text of their constituent instruments. Yet such implied powers remain controversial and generally require either consistent subsequent practice accepted by member states as law or an identifiable nexus to expressly conferred treaty powers. The difficulty for ASEAN is that its approach toward Myanmar has evolved into a prolonged arrangement without Charter amendment, procedural codification, or clearly defined legal limits. To hold that Articles 1(7) and 2(2)(h) independently authorize restrictive measures would imply that any member state's participation could be curtailed on a subjective assessment of its domestic governance a proposition that would undermine sovereign equality and create a precedent of concern to every member, given the diversity of political systems within ASEAN since its founding in 1967 (Acharya, 2013).

It might further be argued that ASEAN's current practice does not constitute formal suspension under the Charter at all, but rather an exercise of the rotating Chair's discretion in extending high-level invitations. This characterization, however, does not resolve the underlying legal question. Whether the restriction is labelled a suspension or framed as a discretionary invitational practice, its substantive effect is the curtailment of a member state's high-level participation in the organization's principal decision-making forum a participation that the Charter neither makes contingent on any external assessment of domestic governance nor permits to be conditioned upon political consensus among other members. The canon *expressio unius* applies regardless of the procedural form in which the restriction is expressed (Jennings & Watts, 1992).

2. The Comparative Dimension: Why the Absence Matters

The absence of a suspension mechanism within the ASEAN Charter acquires particular significance when examined through a comparative institutional lens. Other regional organizations that possess such powers have explicitly codified them within their founding instruments, a pattern that underscores the deliberateness of the ASEAN Charter's silence.

The Constitutive Act of the African Union, adopted in Lomé on 11 July 2000, provides under Article 30 that governments which come to power through unconstitutional means shall not be allowed to participate in the activities of the Union. Its legal trigger is defined and its consequence specified. The African Charter on Democracy, Elections and Governance (2007) elaborates this framework, defining the situations that constitute

unconstitutional changes of government in Article 23 and the graduated response measures available, including suspension, in Article 25. Since the adoption of the Constitutive Act, the African Union has suspended member states on numerous occasions, among them Madagascar, Egypt, Sudan, Mali, Guinea, Burkina Faso, Niger, and Gabon, in each case pursuant to an express treaty provision with a defined legal basis.

Article 7 of the Treaty on European Union establishes a formal, multi-stage procedure for addressing serious and persistent breaches of the Union's foundational values. A determination that there exists a clear risk of a serious breach requires a four-fifths majority of the Council after obtaining the consent of the European Parliament, while a determination that a serious and persistent breach actually exists requires unanimity in the European Council, excluding the member state concerned; only upon such a determination may the Council suspend certain membership rights, including voting rights. The procedural complexity of Article 7 reflects the framers' recognition that restricting a member state's participation is among the most consequential powers a regional organization can exercise (Sadurski, 2019). The proceedings initiated against Poland in 2017 and against Hungary in 2018 illustrate both the gravity with which such mechanisms are treated and the institutional safeguards governing their application.

The implication for the ASEAN framework is clear. When the drafters of a regional organization's constitutive instrument intend to confer suspension or restriction powers, they do so expressly, with defined triggers, procedural safeguards, and institutional oversight. The ASEAN Charter's drafters were

not unaware of these comparative models. The Eminent Persons Group recommended in 2006 that the Charter incorporate a provision for the suspension of membership rights in cases of serious breach of ASEAN's principles, but this recommendation was ultimately not adopted in the final text a deliberate decision by the High-Level Task Force that drafted the instrument and by the leaders who adopted it, reflecting the membership's unwillingness at the time to depart from the consensual, non-punitive ASEAN Way (ASEAN Eminent Persons Group, 2006; Koh et al., 2009; Ahmad, 2016). This drafting history carries significant interpretive weight under Article 32 of the Vienna Convention, which recognizes the preparatory work of a treaty as a supplementary means of interpretation (United Nations, 1969). That a suspension mechanism was proposed, considered, and excluded strongly supports the conclusion that its absence represents a deliberate structural choice consistent with ASEAN's foundational emphasis on sovereign equality and consensus-based, non-punitive institutional design rather than an inadvertent omission.

3. The Five-Point Consensus: Political Understanding, Not Legal

Instrument

Much of ASEAN's present posture toward Myanmar continues to be framed around the Five-Point Consensus reached at the ASEAN Leaders' Meeting in Jakarta on 24 April 2021, which comprised the immediate cessation of violence; constructive dialogue among all parties concerned; the appointment of a Special Envoy of the ASEAN Chair to facilitate mediation; the provision of humanitarian assistance through the AHA Centre; and a visit

by the Special Envoy to Myanmar to meet with all parties concerned (ASEAN, 2021).

The instrument, however, was not drafted as a treaty within the meaning of Article 2(1)(a) of the Vienna Convention, which defines a treaty as an international agreement concluded between states in written form and governed by international law (United Nations, 1969). It was not subject to formal ratification, was not registered with the United Nations as an international agreement, and does not possess binding legal force under either the ASEAN Charter or general international law; its provisions were drafted in hortatory rather than obligatory language (Aust, 2013; Mahaseth & Subramaniam, 2021). The distinction between politically binding and legally binding instruments is well established in international law (Schachter, 1977; Klabbers, 1996): political commitments, however solemnly undertaken, do not generate legal obligations enforceable as a matter of law unless they satisfy the requirements for treaty formation or give rise to other recognized sources of legal obligation. This characterization is not displaced by the instrument's subsequent endorsement at the United Nations. Although both the General Assembly (United Nations General Assembly, 2021) and the Security Council (United Nations Security Council, 2022) called for the implementation of the Five-Point Consensus, they did so in recommendatory terms rather than by binding decision, and such endorsement neither converts the Consensus into a treaty nor alters its non-binding character.

This distinction carries significant institutional implications. Employing a non-binding political understanding as the continuing basis for restricting a

member state's participation five years after its adoption creates a precedent extending well beyond the immediate situation (Jones, 2010). If a political consensus, rather than a formal legal instrument with defined procedures and safeguards, can serve as the indefinite basis for limiting sovereign participation, the institutional security of every member state is potentially affected. The principle that membership rights derive from the Charter, and may be restricted only through Charter-based mechanisms, serves as a fundamental guarantee for all members, particularly smaller states whose institutional security depends upon the consistent application of legal norms rather than upon the political preferences of larger neighbours (Acharya, 2013).

A potential objection must be addressed directly, since it bears on the coherence of the argument as a whole, and it has been examined in recent scholarship on the contested legitimacy of the consensus (Haacke, 2025). If the Five-Point Consensus is a legitimate ASEAN consensus decision, how can the measures associated with it be described as operating outside the Charter? The answer lies in distinguishing the legitimacy of an instrument's adoption from its legal capacity to produce a particular effect. The Five-Point Consensus was, on its face, validly adopted by consensus, and in that procedural sense it is a legitimate political instrument. Two points nonetheless follow. First, the restriction of high-level participation does not in fact derive from the text of the Consensus at all: none of its five points authorizes, or even mentions, the curtailment of a member state's participation, so the restriction is an additional measure layered upon the Consensus rather than an implementation of it. Second, and more fundamentally, even a validly adopted political consensus

cannot confer upon the organization a power that the Charter itself withholds. A non-binding instrument may legitimately express the collective political will of the membership, but it cannot, by virtue of that legitimacy alone, supply the legal authority to restrict a treaty-based right that the Charter renders unconditional. Consensual legitimacy and Charter legality thus operate on different planes; to recognize that the Consensus was legitimately adopted is therefore entirely consistent with concluding that the participation restrictions built upon it lack a Charter basis.

The comparative dimension reinforces this concern. When the African Union suspends a member state under Article 30 of its Constitutive Act, it does so pursuant to an explicit treaty provision; when the European Union initiates proceedings under Article 7 of the Treaty on European Union, it follows a defined procedural framework requiring specific institutional actions and supermajority thresholds. These mechanisms operate within a legal architecture that supplies both legitimacy and predictability. ASEAN's current approach toward Myanmar operates outside any such framework a reality that carries implications not merely for one member state but for the institutional foundations of the organization as a whole (White, 2016).

4. The Institutional Counterpart Question

Beyond the legal dimension lies a fundamental practical question that ASEAN's current approach has not adequately addressed: if ASEAN does not engage Myanmar's governing institutions, with whom does it engage? ASEAN's institutional architecture is built entirely upon state-to-state relations. The Charter recognizes member states not political movements,

armed groups, or parallel governance structures, as the sole units of institutional participation, and every ASEAN mechanism, from Summits to Ministerial Meetings and technical working groups, operates on the basis of engagement between recognized state authorities.

No alternative entity presently holds ASEAN membership on behalf of Myanmar. While Myanmar's representation at the United Nations has been the subject of competing credentials submissions, on which the General Assembly's Credentials Committee has repeatedly deferred a decision, the authority based in Naypyidaw remains the entity in effective control of the State and its administrative apparatus. The doctrine of effective control informs the recognition of governmental authority for the purposes of international representation (Crawford, 2006): the authority based in Naypyidaw continues to administer the State's public services and to maintain diplomatic relations with much of the international community. In the absence of engagement with this authority, ASEAN effectively lacks a functioning institutional counterpart for Myanmar's vacuum that undermines the practical efficacy of regional cooperation on every issue requiring Myanmar's participation, including humanitarian coordination, border management, transnational-crime prevention, disaster response, economic connectivity, and public health (OCHA, 2024).

The principle of Myanmar-owned, Myanmar-led solutions, which ASEAN itself has repeatedly endorsed as the appropriate framework for the country's political process, logically presupposes engagement with the institutions that govern Myanmar. One cannot simultaneously advocate a nationally led process

while refusing to engage the national authorities responsible for leading it. This internal contradiction undermines the coherence of ASEAN's stated policy framework and diminishes the organization's credibility as a constructive mediator (Jones, 2012).

This counterpart vacuum is not merely a practical inconvenience; it carries a legal construction. Under the principle of good faith that governs the performance of constitutive treaties, and the related principle of *effet utile*, an organization is expected to exercise its competences in a manner that gives practical effect to the purposes for which it was established. The ASEAN Charter, in Article 1, sets among those purposes the maintenance of regional peace and the response to transboundary challenges through cooperation. A posture that leaves the organization without any functioning interlocutor for one of its members impairs its capacity to give effect to these Charter purposes, so that the absence of a counterpart is not only a diplomatic gap but a self-imposed constraint on the good-faith performance of the Charter itself (White, 2016; International Law Commission, 2011).

5. Strategic Implications of Prolonged Disengagement

Myanmar occupies a critical geopolitical position at the intersection of Southeast Asia, South Asia, and southwestern China. It borders five countries and commands a long coastline along the Bay of Bengal and the Andaman Sea, and its internal stability directly affects migration flows, narcotics trafficking, border security, maritime connectivity, and the broader strategic equilibrium of the Indo-Pacific region (International Crisis Group, 2022; Lall, 2016). Its geographic position also places it at the centre of major connectivity initiatives,

while its offshore energy resources underscore its significance within the regional energy architecture.

Five years of restricted engagement have not produced a resolution to Myanmar's internal challenges. According to the United Nations Office for the Coordination of Humanitarian Affairs, approximately 19.9 million people in Myanmar required humanitarian assistance under the 2025 plan, with internal displacement reaching record levels (OCHA, 2024, 2025). These figures are not merely contextual; they bear directly on ASEAN's legal position. The scale of humanitarian need engages the cooperative commitments ASEAN has itself undertaken, including the disaster- and humanitarian-response architecture of the AHA Centre expressly invoked in the fourth point of the Five-Point Consensus. Cooperation has in fact continued at the working and technical levels: Myanmar has engaged actively with the AHA Centre in humanitarian and disaster-response coordination. What the restriction has principally constrained is coordination at the highest political level, where summit- and leadership-level dialogue shapes the strategic direction, resourcing, and scaling of such cooperation. More broadly, the principle of due diligence in international institutional law holds that an organization which has assumed competence over a field of cooperation incurs a corresponding responsibility to exercise that competence in good faith and with reasonable effectiveness. Where ASEAN has both asserted a coordinating role in Myanmar's humanitarian response and, through its restriction of high-level engagement, constrained the political-level coordination on which the full scaling of territorial access, customs clearance, and logistics ultimately depends, the

resulting shortfall is not only a strategic cost but a question of institutional responsibility. This tension reflects a broader regional recalibration in which non-interference is increasingly read alongside expectations of humanitarian cooperation and protection (Bellamy & Drummond, 2011).

Meanwhile, external actors including major powers with strategic interests in Myanmar's geographic position have expanded their influence in ways that progressively diminish ASEAN's own relevance to developments on the ground (International Crisis Group, 2025). In an era of intensifying great-power competition, ASEAN centrality depends not upon rhetorical assertion but upon demonstrated institutional coherence and the capacity to manage complex regional challenges through sustained engagement rather than prolonged exclusion (Severino, 2006; Acharya, 2017; Qiao-Franco, Karmazin, & Kolmaš, 2025). An organization that cannot engage one of its own member states at the highest political level is poorly positioned to assert centrality in broader regional affairs; a policy framework that increasingly diverges from the Charter while producing limited measurable outcomes erodes centrality rather than strengthening it.

6. Toward Principled Constructive Engagement

A reassessment of ASEAN's approach does not require abandoning concerns regarding humanitarian conditions, political inclusivity, or violence reduction, which remain legitimate regional objectives, nor does it imply endorsement of any particular governance outcome within Myanmar. What is required is recognition that the binary framework of engagement versus exclusion inadequately captures the range of institutional options available.

ASEAN's most effective periods of influence over member states' domestic trajectories have come through sustained engagement rather than institutional isolation an approach often characterized as the ASEAN Way, which enabled the organization to navigate the Cambodian conflict of the 1980s and 1990s, manage the admission of Myanmar in 1997, and maintain cohesion through the Asian Financial Crisis (Acharya, 2013; Jones, 2012; Aminuddin & Purnomo, 2017).

A framework of principled constructive engagement would build upon the functional cooperation that already continues at the working level in humanitarian access, border security, counter-narcotics operations, disaster preparedness, economic stabilization, public health, and transnational-crime prevention and combine it with the restoration of engagement at the highest political level and sustained diplomatic dialogue, while maintaining structured dialogue on the Five-Point Consensus objectives through the Special Envoy mechanism and other ASEAN channels (Kharisma & Widayutami, 2024).

Crucially, these recommendations can be given concrete legal form rather than left as policy aspiration, and the following pathways merit particular consideration. First, if ASEAN wishes to retain a capacity to restrict participation in defined circumstances, the legally coherent route is amendment of the Charter under Article 48, which provides that amendments may be proposed by any member state, adopted by consensus, and enter into force upon ratification by all member states; such an amendment could introduce a suspension mechanism with defined triggers, procedural safeguards, temporal limits, and a review procedure, converting the present ad hoc practice into a

codified power consistent with the comparative models examined above. Second, and as a less demanding alternative, ASEAN could adopt an authentic interpretation of the existing Charter through a Summit-level resolution clarifying the scope of Articles 1(7), 2(2)(h), and 20 in relation to member-state participation; authentic interpretation by the parties to a treaty is recognized under Article 31(3)(a) of the Vienna Convention as a means of interpretation to be taken into account (United Nations, 1969). Both of these pathways would relocate the matter within the Charter's own legal architecture, supplying the legitimacy and predictability that the current arrangement lacks. Third, and most immediately, because the restriction itself finds no basis in the Charter, the legally coherent default pending any such amendment or authentic interpretation is the restoration of Myanmar's full and ordinary participation rights as a member state, including invitations to participate at the head-of-government and ministerial levels and recognition of its entitlement to assume the rotating ASEAN Chairmanship when its turn arises, consistent with the sovereign equality that the Charter guarantees to all members.

D. CONCLUSION

This article has examined whether ASEAN's sustained restriction of Myanmar's high-level participation is compatible with the legal architecture of the ASEAN Charter, and whether the Five-Point Consensus possesses sufficient legal character to ground such a restriction. On the first question, the conclusion is that the restriction operates outside the Charter's formal legal architecture: the Charter confers no power to suspend or restrict participation; comparative practice confirms that such powers,

where they exist, are expressly codified; and the deliberate exclusion of a suspension mechanism during the drafting process indicates that the Charter's silence is a structural choice rather than a gap to be filled by implication. On the second question, the conclusion is that the Five-Point Consensus, as a non-binding political understanding, lacks the legal character necessary to serve as the indefinite basis for restricting a member state's sovereign participation; its legitimate adoption as a political instrument does not supply the legal authority to curtail a treaty-based right, and the restriction in any event finds no basis in its text. On the subsidiary question, the analysis shows that prolonged disengagement at the highest political level carries significant strategic and institutional costs: constraining the political-level coordination of regional cooperation, diminishing ASEAN's relevance amid intensifying great-power competition, and eroding rather than reinforcing the centrality ASEAN seeks to project while legally coherent alternatives remain available within the Charter framework, principally amendment under Article 48 or authentic interpretation under Article 31(3)(a) of the Vienna Convention, complemented in the interim by the restoration of Myanmar's full participation and principled functional engagement.

These conclusions are not intended to diminish the seriousness of the humanitarian and political challenges within Myanmar, which are real and deserving of sustained regional attention. The argument is rather that ASEAN's response must itself remain anchored in legal coherence and institutional consistency, qualities that the current approach increasingly struggles to demonstrate.

ASEAN should ground its approach in the Charter's legal framework, either through amendment under Article 48 to codify a suspension mechanism with clear triggers and safeguards, or through an authentic interpretation via Summit resolution

under Article 31(3)(a) of the Vienna Convention; until such steps are taken, Myanmar's full participation rights must be restored in line with sovereign equality, including invitations to high-level meetings and the rotating Chairmanship, while ASEAN continues functional engagement and dialogue on the Five-Point Consensus; more broadly, this case highlights a recurring challenge in international institutional law, where reliance on informal practice instead of formal amendment or interpretation undermines legal certainty, erodes treaty-based membership rights, and risks substituting political consensus for legal authority, underscoring that the legitimacy and durability of organizational decisions depend on anchoring them firmly within their constitutive legal framework..

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