



**Internal Self-Determination and Constitutional Reform  
in Myanmar**

**Student: Nay Khyi Win Swe (2226560)**

**Supervisor: Professor Miguel Vatter**

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## **Declaration**

I certify that this thesis does not incorporate without acknowledgement any material previously submitted for a degree or diploma in any university, and that to the best of my knowledge and belief it does not contain any material previously published or written by another person, except where due reference is made in the text.

Name: Nay Khyi Win Swe

Date: 24 July 2021



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## Abstract

As a newly democratising nation, Myanmar is a pluri-ethnic, multi-lingual, and multi-religious country with a culturally diverse population comprising over 135 recognised ethnic groups. Since gaining independence in 1948, Myanmar (formerly Burma) has experienced prolonged instability resulting from over half a century of oppressive military rule under the Armed Forces of Myanmar, known today as *Tatmadaw*, and from a long-running, ethnic-based insurgency fighting for minority rights of self-determination. Consequently, building unity out of diversity is the greatest challenge to democracy and yet it is the broad objective that Myanmar people desire. Ethnic armed minority groups in the country have been calling for a Democratic Federal Union with the right to self-determination and freedom from discrimination because they have been oppressed and marginalised by the Bamar dominant majority ethnic group for decades. However, the nation's current constitution precludes these important provisions, and the military's dominant role in government prevents the appropriate reforms needed in the constitution. The self-determination rights claimed by ethnic people can be legitimised and achieved only if they are embodied in the nation's constitution. However, with the exception of the draft constitution proposed by the country's first leader, General Aung San, the formal constitutions enacted in 1947, 1974, and 2008 have not reflected the right to self-determination of ethnic people nor have they referred to a Federal Union. By examining the three constitutions of the Union of Burma, which became Myanmar in 1989, this paper aims to highlight why constitutional reform is needed in Myanmar. Such a process of reform has been resisted by the *Tatmadaw*, which assumes that self-determination will lead to secession of ethnic groups and territories, and loss of the military's control over the country and its people. This struggle for self-determination and conflicting interpretations of what constitutional reform would mean for the nation has resulted in many armed clashes, stalled Myanmar's peace process, and prevented constitutional reform. Therefore, this research argues that clarification of the concept of internal self-determination and reforming the constitution would lead to a peaceful resolution to the present conflict. Accordingly, a new constitution is proposed which does not allow for secession, but does allow minority ethnic peoples autonomy and the right to choose their own

regional government, while also prohibiting discrimination against minorities regardless of ethnicity, race, or religion, as a means of achieving a lasting peace in the country. Furthermore, a form of blended federalism is recommended to accommodate the needs of such an ethnically and culturally diverse population while building an overarching sense of nationalism with common objectives in partnership for all the peoples of Myanmar.

**Keywords: internal self-determination, constitutional reform, federal union, ethnic people, armed ethnic conflicts, peace**

## List of Acronyms

AFPFL	Anti-Fascist People's Freedom League
BSPP	Burmese Socialist Program Party
EAOs	Ethnic Armed Organisations
FACE	Frontier Areas Committee of Enquiry
FCDCC	Federal Constitution Drafting and Coordination Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KIA	Kachin Independence Army
KIO	Kachin Independence Organisation
LDC	Least Developing Countries
NCA	Nationwide Ceasefire Agreement
NLD	National League for Democracy
SLORC	State Law and Order Restoration Council
SPDC	State Peace and Development Council
UN	United Nations
UPDJC	Union Peace Dialogue Joint Committee
USDP	Union Solidarity and Development Party
UWSA	United Wa State Army



# **Chapter 1 Introduction**

## **1.1 Background**

This chapter lays the groundwork for an understanding of Myanmar's long history of interethnic conflict and its journey through decades of military authoritarianism and constitutional change that has led to a nation of deeply divided polities and war-torn societies. The introductory discussion in the chapter explains and reflects on the causes of conflict in the case study of Myanmar and reveals its current ethnically and politically fragmented state of violent confrontation between the diverse minority ethnic population and its military dominated government.

### **1.1.1 Ethnic conflicts and demand for self-determination in Myanmar**

Today, many countries around the globe are populated by a mixture of different ethnic groups and to some extent are culturally, linguistically, and religiously diverse. Since the second half of the 20th century, many multi-ethnic countries have experienced violent conflicts between ethnic groups due primarily to intolerance, discrimination, and lack of self-determination for these groups (Mohammadzadeh, 2016, p. 156). Ethnic conflicts are conflicts that occur between two or more ethnic groups within a single state. One ethnic group dominates over other groups in most of the ethnic disputes, and that dominant group often controls government and the country's military. Ethnic violence has been one of the key obstacles to international peace and stability in modern times. Some scholars point out that differences in ethnicity are the main cause of ethnic conflicts while others assert that conflicts between ethnic groups typically arise not because of their ethnicity but due to power imbalances (Reuter, 2017).

The word ethnicity is not limited to a group of people who share a common national identity. It may also refer to a group sharing a common language, culture, faith, and history, or who share a communal identity. Scholars who reject ethnicity itself as a source of conflicts argue that the principal causes of ethnic conflict can be attributed to political, economic, social,

cultural, or territorial factors. Inter-ethnic tensions can often be seen where the minority ethnic groups do not have equal representation in public and political bodies, or fair economic and educational opportunities, as compared with the majority group, and are not permitted to practise their culture and follow their way of life (Reuter, 2017). Therefore, ethnic groups are often forced to fight for self-determination to protect their rights and create their own destiny. The more minority ethnic groups are determined to gain a share of power, the stronger the conflict between them and the dominant group that seeks to retain its power. Some self-determination movements merely seek autonomy and certain freedoms, while others seek secession and statehood (Ishiyama & Breuning, 2011). However, whatever their aims, there have been 464 significant self-determination movements between 1945 and 2012, which illustrates what a widespread problem ethnic conflict is in many parts of the world (Sambanis et al., 2018, pp. 657,660).

Myanmar is a pluri-ethnic, multi-lingual, and multi-religious country with over 135 recognised ethnic groups, which can be categorised into eight major groups, namely Bamar, Chin, Kachin, Kayah, Kayin, Mon, Rakhine, and Shan (Collins, 2002). According to the latest Population and Housing Census of Myanmar in 2014, the total population in Myanmar is over 51.4 million. Among those ethnic groups, Bamar nationality (often referred to as Burmese) is the most dominant and comprises 68% of the population of Myanmar. The minority ethnic groups comprise 9% Shan, 7% Karen, 4% Rakhine, 2% Mon, and 5% other ethnic nationalities, while 3% Chinese and 2% Indian are also settled in Myanmar (UNHCR, 2017). These ethnic groups tend to be regionally concentrated in distinct locations according to their ethnic identity, as shown in Figure 1. Myanmar is not only a multi-ethnic country but also a multi-religious country. The majority of the Myanmar population at 87.9% are followers of Theravada Buddhism (see Figure 2), whereas most of the Kachin, Karen, and Chin people, amounting to

6.2% are of Christian faith. The remaining minor religious groups are 4.3% Islam, 0.5% Hinduism, and 1% other religions (Cultural Atlas, n.d.).

**Figure 1**

*Classification and Distribution of Ethnic Groups in Myanmar* (Smith, 2002)

Image removed due to copyright restriction.

## Figure 2

*Religious Affiliation in Myanmar by Percentage of Population* (Steinberg et al., 2021)

Image removed due to copyright restriction.

Throughout the history of Burma (renamed Myanmar in 1989), the dominant Burmese (Bamar) people and other ethnic groups have not had a friendly or peaceful relationship. Walton (2008, pp. 892-898) stated that the Burmese rulers and the other ethnic leaders always fought against each other for territorial expansion, which has only escalated into greater, armed violence in recent times. Through the three Anglo-Burmese Wars, the British colonised Burma and ruled it for over 100 years (1824 – 1948). The British used a “Divide and Rule Policy” to govern the region and this policy has promoted and worsened the current armed ethnic conflicts. When the British were considering giving independence to Burma, they argued that if the frontier, mountainous areas where most of the ethnic minorities live had no desire to join with the central, plains areas (where most of the Burmese nationalities live), the British would allow the minorities to separate from the state of Burma. To forestall the separation of the frontier territories from Burma at the time of independence, General Aung San (regarded as the national hero of Burma’s struggle for freedom from British rule) and 22 ethnic leaders from Chin,

Kachin, and Shan ethnic groups signed an agreement named the “Panglong Agreement.” The ethnic group leaders signed the Panglong Agreement because it offered promises for all ethnic groups in Myanmar to enjoy rights and privileges equally regardless of ethnicity and allowed the ethnic groups to fully practise autonomy and self-determination in their areas (*Panglong Agreement*, 1947). In 1947, General Aung San drafted the first proposal for a constitution of Burma (later to become Myanmar) which assured self-determination and equal privileges of all ethnic groups residing in the state and to build Myanmar as a federal state. In addition, it was mentioned in Article 202 of the Constitution drafted by General Aung San in 1947 that ethnic states would not be allowed to secede within ten years of entry into force of the constitution. However, General Aung San was assassinated before Burma achieved independence, and his successor redrafted and drastically changed that constitution. In the redrafted constitution, the country became a Unitary State and the Central Government held the main powers (Sakhong & Keenan, 2014, pp. 67-68). Consequently, ethnic minorities thought that their role was unfairly omitted in managing the country’s affairs and governing process. Thus, a few months after gaining independence in January 1948, the Communist Party of Burma began fighting against the government. Then, the Karen ethnic group also joined the fight against the government and since then ethnic conflict has continued in Myanmar, with many armed ethnic groups participating in an ongoing civil war (Smith, 2002, p. 8).

It is unrealistic for a multi-ethnic country to expect to succeed in becoming a unitarian state by encouraging all ethnic groups to assimilate into one homogenous population without this giving rise to clashes. However, successive leaders of the government (until democracy returned for a short time in 2011) have tried to build Myanmar as an ethnically and religiously homogenous society. Kramer (2015, p. 355) has pointed out that the main grievances of ethnic minorities have risen because they have been excluded from participation in political decision-making processes. Moreover, under the form of Burmanization policies, ethnic minorities in

Myanmar have been denied the human rights to freely practise their culture and religion as well as follow their ways of life. In addition to the removal of basic rights to self-determination, the frontier regions have been deprived of social and economic development by the government's policies. Religious freedoms have also been suppressed by the government to assist the national assimilation process when, in 1961, Buddhism was made the state religion of the country. As a consequence, the Kachin Independence Army (KIA), a very powerful ethnic armed organisation in Myanmar, was founded in opposition to the state religion bill (Sakhong, 2012, pp. 5-6).

In addition to the cultural and religious restrictions, the government proclaimed in 1962 that the Burmese language would be the official language in all sectors including government and education. The government enacted laws which restricted ethnic people even to publish the teaching curriculum in their own ethnic language for teaching in schools of the frontier regions, including religious schools (Sakhong, 2012, p. 8) (Collins, 2002, p. 126). In effect, the ethnic minorities have been prevented from pursuing their ways of life and beliefs. They have been oppressed and marginalised as well as having their cultural and ethnic identities erased through Burmanization with oppressive laws, an unequal education system, and religious proselytisation.

Moreover, unfair distribution of revenue from natural resources and uneven development between central and ethnic frontier regions have led minority ethnic groups to conclude that they are disregarded and have been denied rights as citizens of Myanmar. These policies and practices of the government have been underpinned by the country's constitution which does not enable equal representation or self-determination for ethnic minorities (The Republic of the Union of Myanmar, 2008). Hence, armed ethnic groups are well-distributed across much of the frontier mountainous areas, as can be seen in Figure 3, and are active in anti-government resistance and confrontations with the *Tatmadaw*. Thus, these key factors in

Myanmar's governance since the country's independence have worsened the grievances of ethnic groups and resulted in violent ethnic conflicts amounting to continuous civil war, which has been sustained for over seven decades. The outcome of these clashes has been a legacy of human rights violations, widespread economic hardship, increasing numbers of displaced persons and refugees, and failure of the state to maintain peace and stability in Myanmar's society (UNHCR, 2017).

**Figure 3**

*Armed Ethnic Groups in Myanmar by Name and Location*

Image removed due to copyright restriction.

Source: The Asia Foundation (2017)

### **1.1.2 Democracy reforms in Myanmar**

After Burma (renamed Myanmar in 1989) gained independence in 1948, a constitutional government was established, and it was led by U Nu. However, the civilian government of U Nu was challenged by a series of problems including a massive scale of ethnic conflict issues and armed insurgencies. U Nu's government could not maintain the unity and stability of the country; therefore, it requested the military to serve as a caretaker government. From 1958 to 1960, the caretaker government led by General Ne Win ruled the country. In 1960, the caretaker government held a general election and U Nu was re-elected as the Prime Minister. However, since the U Nu civilian government could not improve the situation and national integrity came under threat again, in March 1962, there was a coup d'état led by General Ne Win who then imprisoned U Nu together with his government members. The Revolutionary Council of the Union of Burma was formed, and the members of the council were drawn from the military. Following the coup, democratic government ended, and a new chapter of military rule began. In 1964, General Ne Win established the Burma Socialist Programme Party (BSPP) and transformed the country into a one-party state (Trager, 1963, pp. 309-324). He served as the President of Myanmar from 1974 to 1988. In 1988, a nationwide protest referred to as the 1988 Uprising broke out and U Ne Win had to resign from his position. The State Law and Order Restoration Council (SLORC), led by Senior General Than Shwe, overthrew BSPP and took office, whereupon the new government changed the country's name to Myanmar. In 1990, a multi-party election was held for the first time since 1960, and the National League for Democracy led by Daw Aung San Suu Kyi won 82% of the parliamentary seats (392 of the 492) (Smith, 2002, p. 10). However, military leaders did not recognise the result and continued ruling the country. They placed Daw Aung San Suu Kyi under long-term home detention (Kudo, 2012, p. 2). The former SLORC political party then transformed into the State Peace and Development Council (SPDC) in 1997 and ruled the country until 2011.



The dissatisfaction of the Myanmar people with the tyrannical and oppressive rule by the military government, as well as the pressure from the international community through condemnation and sanctions, grew gradually more intense during the two decades of military rule (Baker, 1997). The international community applied a great deal of pressure on the military government and imposed sanctions including military equipment embargos to Myanmar of weapons which would be used to oppress its people (Toshihiro, 2007). The growing internal dissatisfaction and international pressure influenced the military leaders to choose the path allowing for a more democratically elected government. In order to ease international pressure in 2008, the SPDC's leader concluded the constitutional drafting process that had been started in 1993. In May 2008, the military-dominated constitution was approved through a guided constitutional referendum. For many decades, the military has stood as the most influential political institution and this position was preserved in the revised 2008 Constitution. The current Myanmar Constitution preserves 25% of the seats in Parliament for unelected military personnel appointees. In 2010, a general election was held and the military-backed party, namely the Union Solidarity and Development Party, whose members are former military leaders, won more than 76% of all seats of all parliaments (Upper House/Chamber of Nationalities, Lower House/ Chamber of Deputies, as well as State and Regional Houses). That is why some commentators have argued that the democratic transition from dictatorship rule was not due to street protests or foreign pressures. It was simply brought about because the military was confident enough it could direct the process of democratic transition and engage with a new democratic system through the military-inspired constitutional order which guarantees *Tatmadaw* as a key player in Myanmar politics (Egreteau & Mangan, 2018, pp. 5-6). On March 30, 2011, the military government was dissolved and the USDP government, led by U Thein Sein, took the office. Under U Thein Sein's government, Myanmar people enjoyed much more freedom and liberty compared to the time of military government since 1962.

However, it was not a true democracy and many minority ethnic groups were still dissatisfied with the lack of autonomy and self-determination they were allowed under the rulings of the government and the constitution.

### **1.1.3 Peace process in Myanmar**

#### **1.1.3.1 Nationwide Ceasefire Agreement (NCA)**

The most significant political reform of the U Thein Sein government was the initiation of political dialogue with armed ethnic groups. The government launched the peace process in August 2011. The peace process achieved noteworthy initial success at the beginning since the Nationwide Ceasefire Agreement (NCA) was reached between the government and the Ethnic Armed Organisations (EAOs). Eight out of sixteen armed ethnic groups in the negotiations signed on to the NCA. Under the NLD government, two more armed ethnic groups joined NCA in 2018, bringing the total to 10 armed ethnic groups which have joined the ceasefire agreement.

#### **1.1.3.2 The 21<sup>st</sup> Century Panglong-Union Peace Conference**

After EAOs signed the NCA, in order to make national-level peace talks, a body named the Union Peace Dialogue Joint Committee (UPDJC) was established. In UPDJC, the representatives from government, *Tatmadaw*, *Hluttaw* (Parliament), EAOs and political parties are included. The UPDJC initiated the “21st Century Panglong” which is a peace conference between government, *Tatmadaw* and EAOs. The peace conference aims to end all conflicts, achieve political agreement on a durable peace and build a democratic federal union through political dialogue. The first Union Peace Conference was initiated by the U Thein Sein government in January 2016. However, no agreement was achieved at that conference. When NLD government assumed office in 2016, the Union Peace Conference was renewed as the 21st Century Panglong Conference. The participation of new players, who did not join NCA of the former government in the peace dialogue, and EAOs had the chance to air their grievances and political aims, and this was seen as an initial achievement. Still, no resolution emerged from

the first 21st Century Panglong Conference. Up to now, the 21st Century Panglong Conference has been held four times. In those conferences, 37 principles and 14 principles of a Union Accord have been agreed upon. In accordance with the NCA, the peace conferences have focused on five areas: (1) political issues, (2) security, (3) economy, (4) social issues, and (5) land and environment. Agreements on principles were reached only for political, economy, social, and land and environment sectors, however, no agreement was reached on the security sector (Burma News International, 2019, pp. 63-64).

After the 3rd 21st Century Panglong Conference in July 2018, the peace process was stalled until August 2020. The peace process was at a standstill because there had been no agreement between government, Myanmar military and armed ethnic groups on how to achieve federal decentralisation and resource sharing (Woods, 2019, p. 5). A Democratic Federal Union with the right to self-determination was proposed by the armed ethnic groups. In principle, the idea of federalism was accepted by every stakeholder in the NCA, however, no agreement on the key principles of federalism, especially on self-determination and non-secession was obtained in the discussion.

The 4<sup>th</sup> 21<sup>st</sup> Century Panglong Conference was held in August 2020. In the Union Accord Part III signed in the 4th session of peace conference, all together 20 points of agreement and work plans as well as implementation after 2020 were included. Fifteen points are on implementation of the NCA, and 5 points are the fundamental principles of building a democratic federal union (Myanmar News Agency, 2020). Although basic principles to build a democratic federal union have been achieved between stakeholders for the first time in history, they are just basic principles and there might be some difficulties in discussing the detailed implementation. In addition, the agreements which have been achieved so far in the Union Accord are just between the government, *Tatmadaw* and EAOs which signed the NCA. There are some powerful armed groups such as UWSA and active armed group such as AA which are

still not participating in the agreement. Moreover, determining what kind of federalism and how to share power is still a problem for the peace process (JAGAN, 2020), and the question of non-secession provision in the constitution has yet to be resolved.

## **1.2 Objective of the Research**

Armed ethnic groups have been calling for a Democratic Federal Union in Myanmar with the right to self-determination since they have been oppressed and marginalised by the dominant majority for decades. The self-determination rights claimed by ethnic people can be legitimated only if they are constitutionally approved. Ethnic peoples claim that the current constitution cannot guarantee the right to self-determination; therefore, they want to reform the constitution. However, without the consent of the *Tatmadaw*, the constitution cannot be altered to include self-determination rights for minorities. The *Tatmadaw* is unlikely to agree to grant the right to self-determination in the constitution as that might lead to secession of minority ethnic groups and would be likely to diminish *Tatmadaw* powers and subvert the military government's policies of assimilation of all ethnic groups into the broad base of Burmese ethnicity. Therefore, the objective of this research was to explore the range of possible solutions that could address the issue of ethnic groups demand for self-determination while overcoming the concerns of the *Tatmadaw* so that Myanmar may establish unity, equality, and a durable peace.

## **1.3 Research Questions**

The main research question that guides this research paper is as follows:

How can the demand for self-determination be addressed?

Myanmar has enacted three constitutions since gaining independence with the latest being enacted by the Myanmar military in 2008; however, according to minority ethnic peoples, this constitution does not provide for their right to self-determination. Therefore, the main research question is addressed through answering the following sub-questions:

### **Sub-questions**

- (1) Is constitutional reform needed in Myanmar?
- (2) If constitutional reform is needed, what would be the possible solution that is accepted by all parties to reform the constitution?

### **1.4 Hypothesis**

- 1.) The new constitutions that the authoritarian regimes have made are considered hybrids between tyranny and democracy and the governing articles often annul liberal democracy. The 2008 Constitution is designed to establish longer military rule and suppression of ethnic minorities which contradicts with the desire of ethnic groups. Minority ethnic peoples cannot accept the 2008 Constitution; therefore, constitutional reform is needed for unity and peace to be established among all of the peoples of the country.
- 2.) Different interpretations of self-determination have delayed and deterred the constitutional reform process. The Myanmar military believes that self-determination may lead to secession; therefore, it hesitates to grant self-determination. Internal self-determination is regarded as the first option for oppressed and marginalised groups including ethnic, linguistic, racial, and religious minorities as well as indigenous peoples. Internal self-determination allows peoples to enjoy the rights to self-determination but not the rights to secession. If the state secures the equal rights and the internal form of self-determination for all of its people regardless of race, religion, sex, creed or colour, the claim for secession cannot be legitimated. If it is certain that self-determination right does not permit the ethnic groups to secede from the union, the *Tatmadaw* will agree upon a constitutional reform process to enable greater autonomy and human rights for all Myanmar citizens.

## **1.5 Significance of the Research**

The literature has already shown why ethnic peoples in Myanmar have been asking for self-determination and *Tatmadaw* has been hesitant to grant this demand. However, it is very difficult to fulfill the requests for both self-determination and non-secession at the same time. The existing literature has already pointed out that internal self-determination can grant the rights to self-determination without offending territorial integrity. Hence, the significance of this research is to provide recommendations to use internal self-determination in a new Myanmar constitution in order to grant the demand of the rights to self-determination and avoid the likelihood of secession.

## **1.6 Methodology**

The research method employed in this paper is qualitative since it aims to explore from a theoretical point of view how and why ethnic peoples have demanded a constitutional right to self-determination and consider whether the reasons *Tatmadaw* has hesitated to grant self-determination are valid (Walliman, 2018). Additionally, the research seeks to provide an understanding of self-determination that may be acceptable to both parties. The research has been conducted through both primary sources, such as the three constitutions of Myanmar, and the secondary sources, such as academic journal articles, books, reports, and newspaper articles that discuss the theory of self-determination and federalism, as well as the history of the ethnic conflicts, the peace process, and demands for self-determination and constitutional reform of Myanmar.

A case study methodology is used in this research paper. Case study means “a detailed examination of one setting, or a single subject, a single depository of documents, or one particular event” (Bogdan & Biklen, 2003, p. 54). Research conducted through this methodology “excels at bringing us to an understanding of a complex issue or object and can

extend experience or add strength to what is already known through previous research” (Soy, 1997). Since this research paper is on Myanmar, it fits with a “single-case study” design. There are several types of single-case studies: Critical case, Unusual case, Common case, Revelatory case, and Longitudinal case (Yin, 2009). This research paper fits with a critical case. As the name indicates, single cases are critical to demonstrate and explain theoretical issues. More precisely, critical cases can provide a significant contribution to knowledge and theory building by confirming, challenging, or extending existing theories and theoretical frameworks. Accordingly, this research explains how the case in Myanmar fits into the broader picture regarding constitutional reforms as a mechanism for mitigating ethnic conflict and calls for self-determination.

## **Chapter 2 Literature Review**

This chapter firstly discusses the causes of ethnic conflicts to understand the source of conflicts in Myanmar. Secondly, it examines the history and concept of self-determination. Thirdly, it reveals the differentiation between external and internal self-determination, and how internal self-determination can help minority ethnic people to improve political representation, ensure economic and social equality with the dominant group, which will assist in enabling them to follow their ways of life. Then, the chapter focusses on federalism and, finally, explores the process of constitution-making and constitutional reform. These approaches in the literature review are used to determine whether constitutional reform is needed or not in Myanmar, and if it is needed, to find a possible means to achieve a successful constitutional reform process.

### **2.1 Causes of Ethnic Conflicts**

In multi-cultural societies, ethnic conflicts are common. Ethnic conflicts are conflicts between two or more competing and often belligerent ethnic groups. The cause of the conflicts may vary from political and economic to religious and social reasons. What is the same in every ethnic conflict is that individual groups in the ethnic conflicts fight for the position and status of their group within the society, and that makes the ethnic conflicts different from other forms of conflicts (Kaufmann, 2002, p. 17).

There are academic theories to explain ethnic conflicts and among these, three theories are particularly appropriate to the Myanmar case study: primordialism, instrumentalism, and constructivism. Although some scholars believe that ethnicity and intergroup differences are not sources of violent ethnic conflicts (Lake & Rothchild, 1998, p. 8), primordialists think that ethnic conflict is caused directly by differences in ethnic identities (Esteban et al., 2012; Vanhanen, 1999). For them, ethnic violence is a natural phenomenon that has resulted from deep and unreconcilable differences in ethnic identities. Their thinking develops the notion of



ethnocentrism, which creates in-group/out-group differentiations to clarify biased actions. For some scholars, the term ethnocentrism only links with a disposition to favour one's own group or in-group favouritism (Hammond & Axelrod, 2006, p. 927). However, other scholars, such as Horowitz (1985, p. 7) believe that ethnocentrism also relates to discrimination by in-groups against out-groups. According to Vahanen (1999, pp. 57-58), the theory of ethnic nepotism, which is closely related to ethnocentrism, refers to a predisposition to favour kin over non-kin. Therefore, primordialist's asseverate that ethnic differences create ethnic interest conflicts and political and other interest conflicts, which are directed into ethnic lines when a country becomes increasingly ethnically divided (Lake & Rothchild, 1998, p. 8), (Vanhanen, 1999, pp. 57-58). In the case of Myanmar with its multi-ethnic background and long history of inter-ethnic conflict, primordialism appears a logical cause of the unresolved disharmony between groups.

For instrumentalists, however, ethnic conflicts are not directly the result of differences in ethnic identity. Ethnic conflicts often arise out of a desire for political and socio-economic gains for one ethnic group which somehow causes damage to other ethnic groups. According to instrumentalists, other than ethnicity, there are additional factors that can explain ethnic conflicts, for example, greed and grievance (Collier & Hoeffler, 2004), competition and inequality (Gurr, 1994, p. 348), and security dilemma (Kaufman, 1994; Posen, 1993). According to Fenton (2003, p. 76) "if behaviour in terms of ethnic attachments could be seen to be serving some individual or collective political or economic ends, then the ethnic action could be reinterpreted as instrumental". Another element of instrumentalism is that ethnic conflicts emerge between rational agents over limited resources, led by the objective of political elites to achieve political or economic advantages or an intentional manipulation by elites based on a rational decision to provoke or support ethnic conflicts (Chandra, 2004). Again, instrumentalism appears to explain inter-ethnic conflict in Myanmar, since it serves the political

and economic interests of the Bamar majority ethnic group and the *Tatmadaw* military-controlled government.

Constructivists focus on a socially constructed nature of ethnic identity. According to them, ethnic identity is a fluid entity that results from a number of factors, such as immigration and colonisation (Wimmer, 2008). According to constructivists, political entrepreneurs can control a historically built master cleavage and narrative within each society (Brass, 2003). For constructivists, identity is a social category that is distinguished by a feature called “rules of membership” that determine eligibility to be a member of that category, and include other features and characteristics including moral commitments, beliefs and physical attributes, as well as behaviours expected in specific situations (Fearon & Laitin, 2000, p. 848). Those social categories, rules of membership, and content are not fixed in human nature but are “cultural and political constructions whose ‘reasonableness’ needs to be regularly reasserted and taught to succeeding generations” (Anderson 1991, cited in (Ferejohn, 2000, p. 45)). Therefore, ethnic identity is flexible and subjective as well as changeable with the interactions between ethnic groups. The aim of ethnicity is to strengthen and preserve social differences to achieve specific goals (Jemma, 2006, cited in (Williams, 2015, p. 149)). Thus, ethnic conflicts are the result of historical processes over time, and these historical effects alter interethnic relations, producing and reinforcing animosity between them. Constructivism, therefore, also appears to explain the circumstances of Myanmar’s unresolved inter-ethnic conflict over the history of the country.

In addition to the theories already discussed, there are also academic explanations in the literature to understand ethnic conflicts. A number of scholars clarify the roots of ethnic conflicts through “ancient hatreds” (Brown, 1996, p. 3), and this concept is related to primordialism. According to this concept, based on historic experience, one group has resentment of another group. Rydgren (2007) analysed the formation of aggressive feeling,

arguing that the perception of the present is influenced by the past. He said that the beliefs of the people rely on whom they trust; therefore, they usually accept their own group's ideas using analogies to a current condition. In order to get support from people, political elites can use analogies. Rydgren (2007) also said that memories are highly simplified, and missing data are filled in with details that seek to seem sensible of the current situations. In the group, common ideas will be reflected by memories. There is also a propensity to exalt one's own history while excluding the incidents that do not suit a positive image. From this process, distortions are created and that changes reality. This memory biases constitutive in analogical reasoning makes ethnic groups feel bitterness and fear simultaneously. As a result, they exaggerate the possibility of future conflicts and try to mobilise to secure themselves, and sometimes carry out preventive measures in ways that provoke conflicts (Rydgren, 2007, p. 231). The cause of some conflicts, including Myanmar's, can be understood through this "ancient hatreds," but there are still other factors that can explain the cause of ethnic conflicts.

According to Brown (1996), there are four factors that can explain the cause of ethnic conflicts, which are weak states, political factors, economic factors, and cultural factors. Governments of fragile states lack capacity to govern institutions and develop economy, and this can create conditions that encouraged the emergence of ethnic conflicts. Some factors that cause governments to be weak are incompetency, corruption, and criminal organisations. Political factors play a significant role to explain ethnic conflicts. In democratic countries, people enjoy equal representation and participation in political and public affairs. However, in tyrannical regimes, ethnic groups do not have such rights and are discriminated against as well as treated unfairly. As the result of discrimination against ethnic groups by the government (usually dominant majorities), internal conflicts have arisen as a result. The more ambitious for power the ethnic group, the more violence will occur. Economic issues can make the tension between groups to be more intense. Unfair policies towards one specific group, low level of

employment, high inflation and increased resources competition are favourable conditions for ethnic conflicts. Cultural factors are also crucial to explain ethnic conflicts. Cultural discrimination, including forced assimilation with the dominant culture, uneven educational opportunities, religious restrictions, as well as constraints on the use of languages and practices of culture of minority groups, can lead to ethnic conflicts (Brown, 1996, pp. 3-11).

Therefore, this exploration of research and discourse in the literature on the root causes of inter-ethnic conflict has identified that, firstly, there are many reasons for these conflicts and that, secondly, the causes may be multi-layered, overlapping, historically relevant, and yet mutable. Thus, an understanding of the persistence of ethnic conflict in Myanmar needs to reflect on the changing circumstances and the political, economic, and social fluctuations that have occurred in the country since before it became a nation. Hence, in Myanmar, conflict that was once based on ancient hatred, has now merged with and become consolidated in irreconcilable confrontation over political and economic dimensions, which have led to a weak and fragile state engaged in a continual inter-ethnic insurgency.

## **2.2 Self-determination**

Before explaining the internal self-determination concept, the notion of self-determination needs to be clarified. The right to self-determination is crucial in the agenda of human rights. The right to self-determination is a principle according to which every group of people has the opportunity to pursue their political status freely and enjoy economic, cultural, and social development by their own form. Berman (1988, p. 52) also defines self-determination as “the right claimed by a people to control its own destiny.” Unrepresented Nations and People Organization (2017) has also stated that the right of self-determination allows people to build their own destiny. The Peace of Westphalia became the first step of the modern state system. The Treaty of Westphalia paved the way for the basic principles such as

equality among sovereign states and territorial integrity that today's global nations are following as the international relations norms and created a foundation for national self-determination (Eide, 1990, p. 1315). After the Treaty of Westphalia, the concept of self-determination could be found in the US Declaration of Independence in 1776 and the French Revolution in 1789. The self-determination concept was adopted both by the leader of the Soviet Union, Vladimir Lenin, and by United States President, Woodrow Wilson. They brought the exact term of "self-determination" into the international discourse. Lenin was the very first person who claimed that the rights of self-determination should be a criterion for the freedom of people. Lenin's idea was that, through self-determination, people would have freedom and the liberation of people would contribute to accomplish the socialist revolution (Cassese, 1995, pp. 14-15). In his thesis, namely the Socialist Revolution and the Right of Nations to Self-Determination of 1916, Lenin clearly explained the concept of self-determination:

"The right of nations to self-determination means only the right to independence in a political sense, the right to free, political secession from the oppressing nation. Concretely, this political, democratic demand implies complete freedom to carry on agitation in favour of secession, and freedom to settle the question of secession by means of a referendum of the nation that desires to secede. Consequently, this demand is by no means identical with the demand for secession, for partition, for the formation of small states." (Lenin, 1916)

President Wilson was the first person who introduced the notion of self-determination to the international agenda (Epps, 1996, p. 434). Although Wilson did not explicitly use the term self-determination in his Fourteen Points statement delivered to the US Congress on 8 January 1918, it implied the idea of self-determination (Wilson, 2006, p. 403). However, in his address to the US Congress on 11 February 1918, he explicitly used the term "self-determination":

“National aspirations must be respected; people may now be dominated and governed only by their own consent. 'Self-determination' is not a mere phrase; it is an imperative principle of action which statesmen will henceforth ignore at their peril.” (Wilson, 1918)

Lenin and Wilson agreed that a people must have freedom to build their own state as they please. Many scholars assumed Lenin's idea of self-determination was a postulate of anticolonialism, but it could have had broader meaning for all peoples (Cassese, 1995, p. 44). Wilson believed that through democratic process, people have the right to choose a form of government that is suitable for them.

After World War II, the concept of self-determination changed from a guiding principle into a legal entitlement. In the modern era, the self-determination concept is recognised in the Charter of the United Nations (UN), where it declares that member states must respect the right to self-determination of other countries and people in order to achieve international legitimacy. The term “self-determination” is mentioned twice in the UN Charter: the article (1) and (55) (United Nations, 1945). Since the UN Charter was adopted, the right to self-determination has been frequently listed in legal instruments of the UN. For instance, in 1960, in the General Assembly Resolution 1514 which is the Declaration on the Granting of Independence to Colonial Countries and Peoples, self-determination is stated as follows:

- “1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” (General Assembly Resolution, 1960)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) (General Assembly Resolution, 1976), and the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) (General Assembly Resolution, 1966) also enshrined the right to self-determination. In article 1 of the two covenants, the right to self-determination is framed as follows:

“1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”

The self-determination concept is also enshrined not only in the international law but also in the law at the regional level. In the principle VIII- Equal rights and self-determination of peoples of the Helsinki Final Act adopted by 35 nations in 1975, is stated the right to self-determination as follows (Security et al., 1975):

“By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.”

In the Article 20 of the African Charter on Human and People’s Right adopted in 1981, the right to self-determination is stated as follows (African Union, 1981):

“1. All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political

status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.”

The principle of self-determination plays a significant position in international law. In the past, the self-determination concept was very important in the decolonisation process (Castellino, 2007, p. 515). However, later, outside the decolonisation paradigm, many minority groups across the world have made claims for secession under the self-determination concept. From using self-determination concept in anti-colonial movements, the concept has been gradually adopted by the local secessionist group. Although international law does not support the right of secession, secessionists have pointed to the recognition of the UN to the right of self-determination of all peoples.

Self-determination is viewed as a positive concept since many countries were freed from colonial control and institutionalized racial discrimination as a result of self-determination; however, the UN views the idea adversely if it is utilised for unilateral secession (Laoutides, 2019, p. 64).-Actually, the possibility of secession under the self-determination concept is left open since the international documents on self-determination, such as the UN Charter, ICESCR and ICCPR, do not provide clear definitions on the notion of self-determination. The international law explicitly says that people have rights to self-determination, but the concept of “people” is not defined anywhere in the international law including the UN Charter (Bell & Cavanaugh, 1998, p. 1347; Laoutides, 2019, p. 63). Although these international law documents



support the right to self-determination, they do not provide a clear definition as to whether self-determination rights should be applied only to those people who are colonised or whether it encompasses all peoples who are under repressive governments (Hannum, 1996, p. 34). Therefore, various scholars and courts have classified self-determination rights into two dimensions namely external and internal self-determination (Cassese, 1995; Emerson, 1971; Scharf, 2002; Stavenhagen, 1996) (Commission of Jurists, 1921). In the case of Myanmar, the above-mentioned absence of a clear definition of “people” makes ethnic conflicts more complex and prolonged since *Tatmadaw* assumes that under the term “people,” the ethnic people might think that they are eligible people who can practice self-determination as a right to secession. Therefore, *Tatmadaw* has consistently rejected the rights to self-determination and, consequently, ethnic conflicts have been prolonged.

### **2.2.1 External self-determination**

Since the development of the concept of self-determination, the international community has tended to emphasise only the external aspect of self-determination, whereas internal self-determination has been largely ignored. Sargent and Melling (2015, p. 13) interpreted external self-determination as the right to secession when a people from a given state attempt to establish a new independent state. The right to external self-determination entitles a people to decide their international identity and to be free from foreign interference which affects the international status of that state (Cassese, 1995, pp. 71,90).

During the anti-colonial periods in history, attempts to establish independent states have not been regarded as attempts at secession, but rather movements of emancipation. Whether or not such an attempt involves an armed uprising, writers and activists have long held that the struggle of people in order to free themselves from colonial rule and achieve independence cannot be called secession. This perspective has been popular, since the prevailing belief is that colonised people are entitled to be free from foreign domination and should be allowed to

restore the rightful sovereignty which has been taken by the colonial power (Emerson, 1971, p. 465). However, in the non-colonial situations, as mentioned above, many minority groups have claimed secession under the self-determination concept. External self-determination has been applied when people are oppressed by their homeland and their basic rights and human rights are violated by their government (Sterio, 2017). The government must allow all of its people to participate equally in the political and economic decision-making processes through related rights. If a small group of people within a larger group is constantly excluded from participating in such processes by the government or dominant majority, external self-determination can be applied to achieve a meaningful engagement in the functions of the society in which they live. In the Preamble of the Universal Declaration on the Rights of Peoples, which was adopted in 1976 by over 80 prominent persons from political and cultural sectors across the world, it is stated that if the right to liberty, the right to freedom from foreign interference, and the right to choose their own form of government of people are disregarded, they have the right to fight against the oppression and get help from other people for their efforts (Paupp, 2014, p. 546).

After studying many normative theories of separation possible objections to those theories, Buchanan (Buchanan, 1991, p. 342) concludes that “there is a moral right to secede, but it is a qualified right”. For Buchanan, the source of the moral right and qualified right is rectificatory justice which claims that a particular area where the same people are residing can enjoy the right to secession if that area was unfairly subsumed into the larger unit from which its members want to separate. He said that the right to secession in this situation is parallel with the circumstance in which one has the right to reclaim his or her own property that has been stolen. According to Buchanan, another justification for the right to external self-determination is discriminatory redistribution principle in which the government of a state, in morally arbitrary ways, set regulatory and economic policies that create advantages for one group, while another group is disadvantaged. If without having any legitimate reasons or moral justification, the

government conducts this unequal treatment, the oppressed group can claim to secede (Buchanan, 1991, pp. 329-330). Hilpold (2018, p. 37) agrees with this sentiment and asserts that the right to secession should be awarded to those who have been extremely discriminated against and suppressed.

The concept of external self-determination is therefore paradoxical in that its purpose is to unify a people and free them from tyranny, yet self-determination frequently confronts the concept of national unity. For example, Seymour (2007, p. 409) claimed that external self-determination has been seen as an attempt that violates rights to the territorial integrity of a state. In contrast, statehood was encouraged among the colonised countries to enable them to become independent states during the decolonisation process (Whelan, 1992, p. 25). Nonetheless, outside the decolonisation paradigm, the claim of minorities, who are suffering discrimination and suppression by their own government, to separate from the existing state by using the self-determination concept is said to contradict the principle of territorial integrity of states. The quandary is further confused in the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples adopted in 1960, it is stated that people can enjoy self-determination, however, it also clearly enshrines in a paragraph that “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations” (General Assembly Resolution, 1960). Thus, according to the 1960 UN Declaration, it is clear that the right to self-determination is not an absolute right. In the Helsinki Final Act, although it is stated that people have the rights to both internal and external self-determination, this statement should not be misconstrued as sanctioning of separatism, since the principle III. Inviolability of frontiers and the principle IV. Territorial integrity of States are also included in the agreement. To underscore this principle on the right to secession, United Nations Secretary General U Thant was quoted in a press conference held in January 1970:

“So, as far as the question of secession of a particular section of a Member State is concerned, the United Nations' attitude is unequivocal. As an international organization, the United Nations has never accepted and does not accept, and I do not believe it will ever accept the principle of secession of a part of its Member State.” (UN Monthly Chronicle 36, cited in (Emerson, 1971, p. 464)

Some countries, such as India and Indonesia, made restriction in the interpretation of self-determination when they ratified the international treaties. For example, in the Article 1 of the ICESCR and Article 1 of the ICCPR, the Government of the Republic of India declared as follows:

“The words ‘the right of self-determination’ appearing in [this article] apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation--which is the essence of national integrity.” (Vijapur, 2018, pp. 53, 57)

The attempt of the international community to provide clarity in the complicated relationship between the right to self-determination and territorial integrity can be seen in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations adopted in 1970. This document declares that the principles of territory integrity or political unity are only reasonable to those states in which the government represents all the people who belong to the territory regardless of race, creed, or colour (General Assembly Resolution, 1970). Some scholars believe that no nations have the primary right to external self-determination. For example, Bauhn (Bauhn, 1995, pp. 111-113) did not support separation in the absence of serious oppression and discrimination, instead, he suggested to look for less extreme options, unless the state resorts to repression. Seymour (2007, p. 411) also suggested that external self-determination right should be applied only when the given state treats their citizens unfairly and

cannot give them internal self-determination. Sterio (2018) also stated that external self-determination is the last option when people are discriminated against or the government of their homeland state does not legitimately represent their interest.

### **2.2.2 International self-determination**

Internal self-determination is regarded as the first option for oppressed and marginalised groups, including ethnic, linguistic, racial, and religious minorities as well as indigenous people. Demir (2017, p. 29) asserts that if a government ignores the right to internal self-determination of an ethnic group, that suppression may lead to external self-determination. Moreover, scholars have agreed that external self-determination should only apply when a group or people or a minority are intentionally left out from government processes and do not receive fair treatment by the government and majority. The attempt of separation from representative democracy is not regarded as a justifiable exercise of the right to self-determination. As long as the state secures equal rights and the above-mentioned internal form of self-determination to all of its people regardless of race, religion, sex, creed or colour, the claim for secession cannot be legitimated. Only if the government is oppressive dictatorship and at the lowest end of scale of democracy, the claims of rights to secession is legitimated (Kirgis, 1994, p. 308). Secession or external self-determination should be obtainable only in exceptional conditions including circumstances in which the fundamental human rights are grossly breached and there is ignorance of plausible peaceful solutions within the existing state structure (Cassese, 1995, pp. 119-120).

The main concern of the internal self-determination concept is the relations between the government and people within the state (Thornberry, 1993, p. 101) (Barten, 2015, p. 197). Raic (2002, cited in (Demir, 2017, p. 23) said that internal self-determination is applied in intra-state relations. Cassese (1979, p. 137), who was a pioneer of internal self-determination, stated that people who are living within a sovereign state can choose their government and no minorities,

regardless of ethnicity, race or religion, will be discriminated by the state government under internal self-determination right (Cassese, 1979, p. 137). He also said that internal self-determination is the right to authentic self-government which means a people can exercise that right to freely determine their own political and economic regime (Cassese, 1995, p. 101).

Internal self-determination is always viewed as a right that can promote the democratic governance (Senaratne, 2013, p. 332). Thornberry said that internal self-determination is a promise of democratic authenticity in which people achieve freedom into the ongoing process of authentic self-rule that help their liberty to deeply root in the culture of democracy (Senaratne, 2013; Thornberry, 1993, p. 101). According to Rosas (1993), in internal self-determination, people within an existing state have the right to control over their own constitution and government that is the right to democracy, rather than the right of the people of an existing state relating to other states and governments or a certain state or government to which these people do not wish to swear loyalty. He said that there are three layers of self-determination:

- “1. The (construed) right of the people to constitute its own political system (pouvoir constituent); this right may become ‘consumed’ when the choice, be it the constitution of a dictatorship, has been made.
2. The right of the people to have a say in amending the constitution, including the right of resistance against tyranny and oppression.
3. The right of the people to govern and to take part in the conduct of public affairs, including participation in elections, referenda, and so on.” (Rosas, 1993, pp. 232,249)

Internal self-determination right helps minorities follow their ways of life and have equal opportunities with the dominant majority. It also helps the minorities not to be discriminated against by the majority. According to Hannum (1996, p. 113), the right to internal

self-determination allows a people or a group of minorities to have an effective participation in the decision-making process that can determine their political, economic, social, and cultural settings. Two most important categories for internal self-determination are group autonomy and democracy (Alfredsson, 1993, p. 50). Under internal self-determination rights, full autonomy is conferred to the minorities without confronting the territorial integrity. Full autonomy refers to the autonomy of a smaller region within the larger unit (state) and it is territorial-based autonomy. Apart from the rights to independent external relations and founding of their own military forces, the minorities will have all rights (Barten, 2015, p. 245). Hilpold (2018, p. 43) said that in internal self-determination, all groups within the state can participate in the democratic process of the state. In that way, they can preserve their identity, culture, and values as well as they can attain equal opportunity in economic and social affairs, alongside the dominant majority. Demir (2017, p. 23) also stated that all peoples within a state should have an equal chance to enjoy their cultural, social, and economic rights without any distinction. Under international law, internal self-determination right is framed in the Declaration on Friendly Relations among States:

“By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.” (General Assembly Resolution, 1970)

Moreover, in the General recommendation XXI on the right to self-determination adopted by the Committee on the Elimination of Racial Discrimination in 1996, the concept of internal self-determination is explicitly stated:

“The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level, as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination. In consequence, Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin.” (United Nations, 1969, p. 4)

### **2.3 Federalism**

Kneitschel (2015, p. 247) said that “Federalism is a concrete manifestation of the right to internal self-determination of specific communities in a multi-ethnic or multi-national state.” Federalism is regarded as a “first resort” to solve ethnic conflicts and the most proper form of internal self-determination because a federal system allows all communities in its entity to enjoy not only the rights to self-government and equal participation in the political, economic and social affairs of the whole country but also maintain their own identities, practise their culture and follow their ways of life. Nowadays, over 25 countries with 40% of the total population of the world, are practising a federal system (Watts, 2008, p. 1). The term “federal” comes from the Latin word *Foedus* which means “treaty” or “pact” which were contracted between allied states of ancient Rome (Watts, 1998, p. 11). However, the United States first developed the modern federalism concept in 1788 (Kozlowski & Weber, 2010, p. 1) (Watts, 1996, p. 2). It is believed that the ancient Israelite tribes first established a federal system over 3200 years ago (Watts, 1996).

Federalism is a political system in which political power is not concentrated at the centre, but power is separated to constituent units. In federalism, the foundational principle is division or separation of power between the central and regional governments. There are five



secondary features of federalism and they are “a written constitution, bicameralism, equal or disproportionately strong representation of the smaller component units in the federal chamber, decentralized government, and the right of the component units to be involved in the process of amending the federal constitution but to change their own constitutions unilaterally (Lijphart, 1979, p. 502).” Federalism is considered as a tool to solve ethnic and racial problems and conflicts in racially and ethnically diverse states. Bermeo said that “federal systems are more successful at preventing or mitigating armed rebellion, political and economic discrimination, as well as political, economic, and cultural grievances” (Bermeo, 2002). It is widely believed that federalism is a means which can enable different people with different identities and backgrounds of a state peacefully co-exist while maintaining their identities (Bagchi, 2003, p. 21) (Bhattacharyya, 2010, pp. 8,10). According to Elazar (Elazar, 1987, p. 64), federalism simultaneously pursues to make and uphold both unity and diversity; in other words, federalism is an effective combination of unity and diversity.

Federalism is composed of at least two levels of government, namely the central government and the provincial or state level governments. Federalism is a system which allows all levels of government to separately and freely work while also allowing them to work together within a nation state. According to Watts (1996, p. 7), federalism is a political system in which two or more tiers of government govern by combining shared-rule and regional self-rule. Under a federal system, different groups with different identities share power for common interests; however, since power is divided between central government and provincial level governments, these groups have autonomy to freely make decisions in administration processes of their own regions and states (Kipgen, 2017, p. 612).

According to Inman and Rubinfeld (1997, p. 44), there are three main principles of federalism. The first principle is that the federal system fosters the allocation of national resources to be efficient. The second principle is that the federal system encourages political

participation of all peoples, and this will help to create a democratic community. The third principle is that elementary liberties and freedom of people will be protected by federalism. It can be said that federalism can bring the government closer to its people, enhance democratic values, as well as protect and promote individual rights and freedom. It also helps to improve the efficiency of the governments by putting them into competition with one another (Bagchi, 2003, p. 21).

There are various types of federalism with different functionalities (Kipgen, 2018, p. 613), namely dual federalism, competitive federalism, creative federalism, cooperative federalism, fiscal federalism, symmetric and asymmetric federalism, territorial-based and non-territorial federalism, which will be discussed in the next section.

### **2.3.1 Dual federalism**

Dual federalism was first practised in the United States in the 1790s (Zimmerman, 2001, p. 17). It is also referred to as “layer cake federalism” since the responsibilities and powers of the two levels of government are clearly separated. The federal government cannot interfere with the state governments in exercising their powers. Power sharing of dual federalism is a horizontal structure in which the two levels of government have different spheres, and both federal and state governments are autonomous in their spheres (Corwin, 1950, p. 4) (Greve, 2000, pp. 557-558) (Young, 2014, pp. 36-37). Since responsibilities and powers are distinctly separated between federal and state governments, dual federalism helps to improve application of democratic principles and federal government cannot abuse power. Cooperative federalism

Cooperative federalism was first established in the United States in the 1950s (Kincaid, 1990, p. 142). Cooperative federalism is also called “marble cake federalism.” In cooperative federalism, state governments not only have autonomy, enact and enforce their own laws in their specific sphere but also cooperate and coordinate with the federal governments in various policy-making areas. While practising marble cake federalism, in order to support the federal

government, state governments submit implementation plans to the federal government, spreading rules and regulations, and taking administrative actions to enforce federal laws and policies (Hills, 1998, p. 815) (Greve, 2000, p. 558). Unlike dual federalism, cooperative federalism is the intergovernmental relations model in which governmental structures are divided; however the responsibilities and powers of federal and state governments are not clearly separated and the functions of the two levels of governments are overlapping (Zimmerman, 2001, p. 18).

### **2.3.2 Creative federalism**

Creative federalism is an expanded form of cooperative federalism in which the federal government has more power than the state governments and the federal government exerts control over the state governments in state-wide programs. Creative federalism is also called picket-fence federalism and it was practised in the US during Lyndon Johnson's presidency (1963-1969). The creative federalism accepts a vertical distribution of power and federal government decides the needs of the states and provides services to the states (RAJASHEKARA, 1986, pp. 93-94).

### **2.3.3 Fiscal federalism**

In fiscal federalism, the federal government allocates funds to the state governments to implement national programs. Rather than political theory, fiscal federalism is principally an economic theory of relations between federal and state governments (Kenyon, 2018). Fiscal federalism was coined by Richard Musgrave, an American economist with German heritage, in 1958 (Sharma & Valdesalic, 2020). Some commentators have said that fiscal federalism is more than distribution of fiscal power. Wildasin (2008, p. 405) said that fiscal federalism is concerned with "the division of policy responsibilities among different levels of government and with the fiscal interactions among these governments". In fiscal federalism, the responsibilities and functions (including finances) of different levels of governments are

divided in order to enhance the economic efficiency and attain various policy objectives (Driessen & Hughes, 2020, p. 1). According to Oates (1999, p. 1120), the subject matter of fiscal federalism is “to understand which functions and instruments are best centralized and which are best placed in the sphere of decentralized levels of government”.

#### **2.3.4 Symmetric and asymmetric federalism**

Symmetric federalism is a type of federal system in which both federal or central government and state governments have equal status, and there is no distinction between all constituent units in terms of power. Australia and the US are the examples of symmetric federations in which every state has equal levels of autonomy. In contradiction to symmetric federalism, in asymmetrical federalism, power distributed to the constituent states is not symmetric and not every constituent unit holds equal power or has equal status. Thus, different constituent states have different levels of autonomy, or one or more constituent states have more power than other states although all states possess the same constitutional status. Some of the examples of asymmetric federations are Malaysia, Spain, and Russia in which different states have different levels of autonomy (Tarlton, 1965, pp. 868-869) (Bulmer, 2017, p. 21). In asymmetrical federalism, there are two different types, namely *de facto* asymmetrical federalism or *de jure* asymmetrical federalism. In *de facto* or political asymmetry, the degree of power of different states varies by some factors such as size of population and territory, as well as economic geography. In *de jure* or constitutional asymmetry, constitutional law grants more power to a constituent unit than the others and different constituent units are treated differently by constitutional law (Popelier & Sahadžić, 2019, pp. 5-6).

#### **2.3.5 Territorial and non-territorial forms of federalism**

Territorial federalism refers to a model of federal system in which power is distributed to all constituent units where federation or country is divided into territorial subunits, such as states or provinces. It is appropriate for a country which is ethnically or linguistically or

religiously homogeneous. Even when a country has diverse societies in terms of religion, language and ethnicity, if these societies are territorially concentrated and the territorial subunits also reflect this situation, the territorial form of federalism can be applied (Kneitschel, 2015, p. 248).

The concept of non-territorial federalism was developed by Karl Renner (Coakley, 1994) through his work on a national cultural autonomy model in his article (State and Nation) in 1899. His idea was that for each nation, a national council comprised of elected representatives of all parts of the nation, regardless of the state or province in which they were residing, was established, and responsibilities and powers would be given to that national council to manage certain areas such as education and culture (Coakley, 1994, p. 300). Non-territorial federalism is relevant for a country that has ethnically heterogeneous societies, especially if the ethnically diverse population is scattered across different geographical areas. It helps prevent exclusion and discrimination of the territorially dispersed minorities by majorities. In this type of federalism, the non-territorial minorities can enjoy the rights to self-determination including autonomy in the same territory (Kneitschel, 2015, p. 249).

## **2.4 Constitution-Making and Constitutional Reform**

Most states across the world have drafted a formal constitution which lays down the set of rules and laws and serves as the legal framework for how the country is governed. Constitutions declare the rights of a country's citizens, underpin a credible government, and set national goals and interests. Constitutions are created by new and decolonising states, as well as in countries when there is a regime transition, for instance, transition from an authoritarian regime to a democratic one. A constitution may be changed, updated, or reformed by consensus in government if it is found that current laws or provisions are no longer appropriate for governance processes or if circumstances in the society change such that new rules should apply. In authoritarian regimes, the leaders may revise the constitution to serve their purposes in

gaining or retaining power and control of the society or its government (Lerner & Landau, 2019, p. 4).

In drafting the constitution, different methods may be used in drafting and promulgating constitution depending on the form of government, for example, authoritarian or democratic governments differ in their approaches. In democratic countries and countries which are seeking a democratic transition, the drafting constitution body may be or ordinary legislatures or specialized constituent assemblies (Crouch, 2019, p. 489; Lerner & Landau, 2019, p. 9). In authoritarian countries, the constitutions are drawn up under the influence of dictators and the constitution makers are not the elected representatives in free, fair, and competitive elections (Ginsburg & Simpser, 2014, p. 2). Therefore, the main body in charge of constitutional making process is directly appointed by the authoritarian regime itself (Crouch, 2019, p. 489).

Constitution-making can be used as a tool in bridging differences between various identity groups by allowing them to discuss main issues and problems in a deliberative way, as well as to find the solutions and draw up institutions that can protect and promote their key interests and benefits (Lerner & Landau, 2019, p. 14). On the other hand, although the constitution-making process is regarded as a vital element to end violent conflicts and achieve peace, many political, economic, and social conflicts may arise during the development or reforming of a constitution (Negretto, 2012, cited in (Lerner & Landau, 2019, p. 4). If distrust and suspicion between different identity groups are very high, it may undermine the democratic process by causing destabilised polities and heightened tensions

Constitutions are sometimes used pre-emptively by the authoritarian regimes to thwart the possibility of a constitutional democratic transition. Authoritarian regimes use the new constitution to foster authoritarian resilience and achieve their goals, such as gaining full control

over the people, ensuring permanency of their positions, or achieving domestic and international legitimacy (Crouch, 2020, pp. 487-490)..

In the constitutional-building and reform process, one of the most important parts is a referendum. In the past few decades, referendums have been a more common feature in the process of amending constitutions and making constitutions. Since referendums allow citizens to vote on any constitutional amendment, they can be seen as a sign of popular sovereignty that indicates the government's authority is created by the consent of its people. However, holding a referendum does not always imply that it will result in a democratic outcome or assist genuine participation. The authoritarian regimes which do not allow people to freely vote also hold referendums, often to strengthen the power or advance interests of political elites or to legitimise a dictatorial government in the eyes of the international community of nations. In the autocratic systems of an authoritarian regime, the referendum for constitutional reform most often serves to consolidate the power of those elites or individuals who are the determiners of how the referendum is conducted and what its outcome will be (Crouch, 2019, pp. 490-491).

### **Chapter 3 Analysis of three Constitutions**

This chapter discusses the history of constitution-making processes in Myanmar since it emerged as a new Union of Burma nation in 1947 after gaining its independence from British colonial rule and the surrender of Japanese occupying forces. The origins and background of the country's three constitutions are explored and analysed from the point of view of self-determination and federalism and the findings from the literature review are discussed. Since the constitutional reform process is related to the peace process together with the issues of self-determination and federalism, the Nationwide Ceasefire Agreement (NCA) and the Union Peace Accord are also discussed in this chapter.

Since officially gaining independence in January 1948, Myanmar has adopted three constitutions: in 1947, 1974, and 2008. The first constitution for the Union of Burma, as it was known then, was drafted in 1947 by U Nu's government (Maung, 1961) after the country's first leader, General Aung, was assassinated. This first constitution was in force from independence until 1962 when it was suspended following a military coup led by General Ne Win (Collins, 2002). The second constitution was made by U Ne Win's government in 1974, through a national referendum, and installed Ne Win as president (Moscotti, 1977). This second constitution was also suspended, this time by the State Law and Order Restoration Council (SLORC), in 1988 during another military takeover of the government. It was then in 1989 that the newly installed SLORC government changed the name of the country from Burma to Myanmar, which remained without a constitution for the next decade of military authoritarian rule. The third and current constitution was drafted in 2008 by the military government led by Senior General Than Shwe.

However, before it is possible to further discuss Myanmar's constitutional matters, the history and promises of the Panglong Agreement must be outlined first because the basis for conflicts and constitutional discord that have happened in Myanmar originate from the



Panglong Agreement of 1946. The Panglong Agreement itself is not the source of the problems but breaking the promises given by the Panglong Agreement is the true source of decades-old problems in the nation.

### **3.1 History of Panglong Agreement and its commitment**

Although Burma was ruled by the British for over one hundred years until 1942, during World War II it was ruled by the Empire of Japan. The Burma Independence Army led by General Aung San cooperated with Japan and helped expel the British in the hope that Japan would allow Myanmar its independence (Collins, 2002). However, once the British withdrew, Japan soon proved to be a brutal occupier that had no intention of giving real independence to Myanmar. Therefore, General Aung San was forced to re-engage with the British and together fought against Japan in March 1945 (Maung, 1961, pp. 47-68). The surrender of Japan brought the British colonial administration back to Myanmar. During the battle with Japan, ethnic people, such as the Chin, Karen and Kachin, fought alongside the British military. Therefore, after the British administration had renewed its control in Myanmar, those ethnic people thought that the British government would treat them better than before in allowing them to follow their ways of life. Most of the ethnic people had been living in mountainous frontier areas and at that time they did not expect to achieve independence but wanted autonomy and freedom to practise their culture without interference. However, the majority Bamar people had been struggling to build an independent state that incorporated all the ethnic groups and territories within the Burmese state (Sakhong, 2003, p. 206).

In March 1946, a conference was organised by H.N.C. Stevenson, who was the director of the Frontier Area in Panglong, Shan State. Both Burmese representatives and ethnic representatives were present at the conference. The aim of the meeting was to discuss the post-colonial status of the ethnic people in Frontier Areas. Stevenson proposed an idea that all Frontier Areas would be established into a single Union. In that United Frontier Union, Chin,

Kachin, Shan, Karen, Karenni (Kayah), Mon, and Tanintharyi State would be included. The United Frontier Union would be the homeland for all the areas of non-Burmese nationalities (Maung, 1989, p. 256). The Burmese representatives were strongly against his proposal, however, the ethnic representative accepted his proposal (Walton, 2008, p. 895).

In December 1946, a Burmese delegation led by General Aung San went to London to ask for independence. The delegation demanded that the Ministerial Burma (mainland Burma) and the Frontier should gain the independence together. However, no ethnic representatives were included in the meeting and it was between the British Government and the Burmese leaders. While the delegation was in London, the British Prime Minister Attlee received a cable from Shan Sawbwa (the chief of Shan state) stating that General Aung San did not represent the Frontier Area (VIP-208). This communique made it clear that the proposal of General Aung San and the Burmese leaders did not represent the voice of the minority ethnic people from the Frontier Areas. General Aung San accepted that he had no right to discuss the future of the ethnic people, therefore, in the agreement with the British government, which is known as the Aung San-Attlee Agreement signed in 27 January 1947, it was stated:

“8. Frontier Areas:

- (b) The leaders and the representatives of the peoples of the Frontier Areas shall be asked, either at the Panglong Conference to be held at the beginning of next month or at a special conference to 210 In Search of Chin Identity be convened for the purpose of expressing their views upon the form of association with the government of Burma which they consider acceptable during the transition period ...
- (c) After the Panglong Conference, or the special conference, His Majesty's government and the government of Burma will agree upon the best method

of advancing their common aims in accordance with the expressed views of the peoples of the Frontier Areas.” (Aung San- Attlee Agreement, 1947)

That agreement was opposed by two Burmese delegates, including U Saw who later assassinated General Aung San. After General Aung San and his delegation had arrived back from London, a conference was held in Panglong early in February. The leaders from Shan, Chin and Kachin states attended the conference. The Karen sent only four representatives to the conference and there were no representatives from Mon and Rakhine state. The reason was that Mon and Rakhine were occupied since before the British colonised Burma and Burmese leaders assumed that those states were parts of mainland or Ministerial Burma. Moreover, although Karen was not occupied or controlled by the Burmese, the relationship between Burma and the Karen was one of a tributary state with internal autonomy since, historically, Karen had paid tribute to ancient Burmese Kings. In contrast to the Karen state, the British colonised the Shan State not as a part of the Burmese Empire, but as an independent state (Sakhong, 2003, p. 207). On 6 February, the Kachin and Shan representatives discussed and reached an agreement to cooperate with Mainland Burma in which the ethnic people would enjoy democratic and equal rights with the Burmese people and have full responsibility of the internal affairs and joint responsibility of the external affairs. (Tinker, 1984, cited in (Sakhong, 2003, p. 212). On February 7, Chin representatives joined that agreement (Walton, 2008, p. 896). On 8 February 1947, a delegation led by General Aung San arrived at Panglong. When he met with ethnic leaders of Kachin, Chin, and Shan, he promised that the people in the Frontier Areas would enjoy full autonomy within the Union, rights to secession, and equality with Burmese people. The most significant promise of General Aung San that is always referenced by ethnic people is that “If Burma gets one kyat [of currency] then you will get one kyat” (Sakhong, 2003, p. 213). That is why ethnic representatives agreed to amalgamate the Frontier Area with

Ministerial Burma. Therefore, on 12 February 1947, General Aung San and 22 ethnic representatives signed an agreement called Panglong.

According to the Aung San-Attlee Agreement, a committee was established to determine the desires and wishes of the people in the frontier region. The Frontier Areas Committee of Enquiry (FACE) led by Colonel D.R. Reese William conducted the enquiry through specific consultation from March to April 1947. The committee found that the ethnic people wanted to cooperate with Mainland Burma and gain independence together. However, that cooperation was contingent on the conditions that ethnic groups in the frontier area would enjoy equal rights with Burmese, full autonomy in internal affairs, and the rights to secession from the Union should they decide to (Sakhong, 2003, p. 215). The committee reported to the British government that the ethnic people agreed to join with Ministerial Burma with those conditions, which were guaranteed by the Panglong Agreement (Panglong Agreement, 1947). Therefore, the British government agreed to approve the amalgamation of Mainland Burma and the Frontier Area and both regions and peoples gained independence together.

Without the Panglong Agreement, the Union of Burma would not have been created in 1947 and Myanmar would not exist today since the ethnic groups rejected the proposal of the British to establish their own union. Instead, they chose to gain independence together with mainland Burma and amalgamate with ministerial Burma in the belief that they would be treated as equal partners in governance of the new nation, enjoying self-determination within the federal union. However, the promises made in the Panglong meeting have not been kept, which is the origin of armed conflicts in Myanmar since that time and the reason that minority ethnic groups are still fighting for self-determination and a democratic federal union.

### **3.2 1947 Constitution drafted by General Aung San**

The Panglong Agreement was reached between Burmese leader General Aung San and leaders of Shan, Kachin, and Chin ethnic groups while Burma was still under British rule. The

Panglong Agreement guaranteed the equality and democratic rights of all ethnic peoples of the country and therefore laid the foundation for the nation known today as Myanmar. Based on those conditions, General Aung San drew a draft constitution which fully guaranteed equality, the right to self-determination, and constitutional protection of all minorities within the Union of Burma. In April 1947, a general election was held in Myanmar and the Anti-Fascist People's Freedom League (AFPFL) led by General Aung San won in the election. In order to draw up the constitution, a "three member committee" was established in the AFPFL first constituent assembly in May (Maung, 1961, pp. 80-81). After completing the task of drafting the constitution, on 23 May 1947 (the last day of the conference), the first constitution was adopted. In accordance with the promises made in the Panglong meeting, General Aung San included some critical democratic principles, including that Burma must develop as an independent sovereign state in which the rights of "all citizens irrespective of race, birth, religion and sex are equal before the law" (Maung, 1961, pp. 80-81). The constitution also stated that any promulgation of religious, ethnic, or racial hatred or conflict would be punished by law. General Aung San intended to build Burma as a democratic nation; therefore, in the preamble of the constitution, the foundational principles of democracy, such as "justice, liberty, and equality" were enshrined (Maung, 1961).

In General Aung San's draft version of the 1947 constitution, separate states were formed independently such that the Burmese constituent unit (State) was equal to any other ethnic state or people. Therefore, the power of the Burmese State did not combine with the power of the Union of Burma, which was a means of ensuring that the Burmese could not control the sovereign power of the Union. The other ethnic groups could establish their own respective States and have their own administrative, legislative, and judicial power. In the Chapter of "THE BURMA UNION AND ITS UNITS" of the constitution of General Aung San, the form of State was stated as follows:

“1. Burma should be Proclaimed as an 'Independent Sovereign Republic.'

2. The said Independent Sovereign Republic of Burma shall comprise: -

A. Such territories that were heretofore within the British Burma known as:-

- (i) Ministerial Burma,
- (ii) Homalin Sub-Division,
- (iii) Sinkaling Khamti,
- (iv) Thaungdut,
- (v) Somra Tract,
- (vi) Naga Hills,
- (vii) Salween District,
- (viii) Kanpetlet Sub-Division, and
- (ix) Arakan Hill Tracts.

B. The Federated Shan States (including Kokang and Mongpai).

C. Karenni States.

D. Kachin Hills, and

E. Chin Hills District (excluding Kanpetlet Sub-Division).”

3. The said Independent Sovereign Republic of Burma should be known as the Union of Burma.'

“(I) The status of a Union State should be accorded to a people who have: -

- (i) a defined geographical area with a character of its own;
- (ii) unity of language, different from the Burmese;
- (iii) unity of culture;
- (iv) community of historical traditions;
- (v) community of economic interests; a measure of economic self-sufficiency;
- (vi) a fairly large population;

(vii) the desire to maintain its distinct identity as a separate Unit.

- (2) The status of an 'Autonomous State' should be accorded to a people who more or less possess the above-mentioned characteristics but lack in economic self-sufficiency.
- (3) The status of a 'National Area' should be accorded to a people who are lacking in all the above-mentioned characteristics except more or less a distinct language, a territory on which it is concentrated in appreciable numbers and the desire to maintain its distinct identity.”

Furthermore, in this version of the constitution, in order to build a genuine federal union, each constituent unit (State) was allowed to have its own constitution in accordance with the Union Constitution while maintaining its own specific features. It was stated in the constitution as follows:

- “1. The Union State shall have its own constitution in conformity with the constitution of the Union and its own specific characteristics and features.
2. It is suggested that the Head of the Union State may be called the GOVERNOR who should be elected by the State Legislature.”

In the constitution drafted by General Aung San, universally recognised rights for human beings, such as liberty, freedom of religion, freedom of expression on their convictions and opinions, freedom of assembly and association and freedom of movement were also enshrined. Apart from those fundamental rights, freedom of trade, freedom from forced labour, freedom for voting and competing in elections, and rights for women were also granted. Concerning the right to practise religion, all people have the entitlement to freedom of conscience and the right to freely profess and practise the religion they believe. General Aung San, the architect of Burma’s independence movement, who forged the treaty with the British, intended to build the Union of Burma as a secular state; therefore, in his draft constitution, it was stated as follows:

“(14) The abuse of the church or of religion for political purposes is forbidden. The Union shall observe neutrality in religious matters. It may, however, extend material or other assistance to religious institutions.

Religious communities whose teaching is not contrary to the Constitution, are free in their religious affairs and in the performance of religious ceremonies and also to have schools for the education of priests; but such schools shall, however, be under the general supervision of the Union.”

Not only economic and civic rights, but also cultural and educational rights were also enshrined in the first drafted constitution, as follows:

“15. No minority whether based on religion, race or language shall be discriminated against in regard to the admission into public educational institutions, nor shall any religious instruction be compulsorily imposed on it.”

In the General Aung San drafted constitution, in order to completely and legally safeguard national minorities, rights of national minorities were exclusively stated. The following rights were granted for the national minorities:

“(i) human rights,

(ii) national or cultural rights,

(iii) freedom of association with cultural autonomy

(i) Human rights embrace the time-honoured elementary rights of man:  
citizenship, the protection of life and liberty,  
equality before the law, civil and political rights,  
religious freedom,  
freedom from discrimination generally, including equality of economic  
opportunity



- (ii) National or cultural rights. Special safeguards against linguistic and educational discrimination should be provided for
- (iii) Freedom of association with cultural autonomy”

The Constitution drafted by General Aung San guaranteed not only the equality of status, of opportunity and before the law, but also right to secession. In the draft constitution, it was stated that if the state wishes to secede, through the resolution passed by its State council, and a plebiscite held to know the will of the people of the State concerned, a state can secede from the Union. However, the important condition was that secession was not allowed “within ten years from the date on which the State concerned comes into the Union of Burma” (Williams & Sakhong, 2005, p. 16). With the approval of two-thirds of the members of the State Legislature, the Union Assembly shall agree to hold a referendum to make sure the will of the people of the State concerned. If the people are willing their own State to separate from the Union, secession would be successful.

Regarding self-determination, General Aung San’s version of the constitution fully granted self-determination to all ethnic groups. General Aung San said that “the right of self-determination means that a nation can arrange its life according to its will. It has the right to arrange its life on the basis of autonomy. It has the right to enter into federal relation with other nations. It has the right to complete secession (Williams & Sakhong, 2005, p. 16).” His proposed constitution would have allowed all ethnic groups to enjoy equality and autonomy, as well as voluntary association with the Union and even secession from the Union if they desired it. However, Aung San’s plan for a fair and just constitution for Burma was not to be realised because, on 19 July 1947, he and seven of his ministers were murdered by a rival faction before he could enact his vision for a modern, democratic state for the country. This was a critical turning point in the nation’s birth which changed the course of history and put in place the circumstances that would lead to rule by a military authoritarian government, ongoing inter-

ethnic conflict, denial of human rights, and discrimination for Burma over the following 65 years until the present time.

### **3.3 1947 Constitution of U Nu's government**

After General Aung San was assassinated, U Nu redrafted the Constitution drawn by General Aung San. Although General Aung San intended to build Burma as a federal state, in U Nu's version of constitution, Myanmar was seen as a unitary state (Williams & Sakhong, 2005). In drafting the new constitution, U Nu kept some of the ideas of General Aung San; however, he made some changes which totally did not reflect the spirit of Panglong. For example, on the basis of the Panglong Agreement, the ethnic groups voluntarily associated with the Ministerial Burma as equal partners. However, U Nu's constitution failed to fulfill equality among ethnic people promised by Panglong Agreement. Instead, it made other ethnic groups constitutionally subordinated to the majority Burmese ethnic group. In the newly drafted constitution, Ministerial Burma where most of the Burmese people were living did not establish a separate State but instead was combined with the whole power of the Union of Burma (Comparative Constitutions Project, 2016). Moreover, the newly drafted constitution excluded the article that allowed the Union States to have their own constitutions. Clauses related to all the affairs of the constituent units (Union States) were put into the Union Constitution and this created the affairs of Union States as part of the Union Constitution (Comparative Constitutions Project, 2016). No separate constitutions for Union States were permitted and all States Affairs were considered part of the Union Constitution which meant that under the 1947 Constitution, the powers and autonomy exercised by State Governments were vested to them by the central government. Williams and Sakhong (2005, pp. 17-18) pointed out that Myanmar under the 1947 Constitution had the characteristics of a unitary state in which the central government takes the supreme power, and any administrative units work under the control of the central government.

Furthermore, General Aung San drafted his proposed constitution by including clauses that separated religion from the politics, which would have created the nation as a secular state; however, U Nu did not make a clear division between religion and state and instead used the following clause:

“21. (1) The State recognizes the special position of Buddhism as the faith  
professed by the great majority of the citizens of the Union.”

Although the constitution also put some of the following clauses that recognise the position of other religions, some non-Buddhist ethnic groups were not satisfied that their religions were being regarded as equal:

“(2) The State also recognizes Islam, Christianity, Hinduism and Animism as  
some of the religions existing in the Union at the date of the coming into  
operation of this Constitution.

(3) The State shall not impose any disabilities or make any discrimination on the  
ground of religious faith or belief.

(4) The abuse of religion for political purposes is forbidden; and any act which is  
intended or is likely to promote feelings of hatred, enmity or discord between  
racial or religious communities or sects is contrary to this Constitution and may  
be made punishable by law.”

Thus, the first constitution to be adopted under U Nu’s government did not establish the Union of Burma as a secular state but instead favoured Buddhism over other religions (Comparative Constitutions Project, 2016). Subsequently, in 1961, the State Religion bill was approved in the Parliament and Buddhism was announced as the State religion (Williams & Sakhong, 2005). Although U Nu said that establishing Buddhism as the State religion would not reduce fundamental rights of other religions, non-Buddhists could sense that the bill would alienate

the other religions and result in religious discrimination, which has since then become a reality (Walton, 2008).

### **3.4 1974 Constitution of U Ne Win's government**

The second constitution was drawn up under the guidance of the Burma Socialist Program Party led by U Ne Win in 1974 after a period of further turmoil in the nation's history. In 1958, due to continuing civil unrest in the outer regions, U Nu asked General Ne Win to take the Prime Minister position since U Nu was incapable of resolving the ethnic conflicts that were threatening the existence and integrity of the Union. Therefore, General Ne Win took the office, and his caretaker government administered the country. In 1960, a general election was held, and U Nu was re-elected; therefore, a parliamentary government which was democratically elected by people was restored for a time in Myanmar. However, there was increased tension between the civilian government and non-Buddhist ethnic groups opposed to U Nu's attempt to promote Buddhism as the state religion. U Nu's mismanagement of the ethnic uprisings and his tolerance of secession caused the military to overthrow the government after only two years of civilian governance. On 2 March 1962, General Ne Win conducted a coup d'état and imprisoned U Nu and some of his cabinet members. Then, he established the Revolutionary Council of the Union of Burma with the members from the armed forces. All political authority, including administrative, judicial, and legislative powers, were held by General Ne Win and the nation was ruled under martial law. As a justification for the coup, Ne Win claimed that he had saved the country from the edge of disintegration, since the ethnic groups would have seceded from the Union had he not stepped in militarily and brought them back under control (Kumbun, 2017). Thus, from that time forward, Ne Win had ushered in the absolute dominance and perpetuation of the military dictatorship of the country.

In 1964, as a means of consolidating his authority, General Ne Win changed the political system of the country to a one-party state. The only party which was allowed to exist in the

country was the Burmese Socialist Program Party (BSPP) and which was dominated by military ethnic Bamar officials. In order to legitimate his power, a new constitution was drafted by General Ne Win and his colleagues (Moscotti, 1977, pp. 5-22). In 1974, a general election was held under the new constitution and BSPP won all seats in the parliament since it was the sole party permitted to run in the election. General Ne Win shed the military uniform, took the chairman's post in BSPP, and became President of the Union of Burma.

The 1974 Constitution was contradictory of the promises embodied in the Panglong Agreement (Comparative Constitutions Project, 2016). The spirit of the Panglong Agreement, such as building a federal union, right to self-determination and rights to secession, were excluded in the 1974 constitution. In 1974 Constitution, regions of ethnic people had been demarcated into seven ethnic minority States, namely Kachin, Kayah (Karenni), Kayin, Chin, Mon, and Rakhine (Arakan). Regions of ethnic Burmese have also been demarcated into seven Divisions (States), namely Yangon, Mandalay, Bago, Magway, Sagaing, Ayarwaddy, and Tanintharyi. Although minority ethnic people have their own States, they did not have their own State Constitution, and the supreme power was held by BSPP (Moscotti, 1977, pp. 5-22). The most significant contradiction of the 1974 Constitution with the Panglong Agreement was that the new constitution excluded mention of any rights of secession from the Union. The outcome from the Panglong Agreement was that ethnic groups joined with the Union by their own consent since they were promised that they would enjoy equal rights with Mainland Burma in all aspects. By the agreement, ethnic minority groups in the Frontier Areas were guaranteed self-determination and legislative, administrative, and judiciary powers as autonomous regions to build their own destiny. The essence of self-determination under the Panglong Agreement was that the newly formed Union would be established on the basis of federal principles and all constituent units (States) of the Union would have the right to decide for themselves to be a member of the Union and give their own consent. Therefore, excluding

the section for rights of secession meant that the 1974 constitution broke the principle of self-determination granted by the Panglong Agreement.

As mentioned above, the motivation for the coup was to maintain the integration of the Union and, therefore, it should be no surprise that secession was not allowed. When the ethnic groups knew that they were not given the rights to secede from the Union, they asked for U Ne Win's government to establish a federal union (Moscotti, 1977, pp. 5-22). However, U Ne Win thought that "federalism" is a term that can bring disintegration and antiunity in the Union; therefore, he rejected federalism (Kumbun, 2017). Under his rule, the country was transformed into a military dominated-single-party state. In Chapter 2-Basic Principles of the State, Article 11 explicitly stated:

"The State shall adopt a single-party system. The Burma Socialist Programme Party is the sole political party and it shall lead the State."

The legislative body of the 1974 Constitution did not reflect a federal structure. It is commonly known that unicameral legislatures are mostly found in unitary states while in federal states, there are usually bicameral legislatures. In the 1974 Constitution, the parliament was only established with unicameral legislatures and the power to make laws was vested only to *Pyithu Hluttaw* (House of Representatives). In the 1947 Constitution, the parliament was a bicameral legislature (Chamber of Deputies and Chamber of Nationalities); however, this was changed in the second constitution of 1974. In Chapter-III, State Structure and Chapter IV-Pyithu Hluttaw, the role of the lower house was stated as follows:

"Article 32 -The Socialist Republic of the Union of Burma has a unicameral Pyithu Hluttaw.

Article 41 -The Pyithu Hluttaw is the highest Organ of state power. It exercises the sovereign powers of the State on behalf of the people.

Article 44- The legislative power of the State is vested solely in the *Pyithu Hluttaw*.”

### **3.5 2008 Constitution and military government**

#### **3.5.1 Constitution making process and National Referendum**

Before discussing the findings concerning the 2008 Constitution, the constitution making process and the national referendum of 2008 will be outlined. In 1962, the democratically elected U Nu civilian government was overthrown by General Ne Win, and the country was ruled by the Burma Socialist Programme Party (BSPP), whose members were former military personnel. The BSPP not only ignored the demands of minority ethnic groups to grant them autonomy, federalism, and equal rights with ethnic Burmese, but also oppressed the fundamental rights of all ethnic people including the Burmese ethnic population. Ne Win’s “Burmese Way to Socialism” motivated him to nationalise almost all private enterprises including the banking system and the industrial sector businesses. Only fisheries and agriculture remained in the private sector. Prior to General Ne Win’s government, Myanmar was one of the richest countries in Southeast Asia; however, because of the military regime’s economic incompetence, political violence, and corruption, Myanmar became one of the least developing countries (LDC) in the world. Not only were Ne Win’s economic policies responsible for making Myanmar one of the poorest countries, but his non-aligned foreign policy isolated Myanmar politically and economically from the rest of the world for over two decades.

Oppressive military rule and socialist economic mismanagement led to a nationwide protest in which virtually the entire population, ranging from students and civil servants to Buddhist monks, clamoured for a democratic transition and an end to military rule. Because of this nationwide demonstration, U Ne Win resigned from his position and the State Law and Order Restoration Council (SLORC) was created by Army Chief General Saw Maung in September 1988. The SLORC brutally cracked down on the demonstrations and deterred further

protests, but also softened the government's stance somewhat on democratic rights and introduced a series of reforms to electoral laws that allowed the formation of political parties in an attempt to improve internal and external legitimacy (Human Rights Watch, 2008, pp. 11-14).

Efforts to gain international credibility led SLORC to hold a general election in 1990, which they expected to win. However, the National League for Democracy, led by Nobel Laureate Daw Aung San Suu Kyi (daughter of General Aung San) won a landslide victory. In confirmation that it was a sham election, SLORC rejected the result and announced that the representatives were elected not to form a parliament but to form a constituent assembly to draw a new constitution. In January 1993, the National Convention was started with 702 delegates in which only 106 were elected representatives in the 1990 election (Crouch, 2019, pp. 495-496). The SLORC military junta did not allow the delegates to draw up the whole constitution but just the "basic principles" of the draft constitution (Human Rights Watch, 2008, pp. 14-16). In writing the basic principles, those principles must follow the objectives of the National Convention that was already set by the SLORC. In the basic principles, the SLORC included a principle that allowed *Tatmadaw* "to participate in the national political leadership role of the State." Moreover, in the basic principles, "non-disintegration of the Union, non-disintegration of national solidarity, and perpetuation of sovereignty" were included as the aims and objectives of the Union (these principles are also the main objectives of the *Tatmadaw*) (National Convention of Myanmar, 2007, p. 1) .

All the processes of the National Convention were strictly controlled by SLORC. In the sessions of the National Convention, if a delegate wanted to make a statement, that statement must be first submitted to the National Convention Convening Commission which was dominated by SLORC. If the Commission found that the proposed statement of a delegate was inconsistent with the objectives of SLORC, they would censor it. If the delegates violated the



rules of the convention set by SLORC, they would be seriously punished. Two delegates were arrested and given jail sentences of 20 years and 15 years respectively for disobeying directions of SLORC. In November 1995, NLD delegates boycotted the convention and shortly after the NLD left the convention, the SLORC (which changed to State Peace and Development Council [SPDC] in 1997) suspended the convention in March 1996. The convention was only reconvened in 2003, by the renamed SPDC which increased the number of delegates from ethnic minorities, especially from armed ethnic groups which had already reached ceasefire agreement with SPDC, while decreasing the elected delegates from the 1990 election. Although delegates from armed ethnic groups were in the convention, a proposal of 13 of the armed ethnic groups that proposed to build “a decentralized federal union with ethnic or national democracy” was refused by SPDC. In 2007, KIO also submitted a 19-points list of proposal in which most points demanded the rights of ethnic States; however, SPDC also rejected this proposal and concluded the convention in September 2007 (Human Rights Watch, 2008, pp. 16-21).

At that time, an uprising known as the Saffron Revolution, came to prominence as the largest protest in Myanmar since the 1988 uprising. The demonstrations were caused by the announcement of the government to remove subsidies on the prices of fuel, which increased fuel costs. At that time, the government controlled the energy sector, and all fuel stations were owned and operated by the government. The prices of petrol and diesel had doubled and gas had risen five-fold resulting in massive cost increases of fuel and all other commodities. In the widespread national protests, the Buddhist monks were also included, and the military government once again brutally cracked down the demonstrators (Adams, 2007; Burma Campaign UK, 2007; Steinberg, 2008, pp. 53-54).

Since the SPDC government faced mounting criticism from the domestic and international community and increasing demands for democratic reform, it held a referendum on a draft constitution in May 2008. However, the referendum was not considered free and fair

because of people could not express their viewpoints and all the points in the constitutions were meant to serve the purposes of the SPDC government. There was little consultation with citizen groups or communities, and the draft constitution was not translated into ethnic languages, being only written in English and Burmese; therefore, some ethnic people could not even understand the draft constitution. Moreover, the officials failed to inform the public about the processes of the voting day, and Law 5/96 prohibited people from criticising the draft constitution. In the Article 3 (c) of Law 5/96, it was stated that anyone who was responsible for “disturbing, destroying, obstructing, inciting, delivering speeches, making oral or written statements and disseminating in order to undermine, belittle and make people misunderstand the functions being carried out by the National Convention for the emergence of a firm and enduring Constitution” would be fined and sentenced to minimum 5 years in prison. There was no media freedom in Myanmar and journalist were not allowed to express their views and opinion and the opinion of the public on draft constitution. Finally, during the public discussion and voting for the new constitution, there were no domestic or international observer groups to monitor the referendum (Human Rights Watch, 2008, pp. 23-26, 42). The military government received the most serious criticism from domestic and international communities because they held the referendum amid the devastation of the worst natural disaster. Just eight days before the constitutional referendum, Cyclone Nargis , which was the worst natural disaster in Myanmar’s history, devastated many areas, especially the delta region, and over one hundred and thirty thousand people died. However, the government proceeded with the scheduled referendum despite the chaos and afterward claimed the result was 98.12% voter turnout and 92.48% voted “Yes” (Than, 2009, p. 204). As with previous SPDC attempts to gain credibility, the referendum was dismissed by numerous authorities as transparently fraudulent (Human Rights Watch, 2008).

### **3.3.2 Analysis of 2008 Constitution from self-determination, federalism, and democracy perspectives**

The 2008 Constitution maintained some features of both the 1947 and 1974 Constitution. For example, the parliament (*Hluttaw*) in the 2008 Constitution is a bicameral legislature like that of 1947 Constitution. As with the 1974 Constitution, the regions of ethnic groups and Burmese have been demarcated into seven States and Regions. In the 2008 Constitution, Myanmar can be seen as a quasi-federal state with the space for multi-party democracy while guaranteeing main political powers to the *Tatmadaw*. It can be said that the 2008 Constitution guarantees a degree of political, fiscal, and administrative decentralisation to some extent. According to Article 9, the seven States (where ethnic people live) and the seven Regions (where ethnic Burmese people live) are of equal status. Moreover, in the 2008 Constitution, specific powers are delegated to the States and Regional Governments and the constitutional roles and responsibilities of those governments are specified as follows:

“Art. 188. The Region or State Hluttaw shall have the right to enact laws for the entire or any part of the Region or State related to matters prescribed in Schedule Two of the Region or State Hluttaw Legislative List.

Art. 249. Subject to the provisions of the Constitution, the executive power of the Region or State Government extends to the administrative matters which the Region or State Hluttaw has power to make laws. Moreover, it also extends to the matters which the Region or State Government is permitted to perform in accord with any Union Law.

Art. 252. The Region or State Government shall, in accord with the provisions of the Constitution, submit the Region or State Budget Bill based on the annual Union Budget to the Region or State Hluttaw concerned.

Art. 254. (a) The Region or State shall collect the taxes and revenues listed in Schedule Five in accord with law and deposit them in the Region or State fund.

(b) The Region or State has the right to expend the Region or State fund in accord with the law.

Art. 256. The Region or State Government:

(a) shall, in carrying out the functions of the Region or State Ministries, their subordinate governmental departments and organizations, manage, guide, supervise and inspect in accord with the provisions of the Constitution and the existing laws;

(b) may, relating to the performance of the civil service organizations discharging duties in their Region or State concerned, supervise, inspect and coordinate in accord with the law.

Art. 257. The Region or State Government may, for enabling the performance of the functions to be carried out in accord with the Union Law for Civil Services and in coordination with the Union Government in advance:

(a) form Civil Services organizations relating to the Region or State as necessary;

(b) appoint the required number of Civil Services personnel.”

However, despite these roles and responsibilities, power is vested in the President of the Union to make any changes to the governments of the states and regions. For example, in the Article 248 (c), is the powers are stated as follows:

“c. The President, with the approval of the Region or State Hluttaw concerned, may:

- i. specify the Region or State Ministries as may be necessary. Moreover, he may make changes and additions to the specified Ministries;
- ii. specify the number of the Ministers of the Region or State as may be necessary. Moreover, the specified number may be increased or decreased.”

Moreover, according to Article 261 (b), Chief Ministers of States and Regions are directly selected by the President. The Asia Foundation (2018, p. 28) has pointed out that, technically, decentralisation to the state and regional governments can be seen in the 2008 Constitution; however, in reality, centralised appointment system has been practised by both U Thein Sein and NLD governments, and the appointees to the state and regional governments have been chosen by the President (The Asia Foundation, 2018, p. 28). There is one more important issue that makes the 2008 Constitution far from self-determination and genuine federalism. According to Article 141 of the 2008 Constitution, the *Amyotha Hluttaw* (Chamber of Nationalities) is formed as follows:

“141. The Amyotha Hluttaw shall be formed with a maximum of 224 Hluttaw representatives as follows:

- a. 168 Amyotha Hluttaw representatives elected in an equal number of 12 representatives from each Region or State inclusive of relevant Union territories and including one representative from each Self-Administered Division or Self-Administered Zone;
- b. 56 Amyotha Hluttaw representatives who are the Defence Services personnel nominated by the Commander-in-Chief of the Defence Services in accord with the law, four representatives from each Region or State inclusive of relevant Union territories;”

As mentioned previously, seven states and regions as well as six ethnically-designated self-administrative regions (within Shan States and Sagaing Region) have been demarcated in accordance with the dominant people of the respective regions. According to the Article 141, twelve elected representatives from each of the states and regions have been sent to the *Amyotha Hluttaw* regardless of area and population sizes of the regions and states (The Republic of the Union of Myanmar, 2008). Such constitutional arrangement has caused imbalance between ethnic groups and the Burmese tribe in the *Amyothar Hluttaw* since Burmese representatives from seven regions dominate the parliament. Among 224 representatives, 56 representatives are from Defence Services, while among the rest of the 168 elected representatives, only half of the representatives (84) are from the seven states of ethnic people. All other 84 representatives are from the Burmese regions; therefore, it would be very difficult to implement the equal social, economic, and cultural development between ethnic states and Burmese regions which would always dominate. Also, in *Pyithu Hluttaw*, there are 440 representatives of which 110 representatives are from Defence Services. The rest, being 330, are elected on the basis of township and population and there is a shortcoming to achieve equality for the ethnic people since the towns and cities in the ethnic states are fewer than that of Burmese regions as well as the population in ethnic regions is not as large as that of the Burmese population. Therefore, both parliaments are dominated by the Burmese majority, while the voice of minority ethnic people in the parliament would never be equally represented or likely to fulfill the rights of self-determination of ethnic people.

Another significant issue with the 2008 Constitution is that it is not a true democratic document due to the extensive role of the *Tatmadaw* military forces in the political process. The most undemocratic feature of the 2008 Constitution is that 25% of the parliamentary seats are reserved for defence personnel who are appointed by the military elites rather than elected by the citizens. In Article 109, it is stated that *Pyithu Hluttaw* (House of Deputies/ Representatives)

must be formed with a maximum of 440 representatives comprised of 330 elected representatives and 110 representatives from the Myanmar Armed Forces. In Article 141, it is stated that *Amyotha Hluttaw* must be formed with a maximum of 224 representatives in which 168 are elected representatives for *Amyotha Hluttaw* and 56 are representatives from the Defence Sector. In Article 74 (a) and (b) of Chapter IV-Legislature, the formation of *Pyidaungsu Hluttaw* (Union Assembly) is stated as follows:

“74. The Pyidaungsu Hluttaw comprises of the following two Hluttaws:

- a. in accord with the provisions of Section 109, the Pyithu Hluttaw formed with Hluttaw representatives elected on the basis of township as well as population and Hluttaw representatives being the Defence Services Personnel nominated by the Commander-in-Chief of the Defence Services;
- b. in accord with the provisions of Section 141, the Amyotha Hluttaw formed with Hluttaw representatives elected in equal numbers from Regions and States and Hluttaw representatives being the Defence Services Personnel nominated by the Commander-in-Chief of the Defence Services.”

Regarding the issue of secession, the 2008 Constitution is in opposition to the principles of the Panglong Agreement. Secession is constitutionally forbidden and, in Article 6, the basic principles of the Union are stated as follows:

“6. The Union's consistent objectives are:

- a. non-disintegration of the Union;
- b. non-disintegration of National solidarity;
- c. perpetuation of sovereignty;”

According to the constitution, *Tatmadaw* is the organisation responsible for those basic principles and in Article 20 (e), it is stated that “the Defence Services is mainly responsible for safeguarding the non-disintegration of the Union, the non-disintegration of National

solidarity and the perpetuation of sovereignty.” That is why *Tatmadaw* has consistently hesitated to agree to any form of federalism and has called for inclusion of the term “non-secession” in the Union Peace Accord to ensure there is never an instance of external self-determination by any of the minority ethnic groups or their states.

### **3.4 Nation-wide Ceasefire Agreement**

Since the enactment of the second constitution and the establishment of a military authoritarian government in the 1970s, Myanmar has laboured under an oppressive and undemocratic system which has been continuously resisted by armed ethnic minority groups. However, a significant development in Myanmar’s journey to find a lasting peace has been the 2015 Nationwide Ceasefire Agreement (NCA) which could play a vital role in the peace process of Myanmar. Under U Thein Sein’s government, the NCA was signed between Myanmar government (leaders of executive, Hluttaw and *Tatmadaw*) and 8 ethnic armed groups (EAOs) in 2015 with the presence of observers from UN, and foreign countries such as Japan, China, India US, and Norway. The NCA aimed at ending the seven decades-old armed conflicts and facilitating a new peacemaking process. Through the NCA, an agreement was reached between the stakeholders on the rights to self-determination, federalism, equality, and maintaining the Panglong spirit. In Chapter 1, the basic principles of NCA are stated as follows:

- “a. Establish a union based on the principles of democracy and federalism in accordance with the outcomes of political dialogue and in the spirit of Panglong, that fully guarantees democratic rights, national equality and the right to self-determination on the basis of liberty, equality and justice while upholding the principles of non-disintegration of the union, non-disintegration of national solidarity and perpetuation of national sovereignty.
- c. Discuss matters concerning Pyidaungsu Tatmadaw made up of all ethnic nationalities during political dialogue.



- d. Guarantee equal rights to all citizens who live within the Republic of the Union of Myanmar; no citizen shall be discriminated against on the basis of ethnicity, religion, culture, or gender.
- e. Establish a secular state based on the principle of the separation of religion and state in order to avoid abuse of religion for political interests.”

While the NCA initiated significant steps to end violence through political dialogue, the impact of NCA on achieving long-lasting peace remains uncertain. One main factor that has delayed the peace process is that there are more than a dozen armed ethnic groups in Myanmar; however, only ten ethnic groups signed the NCA (8 groups signed NCA in 2015 and, in February 2018, New Mon State Party and Lahu Democratic Union joined the NCA). Several of the more powerful armed ethnic groups, such as Kachin Independence Army (KIA) and United Wa State Army (UWSA), have yet to sign the NCA. Although the armed ethnic groups which have yet to sign the NCA are allowed to attend the Union Peace Conference, their status is only as observers, and they cannot participate in the decision making and peace talks. Therefore, some non-signatory armed groups have sometimes rejected invitations to attend peace conferences. In order to achieve longstanding peace, comprehensive engagement of all EAOs is very important; therefore, bringing both signatory and non-signatory groups of NCA together at the negotiation table has become a main challenge for the government (San Awng et al., 2019, p. 3).

Moreover, the NCA has been unable to resolve many of the complicated issues in the ongoing peace process. Different understandings of key terms for political and security sectors have created a deadlock. For example, the NCA stakeholders have agreed in principle to establish a *Pyidaungsu Tatmadaw* (national army) while guaranteeing the right to self-determination and safeguarding the principles of non-secession. However, when detailed plans were discussed for the Union Peace Accord, agreement could not be reached between

stakeholders, especially between the *Tatmadaw* and armed ethnic organisations because they have different understandings and interpretations on *Pyidaungsu Tatmadaw*, and how such a national army would not interfere in self-determination for ethnic minorities (Nyein, 2018) (San Awng et al., 2019, pp. 3-4). Furthermore, the complexity of conflicting claims, agendas, and demands among the numerous parties involved in the NCA negotiations, or on its outskirts, create a kaleidoscope of challenges to the peace process and implementation of the principles of democracy, autonomy, and self-determination that the minority ethnic groups are seeking.

### **3.5 The Union Peace Accord**

After signing the NCA, U Thein Sein's government held a peace conference to conduct national-level peace talks which included the representatives from the government, *Tatmadaw*, *Hluttaw* (Parliament), EAOs, and political parties. Under U Thein Sein's government, the first peace conference was held but no resolution was emerged from that conference. Since the National League for Democracy (NLD) government under the leadership of Aung San Suu Kyi, took the office in 2016, four Union Peace Conferences were held in 2016, 2017, 2018, and 2020 and the NLD government changed the name of the peace conference to the 21<sup>st</sup> Century Panglong. Again, no agreement was reached between stakeholders at the first 21<sup>st</sup> Century Panglong Conference. However, beginning after the second conference, some principles were agreed upon and were put in the Union Peace Accord. In accordance with the NCA, the peace conference has focused on five areas: (1) political issues, (2) security, (3) economy, (4) social issues and (5) land and environment. In the second and third conference, 51 principles were agreed upon including 16 principles on the political sector, 12 principles on the economic sector, 11 principles on the social sector and 12 principles on the land and environmental sector (International-BNI, 2019, pp. 63-64). In the 4th peace conference, 20 points of agreement and work plans as well as implementation after 2020 were agreed as Union Peace Accord Part III. Among 20 points, 15 are to implement NCA and 5 are "fundamental

Principles to Establish a Union based on Democracy and a Federal System” (MNA, 2020). It can be said, therefore, that this was the first time in history that the agreement on the basic principles to build a Democratic Federal Union in Myanmar was reached between stakeholders; however, basic principles alone would not be enough to build a genuine federal union. Moreover, it can also be said that when the detail involved in implementing these principles are discussed, disagreements invariably have emerged between *Tatmadaw* and EAOs. For example, although the term federalism is understood by all stakeholders in general, there have been disagreements over the division of power between national (federal) and state governments and constitutions of states, since there are various forms of federalism and the exact type of federalism that will be practised in the future federal union of Myanmar is not defined in the NCA. Moreover, in defining the specific character of federalism, the term self-determination has been the most controversial one for stakeholders to agree upon. Again, there has been a different understandings and interpretations between *Tatmadaw* and EAOs on the term “self-determination.” Armed ethnic groups believe that within the federal union, all ethnic groups must have self-determination, which would allow them to have autonomy including enacting of their own State Constitutions and appointing the Chief Ministers independently. In contrast, *Tatmadaw* does not wish to grant self-determination since it may lead EAOs and their states to secede and cause the disintegration of the Union (Thway & Raw, 2021, p. 6).

For this reason, the *Tatmadaw* has made consistent demands that the EAOs pledge never to secede from the Union in return for assuring them federalism and self-determination. Accordingly, the *Tatmadaw* insists on the inclusion of the “non-secession” clause in the Union Peace Accord, hence, this has become a key area of dispute between the stakeholders. Although peace talks have been held, agreement on the inclusion of “non-secession” in the Union Peace Accord has not yet been reached between the *Tatmadaw* and EAOs. (Kipgen,

2018, p. 615). Underlying this deadlock is perhaps a more serious sense of mistrust and lack of cooperation that is unlikely to bode well for any eventual agreement between the parties (Thway & Raw, 2021, p. 6).

Another obstacle in the peace process is that no agreement has been achieved in security sectors so far because there have been different understandings between *Tatmadaw* and EAOs on the concept of a national army or *Pyidaungsu Tatmadaw*. For the *Tatmadaw*, their role as the national army is required to maintain their command and authority in the political and security sectors, whereas the EAOs require a “federal army” with independent branches in each state which would allow them to maintain their own armed forces to secure and protect their territories (Kipgen, 2017). In this situation of lack of trust, each party feels it must have the military forces to protect its own interests, which is a perception reinforced by numerous incidents over the past seven decades when they fought each other (Thway & Raw, 2021, p. 10).

Thus, it can be seen that mistrust and unresolved inter-ethnic conflict over a long historical process in Myanmar has created a solid bedrock of animosity and mistrust in the relationships that is unlikely to be dislodged by simple peace dialogue (Kipgen, 2017; (Williams, 2015, p. 149)). As discussed in the Chapter 2 Literature Review, the circumstances of ethnic conflict that Myanmar finds itself in today relate to a number of theories that help explain the root causes of these conflicts, including primordialism, instrumentalism, and constructivism (Lake & Rothchild, 1998, p. 8). In addition to the historical grievances that remain fixed in the collective consciousness, memory, and self-identity of minority ethnic groups in Myanmar, there are perspectives and postures based on ethnocentrism, ancient hatreds, greed, avarice, and hunger for political power that may be unreconcilable by conventional negotiation in a nation that has become increasingly ethnically divided (Brown, 1996; Rydgren, 2007).

## **Chapter 4 Discussion**

### **Constitutional Reform in Myanmar**

#### **4.1 The Need for Constitutional Reform**

Through this study's analysis of the Panglong Agreement, the three constitutions, the NCA, and the Union Peace Accord, the need for constitutional reform process becomes apparent. Research into the history of the region known today as Myanmar shows that ethnic peoples living there over the centuries have had their own polities in the plains and mountainous areas that were not under the control of the Burmese empire. Except for the era of the three Burmese Kings, who united the whole region, ethnic peoples were self-governing and independent. By the time the British colonised Burma, some of the ethnic states had already been under the control of the Burmese empire. Therefore, before the British gave independence to Burma, it recognised the need for an arrangement of the post-colonial status of the ethnic peoples in Frontier Areas to ensure those groups could live free from discrimination as autonomous communities.

Since gaining independence, Myanmar has had three constitutions and no constitution reflects the right to self-determination of all peoples and genuine federal union that would protect the rights of minorities. The ethnic peoples entered the Union with the expectation that they would enjoy self-determination under the federal system. They thought that their states would be the basic and founding units of the Federal Union, and the powers that they exercised would be given to them by the people living in their states, not from the central government. They agreed to amalgamate their frontier areas with ministerial Burma as equal partners. It is obvious that in a federal system, the state government holds various and significant powers, and the federal government is not supreme over state governments. In contrast, under Myanmar's constitutions, the political power has been centralised in the national government and all states

are subservient with the military placed in a position of overarching control of governance and security.

Myanmar's current 2008 Constitution was drawn by the military authoritarian government and, although the quasi-federal system can be seen in it, there are two major problems with the 2008 Constitution. In the present constitution, *Tatmadaw* can be seen as the fourth branch of government after executive, judiciary, and legislative branches. The military representative appointees comprise 25% of parliamentary seats and therefore the Constitution cannot be amended without the consent of the military and they hold veto powers over many aspects of governance. Moreover, the Presidential Electoral College is founded with three groups of representatives (*Pyi Thu Hluttaw*+ *Amyotha Hluttaw*+ Defence Services), and each group can nominate a vice president, while the President shall be chosen from among those three vice presidents. Therefore, a nominee from *Tatmadaw* at least becomes a vice president. Additionally, according to Article 232 (b), the constitution allows the *Tatmadaw* to appoint three key ministers: Defence, Home Affairs, and Border Affairs, which means that all security bodies such as armed forces and police are under the control of *Tatmadaw*.

The second problem with the 2008 Constitution is that the articles do not include the concept of self-determination for all peoples and ethnic groups. Ethnic people want self-determination and autonomy to decide their own governments, build their own destiny, and follow their ways of life; however, the *Tatmadaw* refuses to allow self-determination since it may result in ethnic states seceding from the Myanmar union of states. Therefore, the 2008 Constitution cannot be used as a tool to bridge the differences between ethnic peoples in Myanmar. Instead, it has caused heightened tensions, and undermined democracy.

#### **4.2 The Effectiveness of NCA and Union Peace Accord**

As discussed in previous chapters, all peace dialogues in Myanmar have been based on the points agreed in the NCA; however, the effectiveness of the NCA to achieve long-standing

peace has been called into question. The NCA does not represent all armed ethnic organisations, since several powerful armed groups such as UWSA and KIA have refused to participate. Since it is not an all-inclusive treaty, the objectives of the NCA have not been realised (Emah, 2020). In addition, the stakeholders in peace dialogue do not share a clear understanding of the principles of non-disintegration of the union, non-disintegration of national solidarity and perpetuation of national sovereignty, nor do they subscribe to the same views on formation of a federal democracy or a national army as part of security sector reform. Hence, the disarmament and demobilisation of EAOs have not proceeded and, consequently, armed conflicts are likely to occur (San Aung et al., 2019, pp. 6-7). Without constitutional reform and guarantees, EAOs are unwilling to disarm and want the national military force to be under the control of a democratically elected political system in which they have participated as equal partners.

Thus, it can be seen from this analysis that there is no trust between *Tatmadaw* and EAOs and little common ground in negotiations on the security sector issues that can be accepted by all parties. If no agreement can be reached in the security sector, the NCA and Union Peace Accord will have no effect on establishing a lasting peace.

#### **4.3 Internal Self-Determination as a Tool to Achieve Constitutional Reform Process**

This analysis has shown why a constitutional reform process is needed to achieve a lasting peace settlement in Myanmar's long-running ethnic conflict. Political parties, armed ethnic groups, political activists, and international authorities have been calling for the replacement or amendment of the 2008 Constitution; however, without the consent of the *Tatmadaw*, no reform of the constitution is possible. According to my analysis, the armed ethnic groups and *Tatmadaw* hold differing interpretations of self-determination by which has prevented the constitutional reform process. Furthermore, to realize the constitutional reform process, it is necessary to obtain the consent of the *Tatmadaw*. In order to gain the approval of

the *Tatmadaw*, it must be convinced that ethnic groups will not leave the Union under the self-determination rights. On the other hand, it is also important to fulfill the desire of ethnic people to enjoy self-determination. If the solution is a zero-sum game and a win-win solution which can satisfy both sides cannot be reached, the conflicts between *Tatmadaw* and ethnic groups are unlikely to be resolved, and constitutional reform will never be realized.

In order to satisfy both sides, the most suitable solution is internal self-determination since it offers people the right to self-determination without confronting the principles of territorial integrity and sovereignty. Many legal and UN documents point out internal self-determination as the first resort to solve ethnic conflicts. Internal self-determination allows ethnic people belonging to that territory to choose the form of government on their own and the rights to govern themselves as well as participate in public affairs including elections and plebiscites. Gross violations of fundamental human rights are not tolerated under internal self-determination rights and the government will equally treat all ethnic people without any distinction regardless of race, ethnicity, religion, sex, creed, or colour. Ethnic people will be able to enjoy political, social, economic, and cultural rights under this concept. However, under internal self-determination rights, people do not have the right to secede from the existing state unless their internal self-determination rights are not fulfilled. Therefore, if the constitution uses the term internal self-determination and grants the internal self-determination rights, ethnic people can enjoy self-determination rights while *Tatmadaw* does not need to fear that ethnic groups would secede from the Union. In this way, the agreement from *Tatmadaw* can be reached to amend the constitution.

#### **4.4 Internal Self-Determination as a Post-Conflict Management System**

While solving the need for the constitutional reform process, internal self-determination will also solve the decades-old ethnic armed conflicts in Myanmar, addressing both problems simultaneously. Internal self-determination is a commonly used tool to solve ethnic conflicts



and encourage a peace-building process. As almost all the grievances of Myanmar's ethnic minority people are based in historical oppression by the Burmese majority, self-determination will reduce those grievances and help to end conflicts. When armed conflicts come to an end and peace is achieved, it will be important to consider how a lasting peace can be maintained. In this regard, internal-self-determination is also the most suitable tool to maintain perpetual peace. It is said that the sources of conflicts can be settled, and a post-conflict management system can be created by internal self-determination (Demir, 2017, p. 31). Therefore, in a post-conflict state, fulfilling the internal self-determination rights of the ethnic groups would be vital to ensure a long-lasting peace.

## Chapter 5 Conclusion and Recommendations

### 5.1 Conclusion

This study has found that reform of Myanmar's 2008 Constitution is required for two main reasons: (1) it does not reflect genuine democracy (2) it does not guarantee self-determination of citizens, and genuine federalism. In the 2008 Constitution, as the basic principles of the Union, one of the explicitly stated objectives of the country is “flourishing of a genuine, disciplined multi-party democratic system”; however, it is obvious that the current 2008 Constitution cannot reflect a genuine democratic system since the constitution sanctions the domination of the military in the political sector. Although Myanmar's military is not a political organisation, it maintains control of the country's political process and governance of its people. In a democratic state, the function of the military is to defend and protect its sovereignty and its people from external threats. The military must be controlled and follow the instructions of the civilian head of state and political institutions and must remain separate from the governance system. However, since gaining independence in 1948, the Myanmar military has been deeply embedded in Myanmar politics, and has prevented the nation from establishing itself as a democracy with free and fair elections and effective civilian institutions.

This research concludes that the main reason the *Tatmadaw* are participating in the political sector is their desire for the preservation of three main national causes: non-disintegration of the union, non-disintegration of solidarity, and perpetuation of sovereignty. Couch pointed out that authoritarian constitutionalism is rooted in that national ideology which is determined to preserve the integrity of the union at all costs (Crouch, 2020, p. 499).

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations adopted in 1970 laid the foundation for the scope of the right to internal self-determination. This declaration states that a state should have a certain kind of government that represents all the

people living in its territory regardless of race, creed, or colour. The responsibility of a democratic state is to have a representative government mechanism and ensure the rights to political participation of all people. Thus, under internal self-determination, all peoples can decide the form of their own government and political status (McCorquodale, 1994, p. 864). They will also enjoy the right to govern themselves, participate in public affairs and take meaningful part in elections and plebiscites (Rosas, 1993, p. 249).

By granting internal self-determination rights to all ethnic peoples in Myanmar, they will be able to enjoy a certain amount of autonomy within a larger entity and on a local basis, make decisions about matters of local interest. Internal self-determination will enable the ethnic people to maintain their full identity and ensure freedom to pursue their ways of life, especially in cultural and educational sectors.

## **5.2 Recommendations**

The rights of people to take part in government and their right to internal self-determination are very important. Nations practising genuine democracy and a federal system of governance are best equipped to ensure those rights are protected, particularly in a nation with a great diversity of ethnic peoples, such as exists in Myanmar. The constitution of a nation is its underpinning foundation of governance that must explicitly set out the mechanisms for protecting the rights of all citizens. Therefore, the discussion in this section focuses on recommendations for a new constitution or newly amended constitution in Myanmar, which would guarantee the right to internal self-determination. In addition, the possibilities of different types of federalism that might work or not in Myanmar are discussed and a feasible approach to this question of federalism is proposed. Since the question of a national army and disarmament of ethnic armies is one of the most significant disagreements between the *Tatmadaw* and EAOs, the solution to the problem of a national army is considered. Moreover,

another significant complaint of ethnic minorities is the Burmese ethnic group domination in *Amyotha Hluttaw*; therefore, the solution to this issue is also suggested.

### **The solution to choosing a form of federalism that might suit Myanmar**

A number of federalism models have been discussed in this paper and several have potential to be applied in the Myanmar situation. Each model of federalism (dual, creative, symmetrical, asymmetrical, territorial, and non-territorial), as it would apply to Myanmar's governance, is considered here. However, no single form of federalism may ideally suit a circumstance as complex as Myanmar's. Therefore, a blended form of federal government may be preferable, as suggested by a number of authors (e.g., Burgess, 2009; Jacobs & Swyngedouw, 2003; Wheare, 1962), since a hard-and-fast federal model can be difficult to utilise where sub-state nationalism is multi-plex and fragmented. This idea has merit as a recommendation for Myanmar to consider and will be explored as a potential approach to this complicated question.

The dual federalism model is characterised by the power and responsibilities of the federal and state government being clearly separated. Many federal states have found that it is very difficult to avoid the situation in which the responsibilities of the federal and state governments are overlapping which creates tension and reduces cooperation and unity (Commonwealth of Australia, 2014). Therefore, dual federalism is unsuited to Myanmar.

In cooperative federalism, federal and state governments have not only their own sphere but also higher degree of partnership. Different tiers of governments cooperate and coordinate in various policy-making areas. While it appears that cooperative federalism could be a possible solution to Myanmar's governance, in reality, it would be very difficult to get agreement in order to enact important legislations and that situation would lead to a power standstill (Kipgen, 2018, p. 619).

Creative federalism is also impossible for Myanmar because it is expanded from cooperative federalism. The federal government has more power than the state governments and the needs of the states are decided and fulfilled by the federal government; therefore, there might be some disagreements between federal and state government upon determining the needs of and providing services to the state governments (Kipgen, 2018, p. 619).

Symmetrical federalism proposes that each constituent unit within federal union will be distributed with equal power without considering its size and population. Constitutionally, Myanmar comprises seven states and regions as well as a union territory. Symmetrical federalism is not suitable for Myanmar because among the ethnic groups, Burmese are the majority of the country's population and dominate seven regions and Nay Pyi Taw (union territory). Therefore, if symmetrical federalism were to be applied, Burmese would have control over all the regions, and it would be politically disadvantageous for ethnic minorities. However, there is a way to apply symmetrical federalism in Myanmar. Since the 1974 Constitution was enacted, the areas of ethnic Burmese have been demarcated into seven Regions (States) and ethnic people's areas have also been defined into seven States; however, in the 1947 Constitution, all the territories where the Burmese people lived were incorporated into one State. Therefore, if all seven Regions of ethnic Burmese can be incorporated into one State, that State will represent the Burmese people and have equal status with other ethnic States. This approach to federalism, while perhaps equitable and logical, would not appeal to the Burmese majority population and therefore be unlikely to pass any constitutional or legislative barriers.

In asymmetrical federalism, different levels of autonomy are given to different constitutional units; therefore, some minorities may not accept the asymmetric federalism because they would assume that they would be marginalised and outnumbered. Ethnic

minorities are likely to believe that the Burmese should form only one state, as with any other ethnic group, to build a federal union with genuine federalism (Kipgen, 2018, p. 619).

Applying a territorial form or non-territorial form of federalism may offer opportunities for a successful federalism model, since the territorial form is appropriate for a country which has diverse societies, but these societies are territorially concentrated. In Myanmar, each major ethnic group (Kachin, Kayah, Karen, Chin, Mon, Rakine and Shan) has its own State of the same name and most ethnic people live in their own State; however, some populations of ethnic groups are scattered across different geographical places of the country to a certain extent. Therefore, a territorial form of federalism may be feasible if not ideal in Myanmar.

Non-territorial federalism is relevant for a country that has ethnically heterogeneous societies, especially if the ethnically diverse population is scattered across different geographical areas. Myanmar could be considered as a country with a scattered population of hundreds of ethnic groups across different geographical places. Therefore, a non-territorial form of federalism could be a possible solution for Myanmar although, again, not ideal since many of the ethnic groups are well concentrated in states or locations. Although non-territorial federalism could be the answer to the quest for genuine federalism in Myanmar, it has been found that non-territorial federalism can be a source of conflicts between various ethnic groups or where there are mixed populations (Kipgen, 2018, p. 619). .

Therefore, considering that neither territorial nor non-territorial federalism ideally suits Myanmar, the question then arises: Could a hybrid of these two forms of federalism be the answer? Wheare (1962) and Burgess (2009) addressed this question of merging federalism models in considering a number of states, such as Canada, where there were competing interests, loyalties, and allegiances from several neo-colonial ethnic parts of the population as well as multiple indigenous ethnic minorities scattered over a wide geographic area. In effect, the population in Myanmar is comprised of nations within nations and, therefore, an

overarching sense of common nationality needs to be installed over and above, not instead of, separate ethnic identities (Burgess, 2006, 2009). Conceptually, a multi-national federation for Myanmar would be a form of blended federalism models, incorporating elements of territorial as well as non-territorial models, which has great potential and is needed for the future of Myanmar's governance and for the establishment of an enduring peace in the nation (Jacobs & Swyngedouw, 2003). To succeed, such a federalism model must embrace and protect the self-determination, cultural autonomy, and collective representation rights of all citizens equally, which would enable all Myanmar peoples to commit to a set of common national objectives which they pursue in partnership despite any differences in ethnicity (Burgess, 2009).

### **The solution to the problem of Single Army**

Regarding the armed forces, the *Tatmadaw* has advocated for a national army and the abolishing of armed forces in states or regions; however, EAOs have resisted calls to disarm, asserting their rights to protect their communities. Therefore, a solution that is acceptable by all stakeholders is needed. The main concern of armed ethnic groups to establish a single army is that Burmese military leaders would dominate the newly formed single army and other armed ethnic groups would be subordinate to Burmese military leaders. Therefore, the best solution to this problem is that a single army should be formed that combines both Bamar and other ethnic military personnel, and it should be under the control of the democratically elected civilian government only, rather than under the control of a military leader of any armed groups including *Tatmadaw*. Not only the EAOs which joined the peace process, but also the Federal Constitution Drafting and Coordination Committee (FCDCC), which is a committee composed of various democracy organisations associated with each ethnic states and representatives from other organizations, have suggested this idea. For example, the FCDCC suggested in Article

161 of its second draft of the federal constitution that “The Federal Armed Forces shall be under civilian administration and control, at all times”(San Aung et al., 2019, pp. 6-7).

### **The solution to Burmese domination in *Amyotha Hluttaw***

The Parliament of Myanmar is a bicameral national legislature comprised of *Amyotha Hluttaw* (upper house) and *Pyithu Hluttaw* (lower house). *Amyotha Hluttaw* is composed of an equal number of representatives sent from each constituent unit and *Pyithu Hluttaw* is composed of members elected by citizens of each township. Ethnic people have claimed that there are imbalances between ethnic groups and the majority Burmese group in the *Amyotha Hluttaw*. According to the 2008 Constitution, each member state shall send an equal number of representatives to the *Amyotha Hluttaw*; therefore, the number of Burmese representatives from seven Regions (States) is equal with the number of ethnic representatives from all seven States in the Frontier Areas. Consequently, the Burmese representation has the greatest influence in the decision making processes. To correct this imbalance, all the seven Regions (States) where Burmese people live should be merged into one Burmese State. By doing so, every ethnic group shall send equal number of representatives and no ethnic group will dominate the parliament. This solution would be met with agreement by minority ethnic groups in the Frontier Areas but might be resisted by the Bamar-Burmese group who would see it as diminishing their dominance of the law-making authority. However, in a democracy, equal representation is one of the fundamental methods of ensuring the rights of all citizens are protected.



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