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FAILED SELF-COUP ATTEMPT IN SOUTH KOREA: MARTIAL LAW CRISIS AND CONSTITUTIONAL RESPONSE

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1. When South Korean President Yoon Suk Yeol unexpectedly appeared on TV late at night on December 3, 2024, and declared an emergency martial law for the entire country, [for the first time in 45 years](#), the people could not believe their eyes and ears and were overwhelmed with a sense of great despair because it was too obvious from the state of the day and from history what it meant.

While announcing martial law, President Yoon referring to the current political gridlock between the government and the opposition-led National Assembly, insisted that apparently 'anti-state forces' behind the opposition parties seemed to paralyze the regime and country, so martial law was inevitable to 'eradicate' them.

[Proclamation No. 1](#) was issued, alongside the declaration becoming effective at 11:00 pm. To implement it, police forces drawn to the National Assembly began controlling the entrances, while highly trained special military forces were heading to the area. They were ordered to blockade the lawmakers whose majority vote could request the President to lift martial law. Around the same time, a larger number of police and military forces occupied the National Election Commission. As it turned out later,

the blockade and takeover of two institutions were linked to the so-called 'election fraud' claim that was invoked to justify martial law.

On this chaotic night, on the other hand, hundreds of citizens rushed to the National Assembly upon hearing the shocking news. Lawmakers also hurried to the Assembly without hesitation to take action according to the law. Citizens protested against access control by police and armed soldiers, fearlessly blocked military vehicles with their bodies, and assisted lawmakers in entering the Assembly. Several lawmakers, including the Speaker of the National Assembly, had to climb over the wall to gain entry. Reporters on the scene broadcast the events live. By midnight, 60 out of 300 lawmakers had gathered within the building, parliamentary staff barricaded all the entrances of the National Assembly building to block the martial law forces from entering. However, the armed military forces eventually broke the glass windows and entered the building to deter lawmakers from convening, to draw them out, and to arrest some of them. Meanwhile, lawmakers desperately flocked to the plenary chamber. Dramatically, at around 1:00 am, the motion to lift martial law was put to a vote, and 190 lawmakers in attendance voted unanimously in favor of lifting martial law. According to the Korean Constitution, the President must lift martial law when the National Assembly requests it through this process. Not immediately, but a few hours later, President Yoon returned to TV, announcing that he would accept the request and lift martial law. The emergency martial law was finally lifted about six hours after it was imposed.

2. Article 77 para 1 of the [Constitution of the Republic of Korea](#) grants the President power to declare martial law "when it is required to cope with a military necessity or to maintain the public safety and order by use of the military forces in time of war, armed conflict or similar national emergency." Based on these requirements, the declaration of emergency martial law on December 3 was unconstitutional and unlawful in terms of the circumstantial requirements and purpose as well as procedures, forms, and contents.

- Martial law was declared despite the absence of wartime conditions,

security issues, or equivalent emergencies. Instead, President Yoon claimed that the opposition-dominated National Assembly was captured by so-called 'anti-state forces' elected through election fraud. He argued that he had no choice but to send military forces to the National Election Commission and the National Assembly to obtain evidence of election fraud. However, these reasons are completely groundless and do not justify the declaration of martial law.

- In terms of procedures and forms, according to the Martial Law Act, the President had to convene a cabinet meeting to decide whether to declare martial law and then had to let the National Assembly know about the declaration immediately after. It should all be documented. But, in this case, such a procedure or form was missing.
- Substantively, the Proclamation prohibited the functions of democratic institutions, such as the National Assembly, local councils, and political parties and even prohibited all political activities of the people. Among other things, according to the constitutional framework, it cannot be justified to stop the National Assembly which has the power to demand the lifting of martial law.

Such an unconstitutional and unlawful declaration of martial law shocked most Koreans because it was reminiscent of a traumatic past that we believed we had overcome. In Korean history from 1948 to the present, the first half was marked by a series of presidential dictatorships, military coups, and self-coup accompanied by [frequent use of martial law](#). After the last declaration in 1979, martial law was never imposed again. Since democratization in 1987, South Korea has developed into a stable and consolidated democracy, with no attempts to extend presidential term or stage coups, but rather four peaceful regime changes. Hence, for the Korean people, martial law has been remembered as an autocrat's tool. While a coup is a takeover of power by illegal means, usually by the military or private forces, it is called a 'self-coup' when an existing executive leader uses illegal means to paralyze the functioning of other state institutions to consolidate their powers or secure their long-term

rule. According to this concept, Yoon's declaration of martial law—although it was short-lived due to resistance from the National Assembly, citizens, and other variables—can be said to be a self-coup attempt. Professors John Chin and Joe Wright, experts in authoritarian regimes and coups, have updated their database of coup attempts around the world with the latest case of [Yoon's self-coup attempt](#).

3. This event led to the impeachment of President Yoon according to Article 65 of the Korean Constitution that provides the National Assembly may impeach a high-ranking official, by a two-thirds vote (at least 200 out of 300 seats) in the case of the President, if he/she gravely violates the Constitution or laws in the performance of his/her duties.

In a swift response by the National Assembly again, an impeachment bill was submitted on the afternoon of December 4, the day martial law was lifted. Yet, [it failed in the vote](#) due to the boycott by the ruling People Power Party. Nevertheless, tens of thousands of citizens protested, calling for impeachment. The impeachment bill was resubmitted the following week and passed on December 14, 2024, with 204 out of the 300 members of the National Assembly voting in favor. Consequently, Yoon's duties were suspended, and the Acting President assumed the role. The same day, the impeachment trial commenced at the Constitutional Court, which requires a six-quorum to decide to remove him from office.

According to the Constitutional Court Act, the Court is required to deliver a final decision within six months, but given the need to quickly resolve the unstable situation with the suspended President, and the fact that the previous two presidential impeachment cases (in 2004 and 2017) took 64 and 91 days, respectively, to reach a final decision after reviewing much more offences than current case, it is likely that the current case will reach a final decision within three months at the latest.

As open hearings are mandatory for impeachment trials, the Constitutional Court has already scheduled eight hearing dates through mid-February. On January 21 and 23, [President Yoon attended the Court and defended himself](#) by appealing the legitimacy and justification of the declaration of emergency martial law.

4. In addition, President Yoon faced criminal charges of declaring martial

law unconstitutionally and unlawfully by abusing presidential martial law power and status as Command-in-Chief. Article 84 of the Korean Constitution explicitly states that the sitting President is exempt from prosecution for all criminal charges during terms of office, except for the charges of insurrection or treason. Since Yoon's actions were considered to constitute insurrection charges, specifically as a ringleader of the insurrection according to the Criminal Act, he became the first sitting President to be investigated for insurrection charges and was promptly banned from leaving the country.

Article 87 of the [Criminal Act](#) defines 'insurrection' as acts "creating violence for the purpose of excluding national power from all or part of the territory or subvert the constitutional order", and it states that the ringleader of insurrection could be punished by death or life sentence; and, specifically, Article 91 defines "subverting the constitutional order" as acts (1) to extinguish the function of the Constitution or Acts without observing the procedure provided by the Constitution or laws or (2) to overthrow government organs established by the Constitution or to make render the exercise of their functions impossible by force.

Yoon denies, despite testimony from those involved and several evidence collected, that he ordered martial law forces to forcibly remove or arrest lawmakers or attempt to disable the functions of the National Assembly. Furthermore, President Yoon has refused to be questioned by the investigation agency (CIO) and resisted arrest, [claiming that the agency lacks legitimate investigative powers](#). His lawyers even cited [US President Trump's recent case](#) where the US Supreme Court conferred absolute immunity from criminal prosecution for official acts within an exclusive presidential authority.

However, based on the testimony of those involved in planning and implementing martial law under direct orders from Yoon, the evidence collected (e.g., a note to draft a budget for creating an emergency legislative body), and the content of the Proclamation, at least, he seems to have attempted to disable the National Assembly and deprive it of its functions by military force without just cause. Consequently, Yoon became the first sitting President to be arrested, detained, and [finally](#)

[indicted for insurrection](#).⁵ Two months have passed since the night of martial law. In [a blog post](#) I wrote early on during this event, I stated that the process and consequences of dealing with this constitutional crisis would testify to South Korea's democracy. In other words, it could demonstrate the fragility or resilience of South Korea's democracy.

On the one hand, the fact that the President could plot a self-coup, [emulating the past coup examples](#), seems to reveal the fragile aspect of Korean democracy. Furthermore, despite the unlawfulness of martial law, some groups have emerged that support the President on fanatical or partisan grounds and resist the legitimate enforcement of the law based on fake news, which might be a long-term concern.

On the other hand, it is fortunate that the self-coup attempt has failed, and one of the worst possible scenarios, such as a second or third attempted coup or a so-called 'democratic coup' to counter the self-coup, did not occur. Instead, the young soldiers who were sent to the National Assembly on the night of December 3 refrained from attacking the citizens. Most striking are the hundreds of thousands of citizens who immediately and fearlessly rushed to the National Assembly upon hearing the declaration of martial law played a crucial role. They assisted the lawmakers in lifting martial law through the constitutional process and have continued to peacefully demonstrate since then, expecting and demanding a democratic, peaceful, constitutional, and lawful resolution to the situation. Their fearlessness and faith in democracy appear a legacy of the past 40 years of democratization.

In conclusion, I hope the readers of this post stay tuned on this case considering how we would respond to and overcome such a foundational yet anachronistic challenge to democracy would have far-reaching implications for the future of democracy, not only in South Korea, but also in many other countries who are susceptible to similar challenges.