



## **Analysis of President U Win Myint’s Congratulatory Speech on the Fourth Anniversary of the Second Hluttaw**

*There is one foremost priority when it comes to making laws. The Legislative body is responsible to enact laws in compliance with State Policy. If by the legislative body enact the laws recklessly contrary to the policy of the State, the policy being implemented by the State would be one thing while the law produced by the Hluttaw would be another. If so, it would be merely unproductive. That is why State Policy is of paramount importance in legislation.*

The abovementioned speech by President U Win Myint will be analyzed from four analytical perspectives: state policy, separation of powers, public policy, and constitutional.

### **1. State Policy Perspective**

President U Win Myint himself did not clarify the meaning of the term ‘State Policy’ in his speech. Besides, a comprehensive definition of the term is nowhere to be found. Thus, lacking a significant definition, State Policy can and must be presumed as the basic principles of the Union of Myanmar specified in Chapter 1 of the 2008 Constitution. Under the said chapter, Article 6 provides that the defence service (Tatmadaw) is enabled to participate in the national political leadership role of the State while “Our Three Tasks” remain sacred values. The practice of having a disciplined multi-party democratic system is defined in Article 7. The Pyidaungsu Hluttaw, Union Assembly, and the Region and State Hluttaws include military personnel as Hluttaw representatives or members of parliament nominated by the Commander in Chief, as per Article 14. Article 37 provides that the Union is the ultimate owner of all lands and natural resources. Meanwhile, Article 47 states that the term ‘Union’ means person or body exercising the legislative or executive authority of the Union. These principles are clearly designed to entrench, enshrine, or fortify military dictatorship.

### **2. Separation of Powers Perspective**

President U Win Myint’s Congratulatory Speech can also be analyzed from the perspective of the three branches of state power: the legislative, executive, and judiciary branches. In many

countries with a presidential system, every law produced by the legislature must be signed by the president before it comes into existence. Moreover, the legislative branch is authorized to serve as a check on and to oversee the administration of executive authority, including the acts of the president.

On the reverse, the incumbent Hluttaws in Burma have no power to check or oversee the executive and merely question the cabinet led by President U Win Myint. In his nebulous speech, the President, as the chief executive, has articulated that the legislative body is responsible for enacting laws in compliance with State Policy, by which it could be understood that the legislative body is under the influence of the executive body. In other words, the president is controlling the legislature and can impose the laws he wants. Military leaders did not show any opposition to his speech because doing so would be against their own interest.

Arguably, President U Win Myint seems to have very little knowledge about the Check and Balance<sup>1</sup> principle aimed to maintain the separation of powers. This principle is normally exercised between the legislative and executive branches. Nonetheless, the Supreme Court, which assumes judicial power, must be completely separated and secure its own operation from the encroachments of the other branches. Additionally, the judicial branch must be empowered to oversee whether laws and statutes passed by the legislative and the performance of the executive are unconstitutional. This premise is a vital condition for the Rule of Law. Yet President U Win Myint did not mention how to produce laws that could guarantee an independent, impartial, and efficient judiciary with the supremacy of civilian courts.

### **3. Public Policy Perspective**

Rather than focusing on State Policy, Public Policy which meets with the necessities of the people should be placed at the forefront. As underscored by an American scholar, only when deliberate policies transformed into laws fulfill the fundamental needs of people can it be said that the government has, through legislation, come closer to the people itself.<sup>2</sup>

During an electoral campaign, every political party should declare a manifesto or electoral pledge, such as its policy on land, economy, foreign, development, taxation, and so on. When a party wins and takes office, it is then obligated to produce and implement laws based on the commitments made during the campaign. Therefore, the realization of a political party's policy after winning the election and forming a government cannot, as President U Win Myint claims, be limited to State Policy.

Article 48 of the 2008 Constitution states that 'the Basic Principles of the Union shall be the guidance in enacting laws by legislature and in interpreting the provisions of this Constitution and other laws.' Thus, the legislature ought to make laws in conformity with the stated principles. Moreover, Article 451 says that 'the application of the Basic Principles of the Union in the

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<sup>1</sup> See details about the independence of judiciary on LAN's Facebook page <<https://www.facebook.com/384443295086628/posts/1284755691722046/>>

<sup>2</sup> Theodore J Lowi, 'Law Vs Public Policy: A Critical Exploration' [2003] 12.3 Cornell Journal of Law and Public Policy 493, 496, 498-500 <<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1050&context=cjlp>>

legislation and administration shall be the care of the Union.’ Thus, the State Policy verbalized by the president is nothing more than the Basic Principles prescribed in the Constitution. In the case of the 2008 Constitution, those principles neither convey the will of nor are beneficial to the people. Yet President U Win Myint spoke rhetorically about this, consciously encouraging to uphold those corrupt principles in which the military dictatorship is embedded.

#### **4. Constitutional Perspective**

Legislative bodies do not necessarily have to convert all government policies into laws. Likewise, not every policy can be transformed into a law. In general, a good law must reflect values and norms adopted by society, ethics, political ideology, and the actual needs and future expectations of the respective society. A policy is just a statement about how the government is going to act in regard to a particular matter in order to achieve its objectives. Policies can be changed and altered depending on time and circumstances.

If a government wants to produce laws in accordance with State Policy, it is required to follow the rules codified in the constitution. As a consequence, the State Policy itself remains unchanged no matter which government takes office. A good example of this is the “Directive Principles of State Policy” found in Chapter 4 of the 1947 Constitution. At that time, most principles had been developed on the basis of socialism. Many laws had been enacted in accordance with the principles specified in Chapter 4 of the 1947 Constitution, and serious attention and consideration had been taken not to spoil the “Fundamental Rights of the People” guaranteed in Chapter 2 of the same constitution.

Given the above, President U Win Myint’s speech delivered on the fourth anniversary of the second Hluttaw appeared groundless and unjustified. To the extent that the President is required to impose pressure on the Hluttaw pertaining to making laws in line with the State Policy, the Hluttaw never enacts any law, which is contrary to the 2008 Constitution. No law, which is based on public policy aimed toward the public interest, based on that idea has ever come into existence. Providing guidelines to make laws based on State Policy which entrenches the prolonging of the military dictatorship does not offer support for the emergence of democracy and the federal union, which the ethnic nationalities and their States/Provinces would like to establish. Thus, President U Win Myint’s speech is biased and ill-founded, and as such, this kind of political discourse should be avoided.

**Legal Aid Network**

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