

PRIMER

Civil Disobedience: Implications for Myanmar

Myanmar's growing civil disobedience movement has garnered global attention for its use of non-violent tactics to oppose the military's February 2021 coup. This primer provides some background on civil disobedience, including its historical and legal significance, and the use of such methods to oppose unjust domestic laws and policies that may themselves violate international law. Regardless of whether civil disobedience actions are considered unlawful under *national* law, **many peaceful acts of civil resistance are protected under the international law of peaceful assembly and expression.** Any response to the civil disobedience movement in Myanmar must therefore be proportionate and fully compliant with international legal standards.

Background: What is Civil Disobedience?

"Civil disobedience" has been defined as "a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government."¹ Civil disobedience is also sometimes referred to as the "duty to dissent," "civil resistance," or "peaceful unlawful conduct."

Civil disobedience has played a prominent role in promoting rights and social justice worldwide. From Henry David Thoreau's popularization of the term, to actions undertaken by abolitionists, women suffragettes, Mahatma Gandhi and others fighting for self-determination, Martin Luther King and civil rights activists, and Nelson Mandela and Desmond Tutu to defy apartheid, civil disobedience has featured in many global protest movements, and led to significant advances for those suffering discrimination or human rights violations. Recent examples include civil disobedience actions around construction of the Keystone Pipeline in the U.S., and peaceful street obstruction by climate protesters and groups like Extinction Rebellion.

Acts of civil disobedience can range from protesters blocking streets or highways to bring attention to a cause, to 'sit-ins' or 'walk-outs' and product or service boycotts. There is often significant overlap between civil disobedience and protests or assemblies (often turning on whether protests are 'authorized' or seen as lawful by authorities, and the extent to which extended traffic blockages occur), as well as

¹ JOHN RAWLS, A THEORY OF JUSTICE (2009), at 320.

strikes. Although support for rule of law is paramount in democratic societies, the theory of civil disobedience posits that not all laws are just or ethical, such as laws institutionalizing slavery or racial segregation. Laws and policies are more likely to be unfair when the democratic process has been thwarted; in such cases, civil disobedience can be an effective advocacy tool to pressure authorities and build support for fairer policymaking.

Myanmar's Civil Disobedience Movement

In the wake of the February 2021 military coup in Myanmar, a civil disobedience movement has taken root, alongside mass protests and opposition from large swaths of the civilian population. In Myanmar's case, civil disobedience has included labor strikes, for instance with the initial stopping of work by frontline medical workers, including over 100 hospitals and medical departments. Civil servants, miners, educators, railway workers, bank staff, and journalists are among the hundreds of thousands of Myanmar citizens who have joined the general strike.

A Facebook group called the "Civil Disobedience Movement" has attracted over 300,000 followers since its initial launch on 2 February 2021. Civil disobedience in Myanmar has extended to calls for boycotting products and services linked to the military, nightly coordinated striking of pots and pans in symbolic protest, and large-scale assemblies, some of which have included mass "car breakdowns" or "slow-motion drive protests" on city streets.

Legal Implications and Relevant International Standards

Myanmar's military has responded to the civil disobedience movement and general opposition to the coup by imposing martial law and nightly curfews, shutting down the Internet and telecommunications periodically, arresting hundreds of activists and defenders, revoking fundamental privacy and security protections, and introducing draconian new measures like the draft Cyber Security Law and Electronic Transactions Law amendment. The Tatmadaw has also used violent force against peaceful protesters, deploying water cannons, tear gas, rubber-coated bullets, and live ammunition against civilians, resulting in multiple deaths and countless injuries.

Many of the Tatmadaw's actions are clearly illegal under international law. Conversely, many, if not most, of the actions carried out by the Myanmar civil disobedience movement – including peaceful strikes, protests, and boycotts – are not only permitted under international law, but protected under the rights to peaceful assembly, free expression, and association. This is true even where such actions may violate domestic law – especially given that many of Myanmar's laws (such as the Peaceful Assembly and Peaceful Procession Act, or various criminal defamation laws) themselves are not in compliance with international law.

Under international standards on assembly, association, or expression, any government-imposed limitations on related acts must pass a **stringent three-part test** showing their conformity with the law, appropriate purpose, necessity and minimal

restrictive nature. Decrees and edicts imposed by a military junta that has enforced a coup against a democratically elected government – thereby additionally violating the distinct right of self-determination – are unlikely to pass this test.

The **Universal Declaration of Human Rights**, widely recognized as customary international law, states in its preamble that “it is essential, *if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression*, that human rights should be protected by the rule of law.”² Some legal scholars have recognized this and similar language in other treaties as establishing “at a minimum, a legal privilege for individuals to act in a nonviolent, proportionate fashion to protest and to attempt to prevent a regime’s continued violation of international human rights.”³

The **Nuremberg precedent** has also been offered as legal justification for civil disobedience internationally, based on the idea that obeying orders is not a defense to an accusation of having committed an international crime; this theoretically opens the way for an obligation to disobey certain immoral, unjust orders, or those that would violate international human rights law.⁴

The recent **General Comment No. 37 (2020) on the right of peaceful assembly** issued by the Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR) **explicitly extends the right of peaceful assembly to include non-violent “collective civil disobedience or direct action campaigns.”**⁵ The OSCE and the Council of Europe, through the Venice Commission, have further confirmed that the State’s response in cases of civil disobedience must be proportionate, and cognizant of the actions’ expressive intent.⁶ Although Myanmar has not yet ratified the ICCPR, it has acceded to multiple other international treaties that protect free assembly, association, and expression rights. It is therefore bound to protect these rights and abide by relevant international law.

Conclusion

The civil disobedience movement in Myanmar is still in its nascent stages; it remains, nevertheless, a **predominantly peaceful expression of the popular will**, consistent with current and past movements opposing oppressive laws and policies. **Any responses by authorities to such actions must be measured, proportionate, and in line with international law.**

² Emphasis added, UDHR, 1948, <https://www.un.org/en/universal-declaration-human-rights/>.

³ See, e.g., Matthew Lippman, The Right of Civil Resistance Under International Law and the Domestic Necessity Defense, 8 PENN STATE INT’L LAW REVIEW (1990): 349, 359.

⁴ Frédéric Mégret, Civil Disobedience and International Law: Sketch for a Theoretical Argument, July 19, 2008, SSRN: <https://ssrn.com/abstract=1163270>.

⁵ General comment No. 37 (2020) on the right of peaceful assembly (article 21), UN Human Rights Committee, 17 September 2020, CCPR/C/GC/37, at para 16.

⁶ Venice Commission, OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, 3rd edition, 2019, para 11: at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e).