

# The Perils of Incoherence: ASEAN, Myanmar and the Avoidable Failures of Human Rights Socialization?

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*Explanations for ASEAN's inability to more successfully influence Myanmar over the last decade have shifted from accusations that the organization does nothing to live up to its on-paper commitments to the belief that what it does is wholly ineffective. The reasons for this ineffectiveness are found in the normative and institutional architecture of ASEAN, specifically its lack of punitive sanction-based compliance mechanisms. Through focusing on ASEAN's use of public pronouncements to express interests and desires, this article takes issue with such assertions. Specifically, ASEAN has been engaged in a strategy of rhetorical action to promote compliance with regional standards. To date it has been unsuccessful in that attempt not because of a lack of courts and commissions, but because it has been incoherent in its political strategy. At crucial moments ASEAN and its members remained more concerned with creating a unified position against external pressure than on developing a single policy towards Myanmar. This reaction fatally undermined the ability of ASEAN to influence Myanmar as it ensures the regime the continued external political cover from pressure that animated its desire to join ASEAN in 1997. This article suggests that correcting this shortcoming through the development of greater coherence is achievable within the existing ASEAN approach to managing regional affairs.*

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In 2006 the ASEAN Eminent Persons Group reported that the problem with ASEAN was “not one of a lack of vision, ideas or action plans. The problem is one of ensuring compliance.”<sup>1</sup> ASEAN’s seeming inability to develop pro-compliance pressure to breathe life into the emerging regional standards it continues to develop is never more evident than in its dealings with Myanmar. Despite framing and then implementing the ASEAN Communities, the ASEAN Charter and now the ASEAN Intergovernmental Commission on Human Rights (AICHR), Myanmar has resisted calls for enhanced good governance and democracy. Recent reforms in Myanmar are attributed to internal dynamics and the desire for the new government to win the next election rather than a product of ASEAN engagement.<sup>2</sup> Seeking to explain this enduring failure, scholars have argued either that ASEAN is doing nothing to exert pressure on Myanmar or that its attempts to develop some leverage is doomed to failure.<sup>3</sup> This article takes issue with such arguments and posits that ASEAN has been very active in trying to exert pressure on Myanmar, especially considering the longstanding commitment to non-intervention that ASEAN has displayed. These efforts have not, however, manifested themselves in ways that resemble the approach to enforcement often displayed by other regional organizations, notably the European Union (EU). Instead of courts and commissions sitting in judgement over members, for the past decade ASEAN’s efforts have rested on the use of language and public pronouncements aimed at making Myanmar modify its behaviour. Drawing on work which analyses compliance from a conceptual angle, it is possible to understand ASEAN’s socialization efforts as resembling rhetorical action within the definition of that term provided by Thomas Risse and utilized by scholars such as Frank Schimmelfennig.<sup>4</sup>

Understanding ASEAN through this conceptual lens promotes new thinking about the organization’s ineffectiveness to influence Myanmar. It suggests that ASEAN’s adoption of an incoherent set of policies towards Myanmar, simultaneously criticizing and protecting it, has undermined its ability to promote change in Myanmar. This undermining has occurred because ASEAN has failed to critically engage with a key motive behind Myanmar’s original desire for membership, namely political cover from external pressures. Further it suggests that ASEAN can correct this shortcoming and become a more effective influence on Myanmar within existing ASEAN and member state preferences to managing regional affairs. Too often it is thought that for ASEAN to become effective there must be

a break with the so-called “ASEAN Way” even in its renegotiated form and a commitment to clear regional oversight and some form of court-based enforcement mechanism. This is a deeply impractical suggestion, one that emerges from an all too common interest in contrasting Southeast Asian regionalism negatively with Europe. The conceptual literature on compliance suggests that ASEAN can become a more successful socializing agent by honing its ability to use rhetorical action through a more coherent and integrated political response to Myanmar. This quest for coherence, while clearly difficult, is imaginable within existing ASEAN governance frameworks in a way a full-blown court system is not.

This article begins by examining the way existing literature has framed the failure of ASEAN to act as a socializing agent, both generally and with specific reference to Myanmar. From there the narrative of ASEAN’s efforts to influence Myanmar is discussed and framed through the lens of rhetorical action. This provides a platform to discuss the question of incoherence by examining the conflicting messages that ASEAN and its members have presented Myanmar over time. The article closes with a discussion on the possibility and desirability of making ASEAN more coherent and thus a more effective socialization agent.

### **Existing Approaches to ASEAN as a Socializing Agent**

While ASEAN is lauded for helping cement regional peace and security, when it comes to the issue of human rights socialization it is widely considered to be a failure. Recent scholarship has moved away from the conclusion that ASEAN and its members have attempted nothing to the more nuanced position which focuses on the ineffectual nature of ASEAN’s efforts. Evidence for this failure of will is found by examining the weakness of ASEAN human rights mechanisms which, it is claimed, are designed more for show than efficacy. ASEAN’s continued eschewal of an institution identity with strong oversight power has led many to provide a negative assessment of the potential utility of the emerging human rights mechanisms within ASEAN.<sup>5</sup> For instance, James Munro has argued that the newly formed ASEAN Intergovernmental Committee on Human Rights (AICHR) is little more than a “thinly veiled instrument to avoid international inquiries into human rights cases in the region”. Were ASEAN and its members genuine about generating compliance pressures with regards to human rights then there would be stronger regional mechanisms equipped to enforce

“punitive measures for non-compliance with human rights norms, such as sanctions”.<sup>6</sup> Due to the absence of such entities it is often claimed that ASEAN is little more than a facade<sup>7</sup> or an “imitation community”.<sup>8</sup> Shaun Narine echoes this sentiment: “efforts to reform the organization and make it more effective and its members more accountable seem doomed to failure”.<sup>9</sup> What links these arguments, and provides the window of analysis for the coming discussion, is the idea of socialization. These arguments all assert, albeit in differing ways, that ASEAN is an ineffective socializing agent. It is unable to influence the actions of its members and move them away from old practices into adopting new standards. This in turn suggests that ASEAN is unable to develop meaningful compliance pressure around its standards and institutions.

Explaining why ASEAN is a weak socializing agent can be achieved by an awareness of the history and development of regional cooperation in Southeast Asia. Emerging in the wake of two failed regional initiatives — the Association of Southeast Asia and Malaya-Philippines-Indonesia initiatives of 1961 and 1963 respectively — ASEAN started as a tentative initiative to enhance the security of its founding members.<sup>10</sup> Given these roots it is unsurprising that the fledging organization was strongly wedded to the norms of non-intervention and sovereign equality. Permeating this institutional context was a set of procedural norms known as the “ASEAN Way”. Most clearly outlined in the Treaty of Amity and Cooperation, the ASEAN Way focused on mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations. As a result, the right of freedom from external interference for member states was at the very heart of the regional body.<sup>11</sup>

This framework indicates a clear preference towards *musyawarah* (consultation) and *musfakat* (consensus-based decision making) between members resulting in a strong preference for informality and “quiet diplomacy”.<sup>12</sup> While this may have cemented interstate peace, it creates significant obstacles to developing regional oversight on issues such as human rights, where non-intervention runs against the enforcement of norms within the domestic political sphere of member states. This set of understandings has undergone some considerable discussion over the last decade.<sup>13</sup> The ASEAN Charter process represents a move towards greater comfort with some degree of regional discussion on previously sensitive issues. Discussing issues such as human rights does not, however, presuppose the way in which these issues are addressed. An examination of the

creation of the AICHR substantiates the claim that ASEAN has not converted to some radical new system of protecting and promoting rights. The Terms of Reference (TOR) for the AICHR are intentionally vague and belie its essentially conservative nature.<sup>14</sup> The TOR calls for the promotion and protection of human rights (TOR Article 1.1) but also clearly states that the AICHR remains wedded to the independence of member states and non-intervention within their internal affairs (TOR Article 2.1). There is a commitment to further progress towards creating an ASEAN Declaration on Human Rights (TOR Article 4.1), the first time the regional body will have indicated its own understandings of what rights actually mean, but there is a parallel and perhaps even contradictory commitment to a “constructive and non-confrontational approach” (TOR Article 2.4) with an affirmation of an intergovernmental and consultative role for the AICHR.<sup>15</sup> The AICHR can be understood as a quintessential ASEAN creation.<sup>16</sup>

Arguments about the weakness of ASEAN are simultaneously correct and incomplete. It is true, as just discussed, that ASEAN continues to lack clear enforcement mechanisms where one body or state sits in adjudication of another, and the reforms of the Charter and the AICHR have not moved ASEAN any significant way towards this end. We must ask, however, whether the fact that ASEAN has no “punitive” enforcement mechanisms means it has no mechanisms at all for generating compliance. The continued focus on the absence of certain types of enforcement procedures within ASEAN has two detrimental effects. First, it ignores the wider range of compliance actions that are possible and that ASEAN may be attempting. Second, it leads to the counterproductive suggestion that to improve compliance with its standards ASEAN must establish clear courts and hierarchical governance strategies that are both politically implausible as well as historically insensitive. Much analysis seems to come from an implicit comparison between the European regional organizations, most obviously the EU itself, and the “lesser” version of regionalism ASEAN represents. The remainder of this article takes exception to both of these points. Through examining the relationship between Myanmar and ASEAN I argue that ASEAN has been a keen promoter of a type of compliance pressure that is compatible with its nature and guiding principles. Establishing that the use of public pronouncements of displeasure can be understood as rhetorical action suggests ways in which ASEAN can improve its ability to influence Myanmar and others. This alteration is not a call for an unlikely transmogrification, but instead suggests a careful appraisal

of ASEAN's nature and opportunities, and offers a politically viable path towards generating better pro-compliance pressures.

### **ASEAN's Efforts to Influence Myanmar: The "Power" of Speech**

Before examining what ASEAN has done it is important to clarify what we mean when we refer to "ASEAN". The ASEAN Charter may, in Article 3, bestow legal personality on ASEAN as an intergovernmental organization but this is insufficient a basis to argue that there is in all cases a singular unitary actor that we can label ASEAN. The argument in this paper rests upon the use of official communiqués and statements by ASEAN to express particular opinions regarding the situation within Myanmar. However, given the commitment to consensus, unanimity and the enduring interest in protecting sovereign equality within ASEAN there is very little room for central institutions of ASEAN to express anything other than that which has not been approved by member states. Indicating that "ASEAN" has engaged in a particular action refers to the fact that certain member states have, through their discussions with other members, been able to elevate particular concerns to the common ASEAN level. The issue of human rights was driven by the Philippines and Thailand (at least up until the 2006 military coup) and increasingly Indonesia as it transitioned into a vibrant democracy in the late 1990s.<sup>17</sup> Even before Myanmar joined ASEAN in 1997 the Philippines and Thailand were keen advocates of the policy of "constructive engagement", inaugurated by ASEAN at the 24<sup>th</sup> ASEAN Ministerial Meeting (AMM) of July 1991 in Kuala Lumpur subsequent to the failure of the Myanmar regime to recognize the 1990 election results. The policy was a way to draw Myanmar slowly into a web of promises and friendly peer pressure in an "attempt that put process over proper institutionalisation of norms".<sup>18</sup> The intention was to influence Myanmar's behaviour by establishing direct and enduring contact between governments.<sup>19</sup>

The interest of Thailand, the Philippines and Indonesia in human rights and Myanmar can be understood as the product of their domestic political situations. Indonesia is illustrative of how domestic politics influenced regional agenda promotion. The domestic reorientation towards democracy after the fall of President Soeharto in 1998 prompted a similar realignment regionally. Indonesia saw an opportunity to take a leadership role in ASEAN and demonstrate its democratic credentials domestically and internationally.<sup>20</sup> These

states, together with a growing range of regional civil society actors such as the ASEAN Working Group on the Establishment of a Human Rights Mechanism, endeavoured to focus attention on human rights concerns within ASEAN. Doing so highlighted the growing gap between what membership in ASEAN came to stand for and the domestic political circumstances of Myanmar as the most extreme recalcitrant within the organization.<sup>21</sup>

It should be noted that not all ASEAN members shared this enthusiasm. Cambodia, Laos, Vietnam and of course Myanmar itself have all maintained low profiles in the discussions about human rights within ASEAN given that their own domestic political systems diverge substantially from liberal democratic standards. Therefore while we may use “ASEAN” as a convenient shorthand it should be remembered that the label denotes discussion and consensus among members, and in the case of human rights a clear concerted effort by ASEAN’s democratic members to take the lead. Indeed the incremental way in which human rights emerged in discussions and were institutionalized slowly and “weakly” within ASEAN is evidence of the range of opinions for member states. Myanmar may be on the extreme end of that spectrum, but it has never been a case of nine members versus a renegade. Instead, throughout the forthcoming discussion it should be remembered that a range of different opinions came together and the outcomes represent a compromise position.

There is broad consensus that ASEAN’s actions have failed to sway Myanmar,<sup>22</sup> but accepting that ASEAN has failed is not the same as arguing that ASEAN has attempted nothing. The purpose now is to highlight key ASEAN activities designed to exert pressure on Myanmar. We can understand this pressure as a type of compliance pressure that relies not on sanctions dispensed by courts and commissions but instead on the use of public pronouncements of displeasure, particularly official ASEAN communiqués. The first of these came in anodyne form as part of the Joint Communiqué of the 34<sup>th</sup> AMM held in Hanoi on 23-24 July 2001 that was the first to mention Myanmar, noting the “encouraging developments in the Union of Myanmar”. The communiqué further noted that ASEAN “appreciated the efforts of the Government of Myanmar towards these developments...”<sup>23</sup>

From thereon there has been a hardening of tone and an increase in the detail of the language that ASEAN has used when discussing Myanmar. The Communiqué of the 36<sup>th</sup> AMM in Phnom Penh, released on 17 June 2003, addressed in more detail domestic

events in Myanmar, and urged the government to “resume its efforts of national reconciliation and dialogue among all parties concerned leading to a peaceful transition to democracy”. The communiqué explicitly noted the role of the National League for Democracy (NLD) when it called for “the early lifting of restrictions placed on Daw Aung San Suu Kyi and the NLD members”.<sup>24</sup> By the 37<sup>th</sup> AMM held in Jakarta in 2004, ASEAN was acknowledging, in regards to the National Convention Process (the apparent bringing together of disparate political and ethnic elements within Myanmar for the formulation of a new constitution) events that were explicitly internal to Myanmar. ASEAN “underlined the need for the involvement of all strata of Myanmar society in the on-going National Convention” and “encouraged all concerned parties in Myanmar to continue their efforts to effect a smooth transition to democracy”.<sup>25</sup>

These statements are very strong for a regional organization wedded to non-interference, and yet the following years saw a further hardening of this position, demonstrating both that the patience of ASEAN and the majority of member states was running thin.<sup>26</sup> The ASEAN Summit of December 2005 in Kuala Lumpur was notable for being, “unusually direct”,<sup>27</sup> calling explicitly for “the release of those placed under detention”.<sup>28</sup> ASEAN noted the “increased interest of the international community” in Myanmar and its response indicates ASEAN’s renewed interest in the implementation of the National Roadmap to Democracy, which ASEAN “encouraged”. ASEAN also “called for the release of those placed under detention”.<sup>29</sup> This was the first explicit request by ASEAN on a human rights issue concerning a member state.

Evidence for the enduring interest of ASEAN in the domestic affairs of Myanmar is seen in the 2005 decision to deny Myanmar the chair of the organization. For some time ASEAN members were split on the issue.<sup>30</sup> As late as April 2005, at the informal ministerial retreat in Cebu, ASEAN could only “agree to disagree” on the way forward.<sup>31</sup> Thai Foreign Minister Kantathi Suphamongkohn was clear that “we [ASEAN] have impressed upon Myanmar the concerns of the international community”,<sup>32</sup> and the community had made clear that Myanmar “in reaching its decision ... should act in ASEAN’s interest”.<sup>33</sup> Ultimately it was announced at the 2005 AMM that ASEAN had “been informed by our colleague, Foreign Minister U Nyan Win of Myanmar, that the Government of Myanmar had decided to relinquish its turn to be the Chair of ASEAN in 2006 because it wanted to focus its attention on the on-going national reconciliation and democratisation process”.<sup>34</sup> UN Special Rapporteur on Human

Rights in Myanmar Sergio Pinero attributes Myanmar's decision to pressure from ASEAN.<sup>35</sup>

The use of public announcements continued thereafter, and the tone of the language employed hardened. In the Joint Communiqué of the 39<sup>th</sup> AMM, held in Kuala Lumpur, released 25 July 2006, ASEAN expressed "Concern on the pace of the national reconciliation process and hope to see tangible progress that would lead to peaceful transition to democracy in the near future."<sup>36</sup> The 40<sup>th</sup> Ministerial Meeting, held in Manila on 30 July 2007, reiterated the call for progress: "We expressed concern on the pace of the national reconciliation process and urged Myanmar to show tangible progress that would lead to a peaceful transition to democracy in the near future." Furthermore it stated "while recognizing the steps taken by the Myanmar Government to release the leader of the NLD, we continue to express concern on the detention of all political detainees and reiterate our calls for their early release."<sup>37</sup> Don Emmerson is correct to draw attention to the changing language that this statement reveals. Earlier ASEAN had called for "national reconciliation" with the effect of "making [the regime] seem the moral equivalent to the opposition and suggesting a compromise solution halfway between their two positions".<sup>38</sup> The call now was for a transition to democracy, denoting a shift in ASEAN's preferred solution "away from mere compromise and towards what the very name of the National League of Democracy endorsed".<sup>39</sup> At the 42<sup>nd</sup> AMM in July 2009, ASEAN encouraged the "Myanmar Government to hold free, fair and inclusive elections in 2010, thereby laying down a good foundation for future social and economic development".<sup>40</sup> At the 43<sup>rd</sup> AMM held in Hanoi in July 2010, ASEAN underscored "the importance of national reconciliation in Myanmar and the holding of the general election in a free, fair, and inclusive manner, thus contributing to Myanmar's stability and development".<sup>41</sup>

However, the strongest use of language since Myanmar joined ASEAN was the organization's response to the 2007 protest by Buddhist monks, the so-called "saffron revolution". ASEAN member states clearly and strongly expressed outrage at Myanmar's violent repression. Indonesia called on Myanmar to "exercise maximum restraint and desist from any acts that could cause further violence".<sup>42</sup> Singapore's Foreign Minister, George Yeo, acting as Chair of ASEAN, in a formal statement expressed the collective "revulsion" to Myanmar Foreign Minister Nyan Win.<sup>43</sup> It is hard to describe an organization using emotive words such as "revulsion" and making clear statements about purely domestic concerns of a member as not engaged in an

effort to bring about the cessation of that behaviour, and in so doing engaging in a socialization effort.

### **Understanding ASEAN Socialization Efforts: Rhetorical Action**

The evidence cited above is sufficient to refute the argument that ASEAN does little to try and influence its members over human rights issues. What it does not tell us, however, is the nature of that attempt. Identifying the nature of compliance pressure being generated is a key step in pinpointing the reasons for ASEAN's failure to influence Myanmar as well as ways in which it can become more effective in generating compliance measures. This identification can be achieved through recourse to theoretical arguments about what compliance pressures are and how they are generated. The use of International Relations theory to interrogate ASEAN is a well-trodden path, but the focus in this work is different. Many have sought to investigate whether ASEAN can be considered powerful, and if so what sort of power it may wield.<sup>44</sup> Helen Nesadurai uses the debate between Realism and Constructivism to illuminate the nature of ASEAN regional order after the Cold War while Narine uses the English School as a foil against which to test the nature of ASEAN.<sup>45</sup> More broadly, scholarship on the EU has a well-developed set of theoretically derived arguments that interrogates EU socialization pressures and the intention here is to undertake a similar analysis for ASEAN.<sup>46</sup>

Analysing ASEAN's action through this lens enables the identification of ASEAN's socialization preferences and provides further evidence of why ASEAN has failed. It further suggests how, in the future, ASEAN may become a more effective socializing agent, not only in relation to Myanmar but also pertaining to other issues. It is argued in this section that ASEAN has engaged in rhetorical action against Myanmar.

As noted, the traditional approach to thinking about socialization efforts is to emphasize the importance of courts and hierarchy more generally, where one body sits in a position of power relative to another, and uses that position to enforce particular standards. Scholarly literature that deals with questions of socialization efforts and compliance most often understands this as what is termed "conditionality", the strategic deployment of rewards and punishments to promote compliance with agreed upon standards. It is conditionality that dominates in explanations of why the EU is

able to socialize not only human rights, but also a wide range of standards to potential and existing members.<sup>47</sup> From a conceptual angle, the failure of ASEAN to socialize member states is often assumed to be a failure to develop conditionality politics. Criticism about the political format of ASEAN has, therefore, a conceptual foundation underpinning it, which is particular and limits our ability to accurately perceive what ASEAN is actually doing.

Conditionality is not, however, the only way to understand socialization efforts. The conceptual literature on compliance suggests that other methods of socialization exist. There is a strong parallel between the use of public pronouncements presented above and the arguments of Thomas Risse concerning rhetorical action. Risse identifies rhetorical action as an interim point between brute bargaining behaviour between actors such as displayed through conditionality and communicative action, where all sides are engaged in a true commitment to learn from each other.<sup>48</sup> Rhetorical action does not necessarily rest on an enforcement organ utilizing its position of empowerment to legally censure offending states.<sup>49</sup> In the absence of conditionality, an organization can still use the elevated position of joint statements in the name of that organization to forward statements of unalterable belief with the desire to condition a behavioural response.<sup>50</sup> Rhetorical action is designed to convince actors to “mend their ways” without material rewards or punishments and rests upon the use of language to convey information and preferences.<sup>51</sup> ASEAN’s actions closely resemble such an understanding. Preferences were fixed when it spoke of Myanmar’s “wrongness” in failing to democratize, clearly placing ASEAN’s own desires for some sort of democracy and greater compliance with human rights standards as benchmarks against which Myanmar was assumed to have fallen short. The process by which ASEAN arrived at sufficient agreement to make these public pronouncements was necessarily one of compromise between those states in the vanguard of a concern for human rights generally and/or Myanmar in particular and the more reluctant Indochinese states. That these reluctant states were willing to go so far is explicable through both the extreme situation within Myanmar and the fact that this extremity was felt to be an outlier by a majority of members. This increasing “gap” between acceptable minimum standards and Myanmar’s own domestic situation was highlighted by the process of organizational revision that saw commitments to Caring Communities, a “people centric approach” and then a Charter that explicitly called for human rights protection and the ultimate creation of the AICHR. ASEAN members may not,

by the late 2000s, have agreed on a precise formula for democracy or the nature of human rights, but they could increasingly agree that Myanmar violated a minimum standard that they, despite their diversity, did not. In this sense ASEAN did not engage with Myanmar over the validity of the claims or wishes embedded in the various statements and actions in any discursive sense in these public statements. Instead, through the medium of public communiqués at the conclusion of both the AMMs and the ASEAN Summits, it stated clearly both its own displeasure at Myanmar's behaviour and, on occasion its desire for Myanmar to in some way change its behaviour. ASEAN's displeasure with Myanmar clearly escalated over time and the hardening of language can be understood as an effort to state clearly preference and desired behavioural change.

### **The Value of Conceptual Insight: Why ASEAN has Failed to Influence Myanmar**

Recognizing ASEAN's socialization strategy as reflecting rhetorical action allows us to critically engage with why ASEAN has failed to influence Myanmar. Trine Flockhart notes that successful socialization requires a clear understanding and consensus on what constitutes good behaviour against which the behaviour of others can be judged.<sup>52</sup> A crucial way in which such clarity is both developed and displayed is by ensuring different parts of an organization convey the same message to targets; that they act in a manner we can term "coherent". Socializing agents must ensure that pressure for reform is consistent across the range of activities where agent and target interact. Unfortunately for ASEAN the messages sent to Myanmar have been contradictory and incoherent, and as such ASEAN has deployed rhetorical action weakly.

The incoherence of the pressure has resulted from member states using ASEAN to simultaneously chastise and support Myanmar. For example at the 6<sup>th</sup> Asia-Europe Meeting held in Rotterdam in September 2005, ASEAN's economic ministers refused to attend as "a matter of principle" following the Dutch government's decision to deny Myanmar's economic minister a visa.<sup>53</sup> This was at exactly the same time that ASEAN was exerting significant pressure on Myanmar over the chairmanship issue. The fact that ASEAN was willing, even when critiquing Myanmar as never before, to stand with their fellow member can only be seen as a sign that when ASEAN unity is threatened, the organization will close ranks.<sup>54</sup> At the November 2007 East Asian Summit, Myanmar Prime Minister General Thein

Sein objected to the Singaporean invitation to Sergio Gambari, the UN Special Rapporteur on Myanmar, and was ultimately successful in blocking his attendance, although as noted ASEAN members themselves had already chastised Myanmar in strong terms concerning the government's response to the "saffron revolution".<sup>55</sup> ASEAN had moved from condemning Myanmar to "caving in" to its demands that its human rights violations were not discussed, showing both a lack of coherence and of "moral courage and vision".<sup>56</sup>

ASEAN has not been able to link the various strands of its relationship with Myanmar together with the result that its preferences have not been clearly and consistently expressed. There are two reasons for this incoherence: normative contestation within ASEAN over the question of non-intervention and the post-colonial setting of the organization. Normative contestation within ASEAN has moved the organization away from an unproblematic interpretation of non-intervention. Key here is the 1997-98 Asian Financial Crisis (AFC) and subsequent debates and community building that ensued after the crisis. Debate between member states centred on how best to reaffirm the fundamental purposes of ASEAN, and make safe the gains that ASEAN had achieved in inter-state peace, whilst extending ASEAN to deal with the sources of social instability.<sup>57</sup> The result was the opening up "more directly the already difficult subject of the principle of non-intervention in the affairs of other members".<sup>58</sup> The AFC called into question the norms that underpinned that perception of success because they were now held as complicit in causing and then exacerbating the crisis itself.<sup>59</sup> Then Thai Foreign Minister Surin Pitsuwan outlined a new vision that sought to correct what he perceived as the shortcomings revealed by the crisis. He argued that the ever deepening relationships between ASEAN member states created new challenges that, to be effectively addressed, necessitated a novel way for ASEAN and member states to relate to each other.<sup>60</sup> ASEAN decision-makers came to realize that they ultimately could not prevent each other from publicly commenting on those intra-state developments that had a perceived detrimental social, economic or political impact on other members of the Association as a whole.<sup>61</sup> ASEAN has extended itself towards greater regional comment on issues that it previously would never have concerned itself with but at the same time has remained committed to non-intervention.

The explanation why ASEAN would be so concerned with maintaining its traditional approach to regional affairs can be found in the colonial and post-colonial experiences of Southeast Asia.<sup>62</sup> The roles that sovereign equality and non-intervention came to play

in ASEAN is not happenstance, but due to the clear desire by the founding members to preserve and strengthen newly independent states threatened by internal dissent and external intervention.<sup>63</sup> These are the deep roots of why ASEAN is averse to responding to external, especially western, pressure. To do so is not simply politically difficult for an organization committed to non-intervention, but it comes very close to violating the founding *raison d'être* of ASEAN itself. It should be remembered that western pressure which was applied to thwart Myanmar's original bid for membership was wholly counterproductive.<sup>64</sup> Tobias Nischalke quotes an ASEAN official who stated that once western pressure was exerted ASEAN "had an obligation to reassert their [ASEANs] sovereignty". Another official indicated that "this is our region, our part of the world, and we know what to do".<sup>65</sup>

What this has resulted in is ASEAN caught between two rival impulses. On the one side the renegotiations of ASEAN membership and the move towards greater regional discussion of national affairs has culminated in a belief that "a state will only be considered equal in its sovereignty if it ensures minimum, standards of good governance for its citizens".<sup>66</sup> However, the postcolonial context renders ASEAN and its members sensitive to external criticism. While ASEAN can critique its members given the assumption of shared respect that binds the organization together, external criticism is invariably seen as illegitimate. Efforts by the United States, the EU or other external actors to chastise Myanmar are met not with agreement but with outright rejection. ASEAN's actions may be politically understandable, but they limit ASEAN's ability to exert pressure on Myanmar by consistently providing Myanmar the shelter it desires.

### **Attempting Coherence within ASEAN: Possibility and Viability**

Given the identification of rhetorical action and the reasons why it has failed to date, it is possible to suggest ways in which ASEAN can become more effective at generating pressure on Myanmar that do not violate the non-intervention principle. This will entail making hard decisions about the meaning of ASEAN and the direction it wishes to go in. What it will not mean, however, is fundamentally altering the organization's approach to regional affairs embodied in the ASEAN Way any more than the Charter process and subsequent formation of the AICHR have done. This is achievable with sufficient

political will. It is not a utopian call for the transformation of ASEAN into a supranational enforcement mechanism.

The possibility of making Myanmar listen to ASEAN would be enhanced if ASEAN were able to remove the shelter it offers from external criticism. This issue of shelter is particularly important because of the reasons why Myanmar sought membership. Myanmar wanted to join ASEAN to find a “sympathetic group...that will not exploit Myanmar’s weak situation”.<sup>67</sup> Khin Ohn Thant notes that Myanmar’s political motives were animated by a concern to seek shelter from international and particularly Western criticism of its domestic political situation.<sup>68</sup> ASEAN’s incoherence therefore has meant that the organization and its members, while engaged in vociferous discussion and public censure, never once threatened to withdraw from Myanmar the principal reason why it valued membership. Closing this gap offers considerable possibility for enhancing the efficacy of rhetorical action. Bodies such as the AICHR, and the promise they offer for the continued prominence of human rights concerns within ASEAN, provide a platform from which continued regional pressure on ASEAN can be developed and potentially used. This is not an issue of expulsion, merely a willingness to desensitize the Myanmar issue and accept the legitimacy of criticism from external sources.

There are two final issues to be addressed: the viability of coherence and the likelihood of success of an ASEAN renewed along the lines suggested. It is not just Cambodia, Laos and Vietnam who would have concerns about addressing Myanmar in such a way, given how it cuts across the historical purpose of ASEAN to shelter members from criticism. However, the slow consensual nature of ASEAN is relevant not only to the creation of new institutions but also to developing agreement on the operation and evolution of those institutions. The very process of organizing coherence *vis-à-vis* Myanmar is itself an opportunity for norm building in a direction that the organization has already embarked on. It requires significant political will but that should not be beyond the reach for political elites who have over the last decade thought in innovative ways about reshaping ASEAN. This is not an overnight revelation but a call for the long term discussion of the necessity of matching the impressive institution building within ASEAN over the last decade with a similar commitment to use those institutions in an effective but quintessentially ASEAN manner. The benefits of such efforts are apparent to ASEAN politicians. Former Secretary General of ASEAN,

Ong Keng Yong, has noted that “ASEAN is concerned about the impact of this [Myanmar] issue...on our credibility and standing, because the world seems to think that ASEAN should be the one tackling this issue and bringing about a positive outcome.”<sup>69</sup> If ASEAN and a majority of its members are indeed concerned about its international reputation, do want to use bodies such as the AICHR for more than mere show, then becoming a more effective socializing agent through recognizing its use of rhetorical action and engaging in more effective efforts offer the most realistic way forwards for the regional organization.

The second issue is more problematic. Even if ASEAN were to act coherently it would not guarantee success. There are indicators that Myanmar values ASEAN membership far less than it did in 1997. Myanmar seems to have found increasing guarantees against isolationism as India and especially China expend considerable effort to court it, be it for economic, military or strategic reasons.<sup>70</sup> However, Myanmar has invested considerable time and energy into ASEAN. To indicate that ASEAN is less important is perhaps true, but it certainly is not dispensable. Were it to be of no value it is hard to see why the regime would continue to participate at all. The decision to allow Myanmar the chair of ASEAN in 2014, a year before the final completion of the community project, promises to embed Myanmar more fully into ASEAN and grant the regime particular prestige and prominence and may well serve to increase Myanmar’s investment in ASEAN. Ultimately the arguments presented here do not guarantee success, but they do perhaps indicate a way to maximize the chances of success. Indeed there is an argument to be made that now is the perfect time to refocus ASEAN’s efforts. With the political situation moving in a more positive direction, including prisoner releases, the re-registering of the NLD as a political party and the possibility of improved relations with the United States, a greater willingness to make Myanmar uncomfortable if it does not continue down this path may finally give ASEAN a real and effective voice in its engagement with Naypyidaw.

## **Conclusions**

Much criticism of ASEAN, especially when dealing with matters of human rights compliance, emerges from a false comparison between ASEAN and the EU that does a disservice to the unique nature of

ASEAN. This does not absolve ASEAN from criticism, but does mean that that critiques should be sensitive to the evolution of ASEAN. ASEAN was founded because of distinct regional political and identity concerns, and its practices and institutionalization remain intrinsically linked to the original rationales. ASEAN cannot integrate hard compliance mechanisms such as courts and detailed intrusive standards which are incompatible with its normative architecture, and it is doubtful whether states pushing ASEAN towards greater regional oversight of human rights matters would wish to see such things. What is important, however, is to recognize the nature of the pressure that ASEAN exerts against Myanmar, and where that pressure can be enhanced within existing approaches to regional affairs. The use of various public pronouncements and communiqués can be understood as representing rhetorical action, a socialization strategy that thrives without the clear punitive strategies of conditionality used elsewhere. Unfortunately rhetorical action is particularly weak when those seeking to socialize Myanmar act incoherently and send contradictory messages.

ASEAN can address this question of incoherence without the radical overhaul of its political and procedural structures that are incompatible with its purpose. ASEAN can exert greater coherence *vis-à-vis* Myanmar by accepting the legitimacy of external actor criticism of the regime. While ASEAN need not actively participate in such criticism, it can, by not leaping to Myanmar's defence, ensure that it does not fatally undermine its own efforts. While the political commitment to such goals is always hard to guarantee, the extensive efforts to reform ASEAN over the last decade indicate that the organization and many of its members are not engaged in moribund debate, but actively driven by an interest to exert regional control.

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