



Norms in Conflict

An Analysis of State Responses to Norm Conflict
in Southeast Asia

Anchalee Miriam Rüländ

Thesis submitted for assessment with a view to
obtaining the degree of Doctor of Political and Social Sciences
of the European University Institute

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European University Institute
Department of Political and Social Sciences

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Examining Board

Professor Dr. Jennifer Welsh, EUI
Professor Dr. Ulrich Krotz, EUI
Professor Dr. Wayne Sandholtz, USC
Professor Dr. Jörn Dosch, Universität Rostock

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Abstract

Constructivist scholarship within International Relations (IR) has yielded important insights into the role of identity and norms in shaping state behavior. Yet, nearly all states have multiple identities and various – sometimes conflicting – normative commitments. This thesis is concerned with ‘norm conflict’: those situations in which the prescriptions associated with two norms clash, making it seemingly impossible for a state to conform to both norms at the same time. Despite the fact that situations of norm conflict present significant decision-making problems for states, the discipline of IR has thus far given them scant attention.

This thesis analyses how Southeast Asia’s more democratically advanced states have responded to situations of norm conflict between the norms of non-interference in the internal affairs of other states, and extraterritorial human rights protection and promotion. These two norms stipulate conflicting obligations in situations of gross human rights violations in foreign jurisdictions. I develop a consequentialist, but socially embedded, theoretical approach to norm following, which argues that by making credible commitments to norms, governments create domestic, international and – in some cases – regional expectations concerning norm compliance. The challenge for states is twofold: to manage such expectations, and to minimize the social costs of non-compliance with one of the two norms – which include potential damage to domestic legitimacy and international reputation.

I suggest that states can pursue different strategies in response to norm conflict, which I conceptualize as *consistent norm prioritization*, *general and context-specific norm replacement*, *norm reconciliation*, *conflict denial* and a *mixed response strategy*. I argue that one important factor in determining which strategy is adopted represents whether the expectations articulated by a government’s relevant audiences converge, conflict or change over time. The thesis empirically explores these different strategies by studying Indonesia, Thailand and Malaysia’s responses to gross cases of human rights violations in Myanmar.

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List of Abbreviations

Amnesty	Amnesty International
AICHR	ASEAN Intergovernmental Commission on Human Rights
AIPMC	ASEAN Inter-Parliamentary Myanmar Caucus
APCET	Asia Pacific Conference on East Timor
ASEAN	Association of Southeast Asian Nations
BN	<i>Barisan Nasional</i> , The National Front
CSIS	Center for Strategic and International Studies
DAP	Democratic Action Party
DPR	<i>Dewan Perwakilan Rakyat-Republik Indonesia</i> , People's Representative Council
ESCAP	UN Economic and Social Commission for Asia and the Pacific
EU	European Union
FPI	<i>Front Pembela Islam</i> , Islamic Defenders Front
Fretilin	<i>Frente Revolucionária do Timor-Leste Independente</i> , The Revolutionary Front for an Independent East Timor
Golkar	<i>Partai Golongan Karya</i> , Party of the Functional Groups
Hindraf	Hindu Rights Action Force
HRW	Human Rights Watch
IFHR	International Federation for Human Rights
IKIAM	<i>Institut Kerjasama Islam Antarabangsa Malaysia</i> , Malaysian Institute of International Islamic Cooperation
ILO	International Labour Organization
IRT	International Relations Theory
ISA	Internal Security Act
KontraS	<i>Komisi untuk orang hilang dan korban tidak kekerasan atau disingkat</i> , The Commission for the Disappeared and Victims of Violence
Komnas HAM	<i>Komisi Nasional Hak Asasi Manusia</i> , Indonesian National Commission for Human Rights
MAPIM	<i>Majlis Perundingan Pertubuhan Islam Malaysia</i> , Malaysian Consultative Council for the Islamic Organization
MoU	Memorandum of Understanding
NAM	Non-Aligned Movement
NGO	Non-Governmental Organization
NHRC	National Human Rights Commission
NLD	National League of Democracy, democratic opposition party in Myanmar
OHCHR	Office of the United Nations High Commissioner of Human Rights
OIC	Organization of Islamic Cooperation
PAN	<i>Partai Amanat Nasional</i> , National Mandate Party
PDI-P	<i>Partai Demokrasi Indonesia Perjuangan</i> , Indonesian Democratic Party of Struggle
PKR	<i>Parti Keadilan Rakyat</i> , People's Justice Party
PKS	<i>Partai Keadilan Sejahtera</i> , Prosperous Justice Party
PMI	<i>Palang Merah Indonesia</i> , Indonesian Red Cross

RtoP	Responsibility to Protect
SPDC	State Peace and Development Council, governing body in Myanmar until 2011
SUHAKAM	<i>Suruhanjaya Hak Asasi Manusia Malaysia</i> , National Commission of Human Rights Malaysia
UDHR	Universal Declaration of Human Rights
UMNO	United Malays National Organisation
UN	United Nations
US	United States

Introduction

Indonesia has transformed itself to become much more democratic and has enshrined universal values such as democracy and protection of human rights in its own constitution [...]. But now we have two normative principles which are equally strong. The principles of national sovereignty and territorial integrity on the one hand and the principles of adherence to the protection of human rights on the other hand.

– Dewi Fortuna Anwar¹

With the liberalization of some of the key member states of the Association of Southeast Asian Nations (ASEAN) during the third wave of democratization (Huntington 1991), a tension developed in their foreign policies between commitment to human rights protection and promotion, and non-interference in the internal affairs of other member states. Ever since the formation of the regional organization in 1967, the norm of non-interference has been a sacrosanct standard of how states are to deal with one another in questions of state-society relations. The commitment to the norm undoubtedly reflects a shared security predicament across the post-colonial world – namely the imperative to prevent the repetition of colonial-era interventions by powerful states. But in addition, in a highly heterogeneous, and formerly conflict-ridden region like Southeast Asia, non-interference has been valued as a means to build trust and stability among governments. Successive generations of ASEAN policymakers have thus been socialized into the norm of non-interference. At the same time, a number of countries in the region, including the Philippines, Indonesia, Thailand, and at times Malaysia and Singapore, began from the late 1990s onwards to push past the exclusive understanding of sovereignty as authority, starting to emphasize notions of responsibility. This entailed a commitment to democracy, good governance and the protection and promotion of human rights – not only at home, but also at the regional level. ASEAN's more democratically advanced states therefore faced a dilemma: The norms of human rights protection and non-interference created conflicting obligations regarding their behavior in cases of extraterritorial human rights violations. These states seemingly had to choose between compliance with two equally valid behavioral standards in cases of human rights violations within the region.

¹ Author's interview with the deputy secretary for political affairs to the vice president of the Republic of Indonesia Dewi Fortuna Anwar, 21 August 2013, Jakarta, Indonesia.

The case of ASEAN's democratizing states is representative of a larger problem. It shows that all states have multiple identities and manifold normative commitments. Sometimes these commitments are contradictory. When they clash, the result is a norm conflict – a situation in which it is impossible to conform to two norms at the same time. For actors that value norm following and want to be seen in a particular way by others, norm conflict creates a serious dilemma for decision makers. Where norm conflicts relate to the foreign policy of states, they constitute a huge source of uncertainty for the decision-making government as well as other actors within their region and broader international society with which they engage. Especially in times of normative advancement, norm conflicts can be expected to be frequent, as old norms continue to coexist next to new ones for extended periods of time. It is thus important to understand how governments determine which norm to follow and how they address the tension between norms. This thesis aims to enhance our knowledge about how states behave in such situations.

This introductory chapter proceeds as follows. In the first section I outline a gap in the International Relations literature with respect to norm conflict. I argue that in the past scholars have either circumvented the problem of norm conflict or, even where they have recognized it, have fallen short of investigating the ways in which governments address norm conflict in practice. Secondly, the chapter moves on to outline the central research question, the theoretical framework and research design. Thirdly, it outlines the subsequent chapters of the dissertation and concludes with a discussion of the overall contributions of the research and its limitations.

1. The Gap in the Literature

International Relations Theory (IRT) has dealt extensively with norms and agency in normative environments. But very little has been said about norm conflicts. The fact that we know so little about the judgments governments make in situations of norm conflict is particularly surprising from a constructivist perspective. While scholars that embrace more materialist theory traditions, such as realism, have dismissed the impact of norms on state behavior, constructivism considers norms as a motivational force for state behavior.

Nevertheless, in the past constructivist scholars have largely circumvented the problem of norm conflict. One strand of theorizing has focused on showing how new

international norms are *grafted* into an existing normative environment (Price 1998). In order to fit into a state's set of pre-existing normative ideas, norms have to be *contested* or *localized* domestically before being internalized (Wiener 2008; Acharya 2004) As a consequence, norm conflict does not arise. However, these theories ignore that overlap between two norms often only develops over time as identities evolve and contextual changes take place. In other words, norm conflict then sets in at a later stage than norm contestation or norm localization. Norm conflict takes as a premise that there is already commitment to both norms at the domestic level. Other constructivist approaches have simply assumed that as states accept and adopt new international norms, conflicting old ones are replaced, thus failing to recognize that old and new norms often co-exist for substantial periods of time until eventually (if ever) one completely replaces the other (Finnemore and Sikkink 1998; Sikkink 2011; Foot 2000).

Only a few constructivist scholars have explicitly recognized the problem of norm conflict. Ian Hurd most accurately describes norm conflict when stating that there can be "inconsistencies within an actor itself" (Hurd 2005, 502). Agents might have attachments to several institutions or norms simultaneously, which require divergent or even opposite reactions to a situation. According to Hurd, these inconsistencies "can last for extended periods and culminate in a crisis only when the actor faces a situation that calls on both internalized beliefs at the same time" (Hurd 2005, 502). Alexander Wendt similarly states that "many situations call up several identities that may point in different directions leaving us unsure how to act" (Wendt 1999, 230). He concludes that actors need to create a "hierarchy of identity commitments," but leaves open how these hierarchies are created and what kind of response patterns they might translate into in practice (ibid).

Sikkink and Finnemore encounter the same problem in their widely cited volume on norm-life-cycles. They *per se* accept that new norms do not just enter a normative vacuum. As a consequence, "actors may face varied and conflicting rules and norms all making claims for different courses of action," but they do not address how these conflicts are overcome in actual decision-making (Finnemore and Sikkink 1998, 914). Similar to Wendt, they refer to the need for agent choice between the conflicting norms. However, they fall short of further enquiring how such choice is motivated and plays out in practice. A more direct consideration of norm conflict is provided by Florini, who concludes that if neither of the competing norms has driven the other to extinction, decision-making agents are likely to follow one norm on some occasions and the competitor on others

(Florini 1996, 373). Yet without specifying the factors that lead to compliance with either of the two norms, this insight is of little help in determining how decision-making is likely to play out in situations of norm conflict.

2. The Research Questions

In light of this gap in the International Relations literature, and the relevance of norm conflict as a 'real world' problem, the objectives of this dissertation are to theoretically and empirically address the problem of decision making in situations of norm conflict. Broadly embedded within a constructivist ontology that takes seriously ideational motives and social relations as constraining factors on state behavior, this project aspires to better understand how states and their governments, as the decision-making agents, respond to situations of norm conflict. The dissertation is thus guided by the following two research questions: *How do states respond to norm conflict in practice? And why do they respond the way they do?* In order to answer these broad yet tightly intertwined research questions, three analytical steps are necessary. First, we need to understand the logic of action used by governments as the decision-making agents in situations of norm conflict in order to guide their choice between the two norms. Second, we need to specify the motivational forces that determine the choice in favor of one of the two conflicting norms in order to increase the predictive power of a theoretical framework designed to explain responses to norm conflict. Third, we need to develop generalizable propositions for how the logic of action, coupled with the motivational forces for norm compliance, translate over time into response strategies to norm conflict.

3. Summary of the Theoretical Framework

Ontologically and epistemologically, this thesis is situated in the constructivist tradition of IR theorizing, which treats ideational phenomena, such as norms, as constitutive elements of world politics. Yet norms are not understood as independent causes for state behavior in situations of norm conflict. The dissertation argues that in situations of norm conflict, the alleged 'independent' pull of norms, which the behaviorist strand of constructivism has emphasized, would necessarily lead to paralysis. Given that the behaviorist approach relies on a 'logic of appropriateness' (Wendt 1992, 1999; Finnemore and Sikkink 1998; Risse, Ropp, and Sikkink 1999), and conceptualizes this logic as a

largely 'unconscious' process, it provides no means for determining which of the two norms – both of which invoke notions of appropriateness – will be followed.

In contrast, this dissertation outlines a consequentialist, yet socially embedded logic to norm following. In this framework, decision makers remain in a conscious state of norm following. They are motivated by the anticipated future consequences of norm following on their domestic legitimacy and international reputation. Instead of being free to pursue just any *a priori* defined interests, decision makers are constrained in their choices of action by the expectations for norm compliance set by their prior commitment to the norms. These expectations are articulated at both the domestic and international levels by the legitimizing audiences a government has to answer to in order to preserve and consolidate its domestic legitimacy as well as international reputation. What therefore matters in situations of norm conflict is both the perceived strength of domestic and international expectations for norm following with respect to either of the two conflicting norms, *and* how the government manages the social costs of violating one of these norms. In sum, while norms influence the government's decision making by defining a realm of possible action, they do not themselves explain the response to norm conflict independent of the social costs the government anticipates in violating a norm. A crucial aspect of the explanation for responses to norm conflict is therefore the government's desire to minimize if not avoid the social costs of norm violation, which include domestic legitimacy and international reputation costs.

In some situations, domestic and international expectations pull in the same direction privileging one norm, while in other situations they can diverge. This dissertation hypothesizes that in cases in which the domestic and international expectations conflict, governments are more likely to align their stance with the expectations articulated at the domestic level, as 'the people' still constitute the main legitimizing audience. Borrowing insights outlined by the 'logic of arguing' (Risse 2000), it contends that governments will use arguments and persuasion to address conflicting expectations of action and thereby minimize the social costs of norm violation. As a consequence, response to norm conflict is conceptualized both as an *act of choice* as well as an *effort to manage expectations*.

In moving beyond just explaining a government's choice of one of the two conflicting norms, this thesis takes the first steps in building a generalizable framework of response strategies to norm conflict. In doing so, it addresses the second element of

response to norm conflict, namely the effort to manage (potentially conflicting) expectations for norm compliance. The likely structure of expectations a government faces in a situation of norm conflict therefore serves as a baseline to develop possible response strategies. One key factor differentiating the strategies is whether the expectations for norm compliance converge, conflict, or change over time. I then draw from insights on norm replacement and cycles of norm change to further specify the various ways states can balance the general imperative to follow norms with the potential costs of violating a norm in a situation of norm conflict (Sandholtz and Stiles 2009; Sandholtz 2016). In Chapter One, I therefore propose six possible response strategies to norm conflict.

The first strategy, *consistent norm prioritization*, arises where domestic and international expectations for norm compliance converge. If the structure of expectations set by the commitment to the norms remains constant, over time consistent norm prioritization is likely to lead to incremental normative change, as one of the two norms becomes irrelevant and ultimately illegitimate. In such a scenario, the experience of norm conflict is relatively benign. Response becomes more complicated, however, in situations in which expectations for norm compliance conflict. I set out four strategies for managing conflicting expectations that differ according to the state's desired trajectory of the two norms, as well as the strategies' scope conditions for success. Most demanding is a strategy of intentional *general norm replacement*. It tries to address the expectation of a dissenting audience by undermining the general validity of the conflicting norm. However, to do so successfully, a government needs to own a lot of Gramscian power (power to convince others), which frankly only a few governments possess (Sandholtz 2009). *Norm reconciliation* reflects a compromise. When confronted with conflicting expectations, norm reconciliation maintains both norms in the shared normative structure. It modifies their meaning in a way that as closely as possible reflects the preferences of its prioritized audience, while at the same time still being acceptable to the dissenting audience. *Context-specific norm replacement* as an approach to conflicting expectations reflects that domestic expectations for norm compliance might vary from the general stance in a specific context. In order to address the domestic expectations without being seen as a violator of the conflicting norm by the dissenting audience *and* without undermining its general validity, the government tries – within a *specific context* – to replace one norm with the other with the help of an argument that establishes

exceptional circumstances. The last response, a strategy of *conflict denial*, attempts to invalidate conflicting expectations by questioning the interpretation of a situation and providing a powerful counter-narrative which, if accepted, enables a state to avoid the social costs of norm violation. Finally, the dissertation argues that where expectations for norm compliance shift, we are likely to see a *mixed response strategy*. In order to optimally address the change in expectations over time, a government relies on different response strategies. A shift in expectations for norm compliance can be the result of an internal or external ‘shock,’ or can reflect a lesser degree of internalization of either of the two norms, meaning that situations are not (yet) consistently interpreted (Legro 2000).

4. Exploring Responses to Norm Conflict in Southeast Asia

In studying norm conflict this dissertation deliberately focuses on a specific non-Western part of the world. This is for two reasons. First, most research on norms, and especially research analyzing cycles of normative change, has so far concentrated on the West.² By contrast, this thesis recognizes that engagement with norms, and particularly states’ confrontation with conflicting norms, also takes place in non-Western contexts – a fact that deserves and requires attention. Second, the normative environment in Southeast Asia following the democratization and liberalization of several Southeast Asian states offered a unique opportunity to study responses to the *same* norm conflict, but provided a context in which response strategies to norm conflict were likely to be different. This is because Southeast Asia’s democratizing states are both similar and different: similar in the sense that they all perceive of a tension between human rights protection and non-interference and different in their domestic particularities and thus the likely domestic expectations for norm compliance.

By applying the consequentialist but socially embedded logic of norm following to Southeast Asia, we learn much, not merely about *any* situation of norm conflict, but possibly the most pressing one of the twenty-first century, as an increasing number of states have democratized and committed themselves to universal human rights. As one of the most diverse regions in the world in terms of regime types, ASEAN as a regional organization groups together democratic states as well as dictatorships of various shades that have poor human rights records. As a consequence, human rights violations within the region are unfortunately not uncommon. During the peak period of democratization

² Exceptions are, for example, (Acharya 2004; Sikkink 2011).

and engagement with human rights in Southeast Asia (2003-2012), the prime offender of human rights within the region was Myanmar. Therefore, this thesis focuses on how states from ASEAN responded to three instances of large-scale human rights violations in Myanmar: the Saffron Revolution in 2007; Cyclone Nargis in 2008; and the Rakhine Riots in 2012. This enabled me to study responses to norm conflict over time, in order to uncover recognizable patterns. As representatives of the universe of the 'more democratically advanced' member states in Southeast Asia, Indonesia, Thailand and Malaysia were picked to test and refine the conjectures set out in the theoretical framework.

5. The Outline of the Dissertation

If conflicting norms can and frequently do coexist for extended periods of time, the pressing question is how to theoretically and empirically account for state responses in situations of norm conflict. What insights has the discipline of International Relations generated so far with respect to the logics of action and choice in normative environments? And are these insights sufficient to explain state response to norm conflict?

The short answer is 'no.' Chapter One introduces the core concepts used in this dissertation, starting with a definition of norms, a discussion of their dual quality as both structuring and constructed, and an analysis of their regulative and constitutive effects, which give rise to the underlying decision-making problem in situations of norm conflict. Subsequently, norm conflicts as decision-making problems are defined and discussed. The chapter carries on to provide a comprehensive and critical examination of the three dominant logics of action used within the discipline of International Relations to explain state choice: the logic of appropriateness, the logic of arguing and the logic of consequences. The core of the chapter outlines and assesses the implications of explaining response to norm conflict based on the different logics and, given their limitations, develops a consequentialist but socially embedded approach to norm following as an alternative theoretical framework for explaining state response in situations of norm conflict. Based on constructivist insights, Chapter One argues that, embedded in a net of social relations, norms can still shape decision making, as governments want to consolidate or improve their standing in relation to their legitimizing audiences. As a consequence, they are constrained by the expectations for norm compliance that exist

both at the domestic and international levels as a result of their prior commitment to norms. The chapter then carries on to outline six different response strategies to norm conflict that aim to minimize the legitimacy and reputation costs of norm violation at the domestic and international levels (outlined in Table 1).

Chapter Two lays the groundwork for the application of the theoretical framework by addressing epistemological and methodological questions. In short, it discusses and establishes how to study responses to norm conflict in practice. The chapter begins by justifying the decision to situate the study of norm conflict in Southeast Asia as a region. Three main arguments are made. The first is that norm conflict is particularly pronounced due to the strict interpretation of non-interference found in the region. Second, because the non-interference norm has been described as a constitutive part of the ASEAN identity, governments will take regional expectations for compliance with non-interference seriously, thus enabling us to analyze a rich set of not only domestic and international, but also regional expectations for norm compliance. Finally, assessing response to norm conflict in Southeast Asia is particularly interesting, as the conflict between human rights protection and non-interference also features in the normative framework of the organization. The chapter then addresses issues of case selection and concludes by outlining the research methods used. In order to test and refine the theoretical framework, this dissertation relies on a case study approach and process tracing as a means to identify the motivations for norm compliance. It employs content analysis of local and international media reporting as well as elite interviews with key stakeholders in the region to gather the necessary data.

Chapter Three establishes the normative context in the three case study countries, which provides the foundation for identifying and studying responses to norm conflict. It analyses the degree of commitment to the two norms in Indonesia, Thailand and Malaysia. The chapter relies on a three-fold measure of norm commitment consisting of formal *norm adoption*, *norm implementation*, and *compliance*. It highlights the sources that give rise to expectations for norm compliance at the domestic, regional and international levels.

From there, the dissertation moves on in Chapters Four to Six to empirically identify and analyze responses to situations of norm conflict in Myanmar by the Indonesian, Thai and Malaysian governments. The chapters all follow the same structure: they first present the response pattern to norm conflict through the three human rights

crises in Myanmar and then analyze the government responses in light of the expectations articulated by the relevant audiences.

Chapter Four assesses the Indonesian response to norm conflict in Myanmar. It shows that in light of a domestic expectation for norm compliance with human rights protection and an equally strong domestic desire to uphold the non-interference norm in cases of territorial disintegration, the government employed a strategy of norm reconciliation. To reconcile the conflicting norms, the Indonesian government reduced the meaning and application of the non-interference norm to instances involving a secessionist dimension. While generally acting in accordance with the human rights protection norm, it remained silent in cases in which a country's human rights violations were related to a struggle for secession or involved a risk of territorial disintegration, such as the later stages of the Saffron Revolution and the Rakhine Riots in Myanmar.

Chapter Five analyses Thailand's response to situations of norm conflict in Myanmar. It illustrates that the government opted for a strategy of context-specific norm replacement by privileging non-interference over human rights protection. This response strategy reflects a strong domestic expectation in Thailand for a prioritization of non-interference that conflicted with international and (at times) regional expectations for human rights protection. In order to justify its silence in the face of extraterritorial human rights violations, thus appearing to undermine the general validity of the human rights protection norm within the region, the government justified its policy by appealing to its 'special position' in relation to Myanmar as a direct neighbor.

Last but not least, Chapter Six assesses the way in which the Malaysian government dealt with human rights violations in Myanmar. It demonstrates that, in line with the theoretical expectations set out in Chapter One, the government adopted a mixed response strategy to norm conflict, as domestic expectations regarding norm compliance with human rights protection and non-interference changed over time. The shift in domestic expectations reflected both the relatively low degree of internalization of human rights protection and promotion in Malaysia compared to Thailand and Indonesia, as well as the presence of a major domestic crisis that coincided with two of the three analyzed cases of human rights violations in Myanmar.

The final chapter revisits the overall objectives of the dissertation and reviews the findings of the case studies in light of the expectations set out by the theoretical

framework. It identifies where further research is needed to increase the predictive power and generalizability of a framework of response strategies to norm conflict.

6. Overall Contributions and Limitations of the Research

This research project was born from a simultaneous interest in constructivist theorizing and norms research, as well as a fascination with Southeast Asia as a region. Studying norm conflict in Southeast Asia brings these two elements together and contributes to our understanding of how states behave in normative environments as well as our knowledge of democratizing states in Southeast Asia.

From a theoretical perspective, this dissertation recognizes that norm conflicts can constitute a serious decision-making problem for states. In outlining a consequentialist but socially embedded approach to norm following, it offers an answer to the question of *how* states respond to norm conflict in practice. As an important motivational force for norm compliance, it highlights the desire to avoid or at least minimize the social costs of norm violation that are detrimental to a government's domestic legitimacy and international reputation. Thereby the consequentialist but socially embedded approach explains *why* governments respond the way they do. In contrast to the bulk of norms research, which still mainly focuses on whether and why states formally adopt norms, this study of norm conflict emphasizes the relevance of the domestic aspects of norm internalization, namely norm implementation and demonstrated commitment to a norm in practice. These processes give rise to domestic expectations for norm compliance, which impact the government's decision making in situations of norm conflict by indicating what kind of action is considered legitimate.

In conceptualizing response to norm conflict both as an act of choice as well as an effort to manage (potentially conflicting) expectations, the study of response to norm conflict in this thesis also advances our understanding of how normative change takes place. More specifically, the research from Southeast Asia suggests that the outcome of norm conflict will not necessarily be full-fledged norm replacement. Instead, subtler normative adjustments are often made which allow for both norms to remain part of a state's normative environment and the broader complex of norms at the regional and international levels. Such a nuanced understanding of normative change more easily explains why 'good' norms not only progress but also regress – sometimes within astonishingly brief periods of time, as vividly displayed in Southeast Asia.

On the empirical side, the dissertation contributes novel insights on the three cases of human rights violations within Myanmar, as well as the engagement with two norms of non-interference and human rights protection in three democratizing Southeast Asian states. While there has been some work on ASEAN's collective response to events in Myanmar, especially to the Saffron Revolution and Cyclone Nargis (Fen and Krebs 2014; Honda 2009; Jones 2008, 2011), the ways in which individual member states responded to these crises has remained largely unexamined. The case studies show, how Indonesia, Thailand and Malaysia emphasized very different aspects of non-interference and human rights protection in their application of the norms in the regional context, as well as in justifications of their actions vis-à-vis dissenting audiences.

However, by focusing on norm conflict in Southeast Asia, the research is limited in its the scope of generalizability. While it achieved a high degree of internal validity, the findings cannot yet conclusively 'travel' outside this context. In order to go beyond Southeast Asia and the norm conflict between human rights protection and non-interference, future research should assess responses to norm conflict in other regions, both with respect to these norms (where relevant) and with respect to other conflicting normative commitments. Doing so would not only enable us to further generalize, but would also help to refine the factors leading to variation in the strength of domestic expectations for norm compliance and thereby the adoption of different response strategies to norm conflict.

Chapter 1: Theorizing Responses to Norm Conflict

Introduction

Since the constructivist turn in the 1980s, IRT has dealt extensively with norms and agency in normative environments. Central elements of this literature have analyzed the impact of norms on state behavior (Wendt 1999; Kratochwil 1991; Björkdahl 2010; Hurrell 2002; Goertz and Diehl 1992), their diffusion and localization (Finnemore and Sikkink 1998; Risse, Ropp, and Sikkink 1999; Acharya 2004, 2009), and their evolution, contestation and change (Sikkink 2011; Wiener 2004, 2008, 2016; Panke and Petersohn 2012; Krook and True 2012; Sandholtz 2009). Yet the issue of norm conflict has remained theoretically and empirically understudied in International Relations. We have little understanding of the judgments governments make regarding compliance when the directives inherent in the norms they have committed to appear to be mutually exclusive. Accordingly, the objective of this chapter is to conceptualize norm conflict as a challenge to decision making in normative international environments and outline a theoretical framework for studying and understanding norm conflict. With the aim of addressing the lacuna in the literature, this dissertation borrows insights from International Law and Sociology, two disciplines that have extensively dealt with norm conflict. In order to understand why norm conflict creates a dilemma for states and their governments as the decision-making agents, we first need to discern how norms affect foreign policy choices.

1. What Norms Are and How they Matter

Within the discipline of International Relations norms are generally understood as “social standards for the proper behavior of a stipulated identity” (Katzenstein 1996, 5). As such, they reflect patterned behavior of a particular kind: behavior that is prescribed and gives rise to normative expectations as to what ought to be done (Hurrell 2002, 11; Dill 2015, 32). Norms follow a deontic logic, which refers to obligations, permissions and prohibitions and can thus be conceived of as a broad class of prescriptive statements that include rules, standards, principles etc. Those statements can be both procedural and substantive in their nature (Hurrell 2002, 11; Onuf 1998, 670).

As social standards, norms are collectively held by groups, which distinguishes them from ideas, which are often held by individuals (Wiener 2008, 41). Hence only those ideas that are shared and refer to “what ought to be” within a social environment also

constitute norms. While there needs to be a general consensus about the validity of a norm within a group, the claim that norms are “shared” should not be understood in absolute terms. There will never be complete social recognition of a norm or of its meaning within a group. Individuals within a group can hold ideas that differ from the prevailing interpretation or meaning of a shared norm. Otherwise norm contestation and normative change would be impossible. Such an understanding of norms as “work-in-progress, rather than finished products” leaves their meaning and validity open to arguing, justification and ultimately change (Krook and True 2012, 105; Björkdahl 2010, 13). Wiener, therefore, conceptualizes norms as “meaning-in-use” (Wiener 2004, 190).

As a consequence, this dissertation will accept that norms are both “static and changing” (Sandholtz 2009, 1). Without some sense of fixity they would not provide what they must, namely relatively stable standards of conduct to guide the choices of those subject to them (Wiener 2004, 191; Sandholtz 2009, 1). As stable standards, norms are seen as “social facts.” They entail recognizable and enforceable prescriptions for behavior that structure behavior and regulate interaction. Yet at the same time, they are constantly evolving and their meaning is often subject to contestation. As a result norms must also remain flexible. Wiener describes this dichotomy as the dual quality of norms: they are both structuring and constructed (Wiener 2008, 38).

All norms involve notions of ‘appropriateness’ (March and Olsen 2006, 689). What is considered appropriate varies and is only known by reference to a social community, such as the population of a nation-state or the international community of states (Björkdahl 2010, 15). The obligations encapsulated in a norm shape what kind of behavior actors see as appropriate for themselves and others in a specific type of situation. However, in indicating what appropriate behavior *ought* to be, norms do not necessarily always identify the *actual* or precise behavior of states. As Kratochwil stresses, norms and rules are valid “even if they fail to guide action in one or several cases” (Kratochwil 1991, 100). They are counterfactually valid. As a consequence, non-compliance does not automatically refute their validity and cannot simply be understood as a sign of norm decay or norm replacement (Ruggie 1998, 97). On the contrary, if a violating state justifies its conduct as a permissible exception to a general rule, the effect can even be a strengthening of the norm (Sandholtz 2009, 11). This kind of justification reinforces the expectation that the norm will generally be followed and thereby ultimately increases the likelihood of appropriate behavior (Björkdahl 2010, 15).

Constructivists have typically distinguished between different *types* of norms, including norms with a primarily regulative function and those with a more constitutive effect on agents and behavior. But is it really possible to identify a norm that is constitutive without also being regulative? In identifying proper standards of conduct and creating expectations for compliance, it would be more accurate to recognize that *all* norms are regulative. As such they can serve as important problem-solving devices for dealing with recurrent issues of social life (Hurrell 2002, 11; Kratochwil 1991, 69). By typifying situations and ruling out certain methods of goal-seeking, they reduce the complexity of situations of choice in which actors find themselves (Kratochwil 1991, 70). Accordingly, all norms have an important action-guiding function (Kratochwil 1991, 10). In situations of norm conflict, this action-guiding function is seriously impaired. While all norms are regulative in that they identify standards of conduct, some norms also have an important constitutive effect. They create identities and interests in processes of social interaction (Tannenwald 1999, 437; Hurrell 2002, 15; Wendt 1999, 231). The constitutive effect of norms determines how agents perceive of themselves and want to be seen by others. As a consequence, norms and identities closely interact without being the same.

2. Norm Conflicts as Decision-Making Problems

Norm conflicts arise from the relatively 'stable' quality of norms, which make them recognizable and enforceable prescriptions for behavior. According to Pauwelyn, "two norms are [...] in a relationship of conflict if one constitutes, has led to, or may lead to, a breach of the other" (Pauwelyn 2003, 176). Hence a norm conflict occurs whenever an actor finds itself in a situation in which its normative directives are inconsistent or not uniquely action-guiding (Beirlaen 2011, 1). Neither norm is applicable without conflicting with the other (Elhad, Breuker, and Brouwer 2000, 209). The clearest example can be found where one norm prohibits a certain behavior, whereas another norm obligates the same behavior. The two norms point in different directions and constitute a situation of incompatibility. In other words, the norms' normative directives are mutually exclusive (Milanovic 2010, 8).

In the realm of foreign policy, norm conflicts first and foremost relate to the policymakers beliefs, which are based on shared normative ideas. Socialization into those shared normative ideas may have previously occurred at both the domestic and international levels. In a norm conflict, which presents itself as a situation of choice, policymakers recognize conflicting normative directives that flow from the competing

norms that regulate the relevant subject matter. The decision-making problem is this: it is only possible for a government to comply with one rule by failing to adhere to the other. To illustrate the point, consider the following case, which refers to German foreign policymaking after the Cold War. Following the horrific events of the Second World War, a strong social norm of absolute military restraint developed in Germany. It was constitutionally codified in assigning the German military the status of a purely territorial defense force (Weiss 2016). However, this norm coexisted with a normative commitment to protecting people on a global scale from violation of their rights and basic freedoms. Article 1 of Germany's Basic Law not only guarantees human rights in Germany, but also obliges the German Government to protect human dignity and fundamental freedoms throughout the world. These commitments started to conflict following the end of the Cold War, as Germany's multilateral partners within NATO and the UN pressured the German government to contribute militarily to peacemaking- and peacekeeping missions (Boekle, Rittberger, and Wagner 1999, 29). As purely humanitarian support was no longer seen as a sufficient response to large-scale human rights violations by their international partners, German decision makers faced a dilemma: the directives flowing from its identity as a risk-averse 'civilian power' and those stipulated by the norm of human rights protection and promotion pulled into opposite directions (Maull 1990, 92).

This example not only illustrates a norm conflict, but also shows that oftentimes a conflict between two norms only arises as contextual changes take place. A situation of norm conflict raises important questions not only about the right immediate response, but also about the resolution of such decision-making problems in the foreign policy of states. While all norm conflicts represent a decision-making problem, those that involve norms with a constitutive effect might give rise to a particular type of norm conflict. They pitch against each other different identity commitments. In doing so they give rise to questions about a hierarchy of identity commitments and might therefore be particularly difficult to resolve (Wendt 1999, 230). In either case, norm conflicts always represent a source of uncertainty for state behavior and create serious challenges to the management of systems governed by norms (Kammerhofer 2005, 1).

3. International Relations Theory and Logics of Action

Given the function of norms in reducing choice and thereby constraining state action, norm conflicts constitute a serious challenge for agents in their decision making in situations in which two conflicting norms regulate the same subject matter. The discipline

has outlined three different logics of action that generally inform behavior in situations of choice: the logic of appropriateness, the logic of arguing and the logic of consequence. Their suitability as a mechanism of choice in situations of norm conflict will be discussed in the subsequent sections of this chapter.

3.1. The Logic of Appropriateness

Constructivists within the 'behaviorist' tradition have tended to focus on the logic of appropriateness as a mechanism of norm following (Wiener 2008, 41). This entails an emphasis on the constitutive effect of norms which, in social processes of interaction and identity formation, constitute state interests (Wendt 1992; Weldes 1996; Dill 2015, 23). As a consequence, actors not only follow norms because they have an interest in their general adherence by others, but also because they have internalized those norm and conceive of themselves in a certain way, i.e. as good global citizens (Dill 2015, 24). In a situation of choice, actors therefore do what they see as appropriate for themselves given their identities (March and Olsen 2006, 689). Within the behaviorist framework, the logic of appropriateness forms the link between norms as an independent variable and state behavior as the dependent variable. Norms are thus believed to have not only an action-guiding function, but also an independent causal effect on state behavior (Acharya 2001, 24). Where norms are 'taken for granted,' compliance becomes habitual and automatically follows. Norm compliance is therefore largely perceived as an unconscious process (Wendt 1999; Finnemore and Sikkink 1998; Risse 2000).

If we rely on the logic of appropriateness, decision-making appears to become impossible in situations of norm conflict. Recall that in a norm conflict at least two norms apply that each invoke notions of appropriateness in relation to a state's identity. Neither norm can be followed without violating the other. An attempt at norm compliance would thus lead to paralysis in a norm conflict. The respective actor – the government – would be unable to act. For purposes of clarity, let us return to the case of German foreign policy during the post-Cold War period: in considering only notions of appropriateness, the government would have ended up doing nothing – not because it had actively decided to comply with its pacifist beliefs, but because it did not know which of the two conflicting norms to follow. In a world in which agents do not operate in complete isolation and normative commitments create expectations of others regarding compliance, paralysis would be an extremely unsatisfying outcome for any agent. A government would be seen as unreliable and indecisive. This is not to say that paralysis can never occur in response

to a norm conflict. However, given the social costs of paralysis, it seems reasonable to assume that most governments will work hard to avoid such an outcome or at least prevent its recurrence.

The logic of appropriateness is particularly problematic as a mechanism of choice in situations of norm conflict because of its conceptualization as part of an unconscious process. But even if the assumption of norm following as an unconscious process were to be relaxed, the logic of appropriateness provides little basis for choice in norm conflicts: even a conscious decision-making agent would still be confronted with two equally appropriate norms in relation to its identity. In order to pursue a path of action, a hierarchy of order between the norms would need to be created. But the violation of either norm would cause what Hurd calls 'psychic costs' (Hurd 1999, 388). Psychic costs differ from material or other ideational costs in that they do not relate to capabilities or social standing, but to the human conscience. Within the logic of appropriateness it remains unclear on what grounds a hierarchy between the norms would be established. It is thus necessary to consider other rationales for norm following in situations of norm conflict.

3.2. The Logic of Arguing

Paralysis represents an extremely unsatisfying response to norm conflict, as it leads to a high level of uncertainty for the agent itself as well as those in its surrounding environment. It therefore seems reasonable to assume that governments will work hard to find a more satisfying response to norm conflict, which entails an 'informed choice' regarding which normative commitments deserve priority in a given situation (Vasconcelos, Kollingbaum, and Norman 2009, 125). Constructivists of a more 'reflexive' tradition have therefore described an alternative mechanism of norm following known as the logic of arguing. Within the logic of arguing agents leave the unconscious process of norm following and via a communicative act of argumentation try to adjudicate which norm to comply with (Risse 2000, 6; Crawford 2002). As a consequence, paralysis can be avoided.

The logic of arguing not only describes a logic of action, but also a mode of social interaction that enables equal participants in a deliberation to mutually challenge and explore the validity claims of the conflicting norms (Risse 2000, 2). Akin to a Habermasian 'ideal speech situation,' the participants in a discourse are open to being convinced by the better argument. Therefore relationships of power and social hierarchies recede into the

background. The participants do not try to persuade one another of their positions, but rather seek to find a communicative consensus – in this case on which of the two conflicting norms should one comply with (Risse 2000, 7). Risse suggests three possible paths to establish the validity claim of a norm. Validity claims can be based on the moral rightness of the norm's underlying argument, the truthfulness and authenticity of the speaker, and the norm's conformity with the perceived facts in the world (Risse 2000, 10). In a situation of norm conflict they could be extended and used as grounds to establish a hierarchy of order between the two conflicting norms within the state.

Several possibilities come to mind: Participants in the deliberation could use the fact that not all norms are based on moral considerations, but many have their origin in what appears to be prudent behavior, to create a hierarchy of order between them. Where a moral norm and one based on prudence are in conflict with each other, they might argue that being morally right is more important than fulfilling other notions of appropriateness. Risse's second path to establishing a validity claim refers to the legitimacy of the speaker. Since individuals can hold ideas that deviate from the general interpretation of the shared norms, a hierarchy of order between the conflicting norms could be created based on the beliefs of a particularly trusted person. The legitimacy of the speaker and the trust that flows from it might be based on his particularly distinct engagement with at least one of the two norms or his track record of good normative leadership in the past. Finally, participants in the deliberation could make arguments that link the prioritization of one of the two norms to shared ideas about appropriateness outside the normative framework of the state. In creating a hierarchy of order between the two conflicting norms, they might reproduce, for example, an already existing hierarchy within the wider international normative system. Where several validity claims can be combined, a particularly strong case for the superiority of one of the two conflicting norms can be made, increasing the chances of a reasoned consensus.

The logic of arguing as a mechanism of norm following provides the analytical tools to understand possible responses in situations of norm conflict. It explains response to norm conflict as a reasoned consensus. However, what makes the logic of arguing problematic is the scale of its scope conditions, which creates the image of decision making as an all-inclusive and consensual process. The logic of arguing as outlined by Risse ignores that the actual decision-making power lies with the government, which in its governing role has interests of its own – most fundamentally to remain in office. In exclusively focusing on notions of appropriateness, these interests, and consequentialist

considerations that might flow from them, remain outside the framework. In order to find a reasoned consensus, actors need to share a “common lifeworld” and be able to “see things through the eyes of one’s interaction partner” (Risse 2000, 10). They need to recognize each other as equal and have equal access to the discourse, which must also be open to non-governmental participants and the public. Thereby relationships of power, force and coercion are assumed to be absent when the argumentative consensus is sought (Risse 2000, 11).

But politics rarely, if ever, delivers ideal speech situations. Once we recognize that it is the government that is doing the actual decision making, it becomes obvious that some votes count for more than others (Sandholtz 2016, 9). As Crawford rightly points out, even in a democratic context, preexisting power and authority are not entirely removed from the scene and therefore it is not only the force of the better argument that prevails. To the contrary, political arguments occur in a decidedly un-level playing field of discourse between differently powerful actors (Crawford 2002, 31). What constitutes the ‘best’ argument for a government in a norm conflict is very much a question of *who* advocates compliance with the different norms and how supportive those groups are of the government and its policies.

3.3. The Logic of Consequences

International Relations Theory offers a third logic of action that, similar to the logic of arguing, allows agents to remain in a conscious state of decision making. The logic of consequence explains action in situations of choice based on a cost-benefit calculation. Within this mode of action, actors behave strategically to achieve objectives and maximize their payoffs (Waltz 1979, 118; Axelrod 1984, 6; Keohane 1984, 64). In a situation of choice, acting in accordance with the logic of consequence implies treating conflicting norms as alternatives in a trade-off. An agent will choose the alternative with the best expected consequences (March and Olsen 2006, 691). While International Relations theories tend to focus on the act of rational choice, the actual explanatory weight of the logic of consequence lies in the forces that determine what count as costs and benefits. For the logic of consequence to be of any analytical help and predictive power, it is therefore essential to identify the motivational forces that determine the trade-off. If all the explanatory power lies in the terms under which an actor defines costs and benefits, virtually anything could be *ex post* described as utility maximization (Jones 2011, 14–15). Since the appropriateness of the norms as motivational forces in their own right are

indeterminate in situations of norm conflict, the decision-making agent alternatively has to ground its choice for compliance on anticipated costs and benefits.

The fact that within a consequentialist framework norms do not necessarily function as direct causal factors has led most International Relations scholars to believe that within this logic of action norms are either irrelevant or simply a reflection of exogenously given interests or state power, a point most prominently made by Krasner.¹ Following other realists (Mearsheimer 1994, 13), he observes glaring disparities between rhetoric and reality in international politics. While he concedes that norms formally persist, he also predicts that they will be systematically violated. Accordingly, Krasner argues that given the multiple and contradictory roles and rules leaders have to consider in their decision making at the international level, their commitment to norm following is mere rhetoric (Krasner 1999, 5). Since there is no constraining authority on the international level, it is up to rulers alone to decide whether to respect a norm or not (Krasner 1999, 7). He thereby provides no real basis for understanding why rulers make the choices they do (Jones 2011, 14). Furthermore, by equating the logic of consequence with an entirely egoistic disposition towards others, he concludes that it is in the interest of rulers to violate the norms. Such a view entails that each decision is seen exclusively from an instrumental point of view and is considered as a new situation of choice. Nothing is valued for its own sake, only for the payoff it brings to the self (Hurd 1999, 386).

In line with other realists, Krasner overlooks the fact that even though governments are not punished for their actions internationally by an international enforcement agency, they are constrained in what they do by the structure of their social relations at both the domestic and international levels. Because norms are shared, commitment to a norm creates expectations towards compliance by others. They are thus part of the material and ideational context in which actors make choices. Functioning like promises, normative commitments can only be overridden by exceptional circumstances and acts of justification (Kratochwil 1991, 9). Leaders therefore have to account for their actions vis-à-vis their relevant audiences through a process of *legitimization*. Relevant audiences are all those communities with which a government identifies and within which it tries to secure a particular social standing (Hurrell 2005, 24; Hurd 2007, 196; Reus-Smit 2007; Hurd 2005, 500). While a government's primary source of legitimacy is still 'the people' of its own state, other audiences at the international level also have to be

¹ For a critique see (Hurd 2008, 301; Dill 2015, 24).

considered (Beetham 2013, 75). It is the job of those in power to identify for themselves which audiences matter and how to speak to those multiple audiences (Hurrell 2005, 24). Audiences respond approvingly to actors and their actions that are in line with the expectations they hold and penalize those that are not (Hurd 2007, 196). In situations of choice, a government's commitment to a norm will create expectations for compliance with the norm among some of its relevant audiences. In response to a situation of norm conflict this implies that a decision in favor of compliance with one norm over the other can be made based on the perceived strength of the articulated expectations of relevant audiences and the social costs the government anticipates in leaving them unaddressed. In sum, the considerations of the consequences of action go beyond the conventional self-interested understanding of the logic of consequences. What is deemed possible and desirable depends on the social context. In this sense norms do not function like causes (Kratowchwil 1991, 98). In shaping expectations they influence the government's decision making. They define the realm of possibility, but do not explain the response to norm conflict independent of the social costs the government anticipates in violating a norm (Tannenwald 1999, 435).

This socially embedded but still consequentialist view of response to norm conflict does not negate the possibility that governments, as the decision-making agents, believe in the norms in question. Nor does it suggest that they never pursue actions based on their inherent sense of appropriateness. It simply argues that in situations in which notions of appropriateness are not uniquely action-guiding, governments have to resort to a conscious process of decision making that relies on a different mechanism for norm following than appropriateness. Compared to the logic of arguing, a socially embedded consequentialist approach to resolving norm conflict has several advantages. First, it leaves the process of decision making open to relations of power and influence, thereby recognizing that governments do not treat all expectations equally. Especially at the domestic level where all governments to some extent have to legitimize their claim to power and continuously gather support for their rule, some voices will count for more than others. While this is surely most pronounced within democratic polities, extenuated forms of domestic legitimization take place within all systems of governance. What represents the 'best argument' from the government's point of view can, therefore, reflect power relations. Second, by ascribing the act of decision making to the government, this approach recognizes that oftentimes a quick response to international events is required, which leaves little time for deliberation about a norm's superior validity claim (Wiener

and Puetter 2009, 2). A socially embedded but consequentialist approach to norm following can capture patterns of relative stability as well as change in compliance by factoring in the internal transformations that states undergo, as well as normative changes in their surrounding international environment. In the following section, the chapter elaborates on the socially embedded consequentialist approach by outlining the social costs that can arise in the domestic as well as international spheres if a government fails to align its policy with the expectations set by the norms. In this thesis I conceive of social costs as including a concern for both domestic legitimacy and international reputation.

3.3.1 Domestic Expectations: Avoiding Legitimacy Costs

Why should governments as the decision-making agents care about domestic expectations regarding norm following? As Krasner rightly points out rulers want to stay in power (Krasner 1999, 7). But given his unwillingness to open the 'black box' of the state, he provides no explanation as to how the government's decision making is linked to the objective of staying in power. Domestic legitimacy provides the missing link. Following Suchman, legitimacy can be defined as "a generalized perception or assumption that the actions of an entity are desirable, proper and appropriate within some socially constructed system of norms, values, beliefs and definitions" (Suchman 1995, 574). Hence legitimacy is more than the capacity to act. It also comprises the right or entitlement to do so (Hurrell 2005, 159; Coicaud 2002, 2). However, an actor is only endowed with legitimacy where its legitimacy claim has been recognized as rightful and has been consented to by relevant audiences (Hurd 2007, 196). To command domestic legitimacy a government has to align its policies with the expectations within its community that express "collective beliefs about right and wrong, or means and ends" (Wendt 1992, 396–97). These beliefs are formulated on the basis of the community's shared norms and interests. Based on the domestic expectations, governments identify the issues their audiences are concerned about and what actions are considered legitimate or possible in a policy area or given situation (Cortell and Davis 2005, 6). Once a legitimacy claim has been recognized, it continues to be assessed on the basis of congruence of the government's actions with the audience's articulated expectations.

In return for endowing the domestic audience with the means of shaping action by expressing expectations, legitimacy imposes obligations on the community members. To the extent that people acknowledge power to be rightful, as validly acquired and

appropriately exercised, they will feel a corresponding obligation to obey and support the government, without having to be bribed or coerced into doing so (Beetham 2013, xi; Ralph and Gallagher 2015, 557). The people cooperate voluntarily (Hurrell 2005, 16; Hurd 1999, 384). Since actors in command of legitimacy can benefit from low levels of opposition to their rule, legitimacy fundamentally contributes to the stability and maintenance of order in a state (Beetham 2013, 29). In short, it reduces the costs of governing for those in power. As a consequence, it is not any power, but *legitimate* power that governments strive for and they can be expected to make “every effort to establish and maintain their legitimacy” (Beetham 2013, xii).² As Clark points out, rulers are engaged in “endless strategies of legitimation, in order to present certain activities or actions as legitimate” (I. Clark 2005, 4).³ While legitimacy constrains power, it also enables it (ibid).

The enabling function of legitimacy is impaired when governments fail to align their policies with domestic expectations and legitimacy costs arise. As legitimacy erodes, voluntary cooperation will most likely decrease and resistance to rule will increase. As a result, the efficiency of rule suffers and the costs of maintaining order and stability are increased through, for example, more surveillance and coercive mechanisms (Crawford 2002, 33; Reus-Smit 2007, 169). In order to re-establish legitimacy the government has to use persuasion or modify its policies. In a norm conflict the desire to avoid domestic legitimacy costs constitutes an important motivational force for the government, which can be expected to align its policy with the expectations for norm compliance articulated by the domestic group most supportive of its rule. This group depicts the dominant domestic audience and has the most power to influence the government’s decision making. But decision makers are not only constrained by domestic expectations for norm compliance. They also seek approval for their actions by their peers on the international plane. The constraining effect of international expectations will be discussed in the following section.

3.3.2. International Expectations: Avoiding Reputation Costs

From a constructivist perspective, international expectations matter not only because governments pursue international cooperation, but also because they strive to obtain international recognition for the ‘identities’ and ‘roles’ according to which they would like

² On legitimate power see also (Hurd 2005, 22; Reus-Smit 2007, 158).

³ On legitimation see also (Reus-Smit 2007, 158; Crawford 2004, 33).

their countries to be seen and judged by others. In other words, they care about their standing within an existing structure of relations and institutions at the international level (Hurd 1999, 386).

Within that structure of relations, expectations express what is seen as legitimate conduct in relation to a shared normative system. This system can encompass the norms governing the international system at large or those of a sub-group of states. In his seminal work, Hedley Bull pointed out that, based on their identities, states associate with groups of states that share similar norms and values and “conceive themselves to be bound by a common set of rules in their relations with one another” (Bull 1977, 13). He famously called such a group of states an international society. While Bull saw international society as global, Buzan and Waever rightly stressed that shared normative systems at a regional level can equally be conceptualized as international societies (i.e. the EU, ASEAN, the African Union, the Arab League, etc.) (Buzan and Wæver 2003, 17). The structure of an international society embodies “rules for identifying who gets to count as a member” as well as rules about “what conduct is appropriate” (I. Clark 2005, 5). Membership within an international society thus entails an understanding amongst states on the ‘inside’ that they are bound by some shared norms and work through common institutions to pursue their goals (Ralph and Gallagher 2015, 556). In identifying rightful membership and judging rightful conduct, international societies are essentially legitimist, similar to domestic communities. They provide social recognition of an actor’s conformity with the shared norms, while at the same time creating an expectation towards compliance with those norms.

Scholars within the sub-discipline of Foreign Policy Analysis have added that at the international level governments do not only seek social recognition for their identities from those within groupings of states that hold similar norms and values. They also pursue particular ‘role conceptions’ that reflect how they see themselves and how they want to be seen by others in their foreign policy. A ‘role’ is generally understood as a set of norms that is thought to apply to a person occupying a given position (Turner 1956, 316).⁴ In applying the notion of roles to the realm of foreign policymaking, Holsti defined ‘role conceptions’ as the functions that policymakers believe “their state should perform on a continuing basis in the international system or in subordinate regional systems” (Holsti 1970, 246). Reflecting the shared worldviews, values, commitments and

⁴ On roles see also (March and Olsen 2006, 689).

objectives within a state, role conceptions flow from a state's identity and constitute its foreign policy culture (Kirste and Maull 1996, 284). Typical roles states can perform are, for example, those of a balancer, mediator, regional leader, democracy promoter or peacemaker, to name just a few (J. Rüländ 2017, 51). In committing to a set of norms and pursuing the associated role conception internationally, governments again create expectations about legitimate conduct and appropriate behavior among their international peers.

Desiring recognition for their identities and the role conceptions they pursue, governments cannot afford to ignore their peers' expectations regarding legitimate action. The attainment of a government's objectives partially depends on the beliefs and opinions of others about them – in short, their reputations (Mercer 1996, 27; Tang 2005, 38). Ignoring the expectations of others could entail reputation costs for a government, relating not only to the likelihood of cooperation, but also its standing within international society and the sub-groups of states it identifies with. Constructivists thus argue that states seek to preserve and consolidate their reputations as legitimate members of those groups (Franck 1990, 191; Boekle, Rittberger, and Wagner 1999, 11). This implies a relational understanding of reputation, rather than viewing it as a property or asset that can be “owned, controlled, accumulated and spent” by an actor (Sharman 2007, 26).⁵ Reputation can thus broadly be defined as “the extent to which a state is considered to be an honourable member of the international community” or a sub-group of states (Downs and Jones 2002, 96). When states leave international expectations concerning legitimate conduct unaddressed by violating shared norms, their action can provoke resistance and a state's reputation as a reliable or ‘good’ member of the group suffers (Hurd 2007, 194; Finnemore and Sikkink 1998, 903).⁶ A constructivist perspective would also argue that reputation concerns affect all states. In short, even the most powerful states in terms of capacity are not completely free in their choices. Despite the fact that they are often able to transgress international rules of legitimate conduct without

⁵ Institutionalists emphasize a property-based concept of reputation that facilitates the likelihood of international cooperation. Within a framework of repeated interactions, international expectations about legitimate action, which flow from an actor's commitments or promises, matter, as the participating agents consider a good reputation valuable. A good reputation allows actors to predict another actor's future moves during strategic interaction by putting its action in a context of past and future interactions (Sharman 2007, 22).

⁶ A relational understanding of reputation affects the way in which states can be sanctioned: it is not only material sanctions that matter; immaterial or even symbolic punishments that aim at a state's status as a legitimate member of a group with a shared normative system are also expected to have an effect (Boekle, Rittberger and Wagner 1999, 10).

suffering adverse material consequences, they in fact rarely do so. And while they might be better able than the weak to bear the material costs of non-compliance with a norm (e.g. sanctions), reputation costs are equally real and painful for the materially well endowed (Sandholtz 2009, 11).

Finally, bridging the two realms of legitimation – the domestic and the international – Finnemore and Sikkink point to another factor that facilitates a government's pursuit of a positive international reputation. They argue that a government's international reputation feeds back into its domestic basis of legitimation and consent (Finnemore and Sikkink 1998, 902). By ignoring international expectations for norm compliance set by the government's commitment to a shared norm, not only would its international standing suffer, but also its legitimacy at home. Hence international reputation loss has negative consequences at both the domestic and international levels. In a situation of norm conflict governments can be expected to consider the expectations articulated by those international audiences it identifies with most and in relation to which it wants to preserve and consolidate a good reputation for norm following. Sitting next to a set of domestic expectations, the following section addresses the question of how governments weigh domestic versus international expectations when they do not converge but are in conflict with each other.

4. Choice in Norm Conflicts and the Management of Expectations

The argument developed above suggests that in situations that are governed by two conflicting norms, governments cannot rely on the notion of appropriateness alone. Yet this does not leave them free to pursue whatever interest they might choose, as the prior commitment to the norms creates expectations towards compliance among others. Embedded in a net of social relations at the domestic and international levels, governments can therefore be expected to also consider the consequences that a policy in favor of either norm would have for its domestic as well as international standing. Hence, from the government perspective norm conflicts are similar to the 'two level' game as described by Putnam (Putnam 1988, 434). The articulated expectations for norm compliance at either level shape what kind of action is perceived as legitimate in a given situation. In trying to minimize the legitimacy and reputation costs that can arise from norm violation, governments can be expected to conform to the norm that causes the least amount of resistance among its relevant audiences.

This situation makes response to norm conflict relatively simple where domestic and international expectations regarding legitimate action are compatible. In complying with the norm that reflects those expectations, governments avoid both legitimacy and reputation costs (Boekle, Rittberger, and Wagner 1999, 11). However, the decision-making process is complicated in cases in which domestic and international expectations conflict. The government has to determine whether it is more vulnerable in its standing domestically or internationally. Intuitively, it seems reasonable to assume that most governments have an inherent tendency to prioritize domestic expectations, since ‘the people’ constitute their primary legitimizing audience (Beetham 2013, 75; Putnam 1988, 436). But ultimately this remains a question that has to be studied empirically. What can be said with certainty is that one set of expectations remains unaddressed by the government’s choice for compliance in situations in which domestic and international expectations conflict. In those cases, response to norm conflict always entails a justificatory element. In order to reduce the social costs of non-compliance with a norm, the government has to justify its actions with arguments that can address conflicting expectations. In political arguments those who argue try to persuade an important audience that they are right (Crawford 2002, 14–15). More specifically, in situations of norm conflict, governments will try to persuade the audience whose expectations have remained unaddressed that its conduct does not actually represent a violation of the conflicting norm, or constitutes a justifiable exception to the rule (Sandholtz 2009, 9; Crawford 2002, 15). In sum, the theoretical framework for this thesis sees a government’s response to norm conflict as both an *act of choice* and an *effort to manage expectations*. While the act of choice relates to the stable property of norms that make them recognizable and enforceable, the effort to manage conflicting expectations reflects their inherent flexibility. The meaning of norms in relation to a situation is open to interpretation, which can then be used, via arguments, to minimize the social fallout from non-compliance. In the final section, six possible response strategies to norm conflict will be outlined.

5. Possible Response Strategies to Norm Conflict

Assuming that governments work hard to avoid paralysis in a norm conflict, their choice in favor of one norm over the other manifests over time in either a ‘uniform’ or a ‘mixed’ response pattern. Response patterns are conceived of here as the visible representation of the act of choice between compliance with the two conflicting norms over an undefined

period of time. A response pattern, therefore, describes what we see a government do in a series of situations of norm conflict. A uniform response pattern implies that over time a government has consistently complied with the same norm. In contrast, a mixed response pattern indicates that compliance with the two norms has varied over time. Those patterns can represent different strategies that aim to avoid or minimize the legitimacy and reputation costs of norm compliance in a norm conflict. Response strategies, therefore, represent attempts to manage (potentially conflicting) expectations for norm compliance in situations of norm conflict. In contrast to response patterns, response strategies refer to the intentions of an actor. In the following, six stylized response strategies to norm conflict will be outlined, along with the likelihood of their adoption in relation to the expectations a government may face in a norm conflict.

5.1. Consistent Norm Prioritization

From a consequentialist but socially embedded perspective of choice in norm conflicts, consistent norm prioritization is most likely to be adopted as a response strategy to norm conflict in those cases in which a government faces compatible and relatively constant domestic and international expectations that favor compliance with one of the two conflicting norms. In this situation, there is a reasonably 'settled' interpretation of what constitutes legitimate action in the face of two conflicting norms. Domestic and international expectations are most likely to converge in cases in which there is relatively uncontested and strong normative leadership within the state's shared normative system and a firm domestic engagement with the global or regional culture has taken place. The compatible domestic and international expectations reinforce each other and raise the stakes of non-compliance with the supported norm (Boekle, Rittberger, and Wagner 1999, 11). By addressing those expectations and complying with the norm prioritized by its relevant audiences, the government avoids both legitimacy and reputation costs. Over time, response to norm conflict manifests as a uniform response pattern. One norm is consistently prioritized over the other. As a consequence of the compatible expectations, the experience of norm conflict is benign: the response to norm conflict involves no social costs. Accordingly, there is no need to plan for future situations of norm conflict by trying to actively influence the meaning of the norms and the attitudes of others towards them. Nevertheless, incrementally, normative change will take place.

As a mostly unintended consequence, over time consistent norm prioritization can affect the validity of the violated norm. As Sandholtz points out, consistent norm

prioritization can eventually lead to norm replacement. Norm replacement reflects the fact that a domain that has been subject to rules cannot return to some pre-normative state of nature; instead, the status of the relevant rule comes into question (Sandholtz 2016, 7). For example, a prohibition can be replaced by a permissive rule and a permissive norm can be replaced by a prohibition or a requirement (Sandholtz 2016, 2). As a result of the consistent prioritization of one of the two norms, the perceived validity of the violated norm diminishes. Observing audiences might start to question the norm's relevance and ultimately its status as a shared standard of behavior in the particular domain. As the norm degenerates it loses its prescriptive status and non-compliance becomes the rule rather than the exception (Panke and Petersohn 2012, 721). If left unchecked, this process slowly removes the norm from the shared normative system. As a result, the consistently prioritized norm assumes an exclusive action-guiding function and stipulates what constitutes appropriate state behavior in future situations of choice (Krook and True 2012; Panke and Petersohn 2012).

5.2. General Norm Replacement

As a response strategy to norm conflict, general norm replacement actively pursues normative change.⁷ Like consistent norm prioritization, over time it manifests as a uniform response pattern, as the government consistently complies with the same norm. But unlike the former, general norm replacement only makes sense for a government to adopt as a strategy to norm conflict if it faces conflicting expectations for norm compliance from the relevant audiences at the domestic and international levels. In addition, the government must be relatively certain that the audience supporting its course of action will continue to do so in the foreseeable future. Otherwise, removing one of the two norms from the normative environment would create more social costs than it would prevent. And finally, it must be relatively confident in its abilities to convince others of the benefits of compliance with the prioritized norm.

In order to manage the social costs that can arise from leaving one set of expectations for norm compliance unaddressed, the government deliberately tries to

⁷ I recognize that a single state cannot replace a norm, as norm replacement constitutes a collective process and requires the acceptance and approval of those states that share the norm within a regional grouping or more broadly within international society. So technically speaking, when saying that a government employs a strategy of general norm replacement, this means that it seeks to contribute to the replacement of a norm. Whether or not a norm is replaced depends on the acceptance and support by others.

undermine the validity of the violated norm within a shared normative system and to replace it with the rival. Thereby the norm conflict is resolved. The immediate goal of general norm replacement is to invalidate conflicting expectations in the situation of norm conflict through arguments that justify action in accordance with the prioritized norm as opposed to compliance with its competitor. By undermining the validity of the conflicting norm and seeking to replace it, a strategy of general norm replacement also tries to prevent conflicting expectations for norm compliance in future situations of choice.

While general norm replacement is attractive in that it resolves the norm conflict and thereby removes uncertainty, it is rather demanding as a successful response strategy to norm conflict. At a minimum the government needs to generate acceptance of the prioritization of the norm among the audience with dissenting views on legitimate conduct in the situation of choice. However, the ultimate goal is to shape the behavior of others in accordance with the norm so compliance becomes 'normal' and does not require legitimation in every situation of choice. Not every government has the capacity to influence others within a shared normative system in such a way and some norms that relate to and interact with the identity of others may be very difficult to replace. Their replacement requires simultaneous identity change, and thus resistance to their violation and ultimate replacement might be particularly strong.

As Sandholtz has pointed out, in order to successfully convince others and replace a norm, power is important (Sandholtz 2009, 12; Ikenberry and Kupchan 1990, 288). While 'hard' power, understood as the material capabilities of a state, often coexists with persuasive Gramscian power, it is the latter that is crucial for the success of norm replacement. Gramscian power enables an actor to influence and alter the beliefs of others. As important elements of Gramscian power, Sandholtz mentions diplomatic representation, presence in the shared organizations and negotiations as well as access to mass media (Sandholtz 2009, 12). However, even getting ones message out there will not be enough if the government is not credible in its normative leadership. Being consistent in it's own response to norm conflict, therefore, not only serves to avoid social costs in relation to the audience articulating expectations for such actions, but is also important to strengthen the government's legitimacy to advocate for compliance with the norm. In leading by example, it increases the response strategy's chances of success. In short, the government needs not only Gramscian power but also soft power. Together with the fact that resistance to the replacement of some norms that relate to a state's

identity might be particularly strong and therefore involve continued social costs, the demanding requirements for the strategy's success make it rather unlikely that many governments will pursue general norm replacement as an approach to norm conflict.

5.3. Context-Specific Norm Replacement

Similar to the previous two strategies, context-specific norm replacement manifests in a uniform response pattern. One of the two norms is continuously prioritized over the other. As a response strategy, however, it is most useful where domestic and international expectations for norm compliance conflict, and the government does not seek a *general* replacement of the violated norm within the shared normative system. This is most likely the case where the prioritized expectations in a particular context diverge from the general stance because of a 'special relationship' between two countries. The conditions, which constitute a 'special relationship' can be manifold and are therefore difficult to determine *a priori*. Most broadly they can be based on a special historical relationship, or special security or economic arrangements between two states which make them highly interdependent and directly affect the audience in question. In such a scenario, the government does not intend to undermine the violated norm's general validity and thereby potentially weaken the compliance of others with that norm. Instead, it tries to affect the expectations of the dissenting audience regarding its own behavior within that specific context.

In order to shape the expectations of the dissenting audience, the government has to argue that under exceptional circumstances the abandonment of the norm and its replacement with the rival is a legitimate response that should not be socially sanctioned. In other words, within a specific context the violation of the norm has to be framed as a legitimate exception to its general validity (Hurd 1999, 386; Kratochwil 1991, 9). To do so, the actor seeking to successfully employ a strategy of context-specific norm replacement has to provide an argument that explains why a specific context should only be regulated by one of the two conflicting norms.

While arguments can take many forms, both Crawford and Sandholtz observe that in 'horizontal reasoning,' arguments that stress similarities with past situations can be particularly powerful (Crawford 2002, 17; Sandholtz 2009, 13–14). As part of a strategy of context-specific norm replacement, the argument provided by the government would need to establish the negative consequences of past norm following by referring to precedents in the particular context. The power of this argumentative approach depends

on how closely the present circumstances resemble those of earlier precedent cases (Crawford 2002, 18). Sandholtz adds that the number of similar past experiences and their closeness in time are important factors for the successful use of precedents as framing devices of current choices (Sandholtz 2009, 14). Actors assert that the present situation is like the one recalled and conclude that one ought to act according to the 'lessons' of the analogy. They use past precedents as analogies for current situations of choice (Crawford 2002, 18).⁸ Hence in order to invalidate conflicting expectations and set a frame for future expectations regarding legitimate action, governments can refer to past experiences in similar situations that justify the norm's violation, while at the same time making it exceptional. If the government remains consistent in its approach and the dissenting audience accepts its argument, a context-specific replacement of the violated norm with the prioritized rival will be the result. In subsequent situations of choice, the remaining norm will exclusively regulate behavior and give rise to expectations for norm compliance (Sandholtz 2009, 14). Outside the specific sphere the two conflicting norms continue to coexist with one another.

5.4. Norm Reconciliation

As a response strategy to norm conflict, norm reconciliation tries to remove the overlap between the two norms' obligations by altering their meaning in a way that the reconciling agent believes to be most acceptable to its various audiences. The reconciling agent then tries to establish the modified norms as new, shared standards of behavior. Accordingly, norm reconciliation targets both the expectations of the relevant audiences towards the government and the behavior of other states in future in situations of norm conflict. It is an attractive response strategy for governments that seek to permanently resolve the norm conflict without entirely discarding one of the two norms. This is most likely to be seen where governments consistently face conflicting expectations for norm compliance, but the dissenting audience is unlikely to be convinced by complete norm replacement. That can either be because the government lacks the necessary Gramscian power to convince others or because acceptance of the conflicting norm requires previous identity change by others. Over time norm reconciliation manifests as a mixed response pattern in which both norms continue to be applied, but in accordance with a clear *a priori* defined logic.

⁸ On analogies see also (Khong 1992).

In the legal realm norm reconciliation is frequently used as a technique for the resolution of norm conflicts. In order to resolve the conflict in a way that allows both norms to continue to co-exist, but in a modified way, jurists rely on the legal maxim of *lex specialis* (Sartor 1992, 210–11).⁹ *Lex specialis* suggests that if both a general standard and a more specific rule regulate a matter, then the latter should take precedence over the former (Cholvy and Cuppens 1995, 201). In a norm conflict, priority would thus fall to the provision with a more precisely delimited scope of application to a particular *a priori* defined context (Lindroos 2005, 44). It is argued that in the given context the more specific norm has greater clarity, while the general norms stays in the background and reemerges in any instance that does not fall within the scope of the more specific norm. The special norm is created through norm derogation and is based on a pragmatic judgment about what is ‘normal’ and what is ‘exceptional’ (Kammerhofer 2005, 5).

Analogous to the legal maxim of *lex specialis*, governments in their foreign policy practice can assign a ‘general’ and a ‘specific’ norm in response to situations of choice. In order to remove the overlap between the norms’ obligations, a gap has to be created within the general norm (Kammerhofer 2005, 5). At the same time, the specific norm needs to be derogated so that it henceforth only regulates the specific subject matter of the gap within the general norm. As a result, the more specific norm essentially becomes an exception to the general norm, while at the same time a hierarchy of order between the norms is created (Ratti 2015, 147). To illustrate the point, consider the framing of Responsibility to Protect. The principle reconciles two norms, namely non-intervention in the internal affairs of states and collective intervention for humanitarian purposes. It creates a gap within the former ‘general’ norm and reduces legitimate military intervention to instances of genocide, war crimes, crimes against humanity and ethnic cleansing. While non-intervention as the general norm is expected to be applied as the general standard in inter-state affairs, cases of genocide, war crimes, crimes against humanity and ethnic cleansing create legitimate exceptions to the rule and in fact obligate external players to act when states have failed in their responsibility to protect their populations. The obligation to assist – as a last resort even by military means – supersedes the obligation to not intervene in the internal affairs of other states (Bellamy 2010; J. Welsh 2014).

⁹ Other principles used to solve normative conflicts are *lex posterior* and *lex superior*. Unlike *lex specialis* they do not offer a mechanism to integrate both norms. In *lex posterior* the later norm supersedes, whereas in *lex superior* the hierarchically higher norm wins.

Following the modification of the norms' meanings and the creation of a hierarchy between them, a reconciling government will try to establish the norms in their new form as shared standards of behavior. In order for norm reconciliation to be a successful approach to norm conflict, the altered meaning of the norms has to be accepted by the relevant audiences. Governments can thus be expected to justify their actions and engage in comprehensive arguments with dissenting audiences in order to persuade them of the norms' reconciled meaning. Since norm reconciliation represents some sort of compromise between the two norms, which both continue to live on in the shared normative system, as a strategy which resolves the norm conflict, it appears more achievable for a larger number of actors and in relation to different types of norms than general norm replacement. The likelihood of acceptance of the modified norms increases with the legitimacy of the reconciling agent, which is grounded in its own adherence to the new spheres of application. The more that governments within the shared normative system support the attempt of norm reconciliation, the more likely it becomes that norm reconciliation will be successful. Only if the 'specific' norm has been recognized as a legitimate exception to the general norm that deserves prioritization under the *a priori* defined circumstances in situations of choice will the social costs of norm violation cease in future situations of choice.

5.5. Conflict Denial

Another possible option for response to norm conflict is conflict denial. As a response strategy it focuses upon the interpretation of a situation and challenges the conclusions about legitimate action that others have drawn from the perceived facts. In short, it rejects a particular framing of a situation that pitches two conflicting norms, both of which the government has previously committed to, against each other. Perhaps the most obvious example of conflict denial relates to the framing of situations as cases of systematic human rights violations, as opposed to humanitarian crises. The former can trigger expectations for action within a foreign jurisdiction without the host state's consent; the latter rules out such measures (Vincent 1974). Thus for a government that does not want to interfere in the internal affairs of the concerned state, the framing of the crisis can be crucial (J. Welsh 2004, 6).

Conflict denial differs from norm contestation in that it does not question the validity of a norm *per se* or a shared understanding of its general sphere of application (Wiener 2004; Krook and True 2012). Instead, it rejects the perceived facts of a situation,

which invoke the norm as a standard of behavior and thus assumes that norm conflict in the particular situation can be interpreted away. In order to do so, the government has to argue that the 'wrong' conclusions have been drawn from the interpretation of the situation and, in fact, only one of the two norms presents a legitimate standard for response to the crisis (Crawford 2002, 17). In order for conflict denial to be effective as a response strategy, the government has to provide a powerful counter-narrative of the situation that can combat expectations towards compliance with a competing norm. The chances of success for this counter-narrative can depend on a number of factors. Particularly important, however, is how widely the competing interpretation and framing of the situation is shared and the credibility of the information presented by a government (Crawford 2002, 36).

If used as a general response strategy to norm conflict, conflict denial should manifest in a uniform response pattern to support the credibility of the government. However, since conflict denial as a response strategy does not target the general validity of either norm and thereby does not affect future expectations for norm compliance, it appears less attractive as a long-term response strategy than others in dealing with conflicting expectations for norm compliance. Instead, it appears particularly suitable as a short-term strategy for governments that face conflicting expectations, but are uncertain about how these expectations will develop in the future. By targeting the interpretation of a particular situation as opposed to the general validity of a norm, it retains the flexibility to align its stance with expectations in favor of compliance with either norm in the future.

5.6. A Mixed Response Strategy

Finally, governments can adopt a mixed response strategy to situations of norm conflict. This combines different forms of response, as over time the domestic and/or international interpretations of what constitutes a legitimate response to situations changes. Reflecting this change, the respective audience articulates new expectations towards the government in charge. In order to maintain congruence between the expectations and the state's foreign policy, the government has to realign its course of action. Otherwise it would risk the disapproval of its audience and possible resistance to its actions. Over time a mixed response strategy therefore manifests as a mixed response pattern, whereby compliance with the conflicting norms varies. A shift in the domestic and/or international expectations for norm compliance is likely under two scenarios. It could be a reflection of the lesser degree of internalization of at least one of the two norms,

meaning that expectations for action in accordance with the stipulated obligations might more easily change and situations of choice might not be interpreted consistently. Alternatively, a shift in expectations could be the result of an internal or external 'shock,' which leads to a transformation and the reassessment of the shared normative ideas (Legro 2000, 419).

To illustrate what a mixed response strategy might look like, consider the following example: Over a certain period of time, a government has consistently prioritized one norm over the other, as its relevant domestic and international audiences articulated expectations uniquely in favor of compliance with that norm. However, following some form of internal crisis that invalidated the interpretation of legitimate response to previous situations of norm conflict, the domestic audience changed its expectations regarding legitimate action. To address this change, the government can be expected to switch from a strategy of consistent norm prioritization to an alternative, which allows it to meet the domestic expectations while at the same time managing conflicting international expectations. A mixed response strategy thus accommodates the reality that over time expectations can change and different response strategies are required to avoid or at least minimize the legitimacy and reputation costs of norm compliance.

To sum up, the six response strategies to norm conflict outlined above all have in common a government intention to avoid or minimize the social costs of violating one norm while privileging another. These social costs can include both concern for its domestic legitimacy and international reputation. In order to reduce the social costs of response to norm conflict, some response strategies involve an element of active expectation management. This is the case where domestic and international expectations for norm compliance do not converge but conflict. In actively managing expectations through arguments and persuasion, the government tries to change the expectations of what is considered appropriate by a dissenting audience with respect to the present case as well as future situations of norm conflict. As a consequence, strategies that relate to conflicting expectations, including general and context-specific norm replacement, norm reconciliation and conflict denial, not only share the objective of minimizing social costs, but also include an element of intentionality in shaping the meaning and application of the involved norms and thereby future expectations for compliance.

The latter is not necessary where a government adopts a strategy of consistent norm prioritization. In prioritizing the norm that is favored at both the domestic and

international levels, the government satisfies the expectations of its relevant audiences without intentionally addressing the meaning of either norm. Recall that expectations are expected to converge for the government to apply a strategy of consistent norm prioritization. In other words, by complying with the norm that is mutually favored by its domestic and international audiences, the government automatically also manages the expectations. Normative change as part of the strategy of consistent norm prioritization is therefore the result of an incremental as opposed to an intentional process.

In comparison to the other response strategies, the mixed response strategy has a more open setup. It is characterized by the government’s conscious decision to change its policy in line with a shift in domestic and/or international expectations for norm compliance. In trying to optimally address the new expectations, it attempts to continue the reduction of domestic legitimacy and international reputation costs. Whether or not this includes intentionality regarding the meaning of the norm and thereby the shaping of future expectations, is contingent upon the actual response strategies that are then implemented by the government. Recall that unlike the other response strategies to norm conflict, the mixed response strategy, over time, combines different response strategies to optimally manage changing expectations.

The six possible response strategies to norm conflict are summarized in Table 1. The table indicates what kind of response pattern accompanies the strategies as one norm is necessarily prioritized over the other. It recaps the theoretically derived expectations of when a government is most likely to adopt a specific strategy and highlights possible enabling conditions for the strategy.

Table 1: Possible Response Strategies to Norm Conflict

Type of Response Strategy	Visible Response Pattern	When adopted?	Enabling conditions
Consistent norm prioritization	Uniform	When domestic and international expectations are compatible and constant over time	<ul style="list-style-type: none"> • Uncontested and strong normative leadership by some
General norm replacement	Uniform	When dom. and int. expectations conflict + gov. wants normative change + is confident of its capacity to convince others of general replacement	<ul style="list-style-type: none"> • Actor has Gramscian power • Actor has legitimacy through leading by example • No constitutive norms involved in norm conflict
Context-specific norm replacement	Uniform	When dom. and int. expectations conflict + gov. generally wants to maintain both norms + is confident	<ul style="list-style-type: none"> • ‘Special relationship’ between two states

		in its ability to establish exceptional circumstances that would justify the privileging of one norm in a specific context	
Norm reconciliation	Mixed	When dom. and int. expectations conflict + gov. lacks confidence to be able to convince dissenting audiences	<ul style="list-style-type: none"> • Constitutive norms involved • Actor has legitimacy through leading by example
Conflict denial	Uniform	When dom. and int. expectations conflict + there is uncertainty about future expectations	<ul style="list-style-type: none"> • Ambiguous situation • International support for counter-narrative that denies norm conflict
Mixed response strategy	Mixed	When dom. and int. expectations change over time	<ul style="list-style-type: none"> • External/internal shock or weak internalization

Source: Author's own compilation

6. Conclusion

This chapter has defined the concept of norm conflict and outlined the problems it can entail for decision-making agents that have expressed and demonstrated commitment to two conflicting norms. In such a situation, the norms are no longer uniquely action-guiding and their equal validity can create conflicting expectations regarding legitimate action. It has been argued that of the different logics of action presented by IRT, the logic of consequences is best equipped to serve as a baseline to explain government decision-making in such situations of norm conflict. Yet this consequentialist approach does not accept that governments are completely unconstrained to pursue interests, here defined as domestic legitimacy and international reputation. By adopting a constructivist approach that accounts for the ways in which states are socially embedded, I argue that states are constrained in their decision making by their relevant domestic as well as international audiences. A government is responsive to expectations of legitimate action that are articulated in those spheres as a result of its prior commitment to the conflicting norms. In responding to situations of norm conflicts governments can therefore be expected to try to minimize the legitimacy and reputation costs that might flow from violating one norm and privileging another. Faced with a choice in favor of one of the two norms, while at the same time needing to manage conflicting expectations, six possible response strategies have been outlined that governments can adopt to avoid or minimize the social costs of norm compliance, which include concerns over domestic legitimacy and international reputation. These strategies will be empirically explored and refined through the analysis of case studies in the subsequent empirical chapters of this thesis. But first, Chapters Two and Three will outline the methodology of this project and

demonstrate the prior commitment to the conflicting norms within the case study countries.

Chapter 2: Studying Responses to Norm Conflict

Introduction

The core objective of this chapter is to operationalize norm conflicts as a foreign policy decision-making problem. The chapter situates the study in Southeast Asia – a region that in the past decade has been particularly prone to norm conflict given its unique normative environment. The so-called ASEAN Way, a shared repository of norms among the organization's member states, centers on a strict interpretation of non-interference in their internal affairs. As the democratization and liberalization of society has progressed in several ASEAN states, this norm has repeatedly been pitted against an increased commitment to human rights protection and promotion in cases of large-scale human rights violations within the region.

The analysis of state responses to norm conflict in this thesis is an iterative exercise in theory building. Therefore, the study of norm conflict in Southeast Asia is neither entirely deductive nor inductive in its approach, but follows an abductive research design (Heritier 2008; Finnemore 2003; J. T. Checkel 2001; Friedrichs and Kratochwil 2009). The virtues of abduction combine theoretical guidance with real-world explanatory power (Finnemore 2003, 13–14). Deductively derived hypotheses or propositions shape the initial design of the inquiry and the case selection. But given that these propositions are insufficient to explain real-world events, they are complemented with inductively derived insights (Heritier 2008, 13). Ultimately, abduction situates these inductively gained insights within the larger theoretical framework.

This chapter discusses the selection of three external human rights crises that invoked the two conflicting norms and justifies the choice of a manageable set of three ASEAN countries to study response to norm conflict. As a result, the research design allows for a comparison of responses to norm conflict across both *time* and *space*. The chapter ends with a discussion of the methodological questions that relate to the use of a case study approach and process tracing, as well as content analysis and interviews as the primary means of data gathering.

1. Why Southeast Asia?

While much of the twentieth century was characterized by the tension between the right to self-determination and non-intervention (Finnemore 2008, 200), a global trend

towards democratization in the post-Cold War era, coupled with the high number of cases of instability and conflict within states, has made the tension between non-intervention and protection of human rights more relevant in contemporary times (Huntington 1991; Cutler 1985). The contradiction between the affirmation of universal human rights and the reaffirmation of state sovereignty has been a recurring point of contention in international affairs (Forsythe 2012, 48). This conflict is particularly pronounced in Southeast Asia, given ASEAN's conjoint strict interpretation of the non-interference norm:

Something ASEAN has always agreed on is that non-interference has to be taken literally – in other words you really can't interfere. In many other regions and organizations there are various levels of non-interference. But in the ASEAN region the principle rules out any form of interference.¹

The practice of non-interference in each other's domestic affairs has long been one of ASEAN's most prominent features. For decades it constituted the centerpiece of the 'ASEAN Way,' a decision-making framework that favors a high degree of consultation and consensus, as well as regional cooperation and interaction based on discretion, informality, consensus building and non-confrontational bargaining styles (Thio 1999, 9; A. C. Guan 2001, 468; Haacke 2003, 4). The historical foundation of the norm, which will be addressed in greater detail in Chapter Three, led to a particularly strict interpretation of what constitutes interference within the region. While in practice ASEAN leaders and academics specializing in the region use the terms 'non-intervention' and 'non-interference' interchangeably, conceptually non-interference in internal affairs as understood in the ASEAN context goes far beyond the definition of intervention as an "internationally wrongful act" (Nasu 2013, 7). Within an international context, for a state's action to constitute an intervention, there must be an element of compulsion. Lauterpacht famously defined intervention as "a peremptory demand or an attempt at interference accompanied by enforcement or threat of enforcement in case of non-compliance" (Lauterpacht 1950, 175). Accordingly, the UN Charter focuses on prohibiting the threat or use of force as forms of intervention. It does not rule out verbal forms of interference such as the naming and shaming of states. Commenting on state behavior or making specific recommendations in order to bring a state's course of behavior in line with an international obligation would therefore not constitute an intervention. Here the ASEAN

¹ Author's interview with the director of the Asia Institute Tasmania at Tasmania University James Chin, 10 August 2016, Kuala Lumpur, Malaysia

interpretation differs. Table 2 summarizes the four dimensions of non-interference as understood in ASEAN (Acharya 2002, 225).

Table 2: Conceptualization of non-interference in ASEAN

Dimensions of non-interference	Indicators of violation
1. No critique of governments	<ul style="list-style-type: none"> - Negative comments regarding domestic events in another ASEAN member state - Expressing concern about a situation in another ASEAN member state - Making unrequested recommendations - Pressuring another ASEAN government - Threatening another ASEAN government
2. Critique of others' interference	<ul style="list-style-type: none"> - Failure to condemn an illegitimate act of interference by a member state
3. No support for rebel groups	<ul style="list-style-type: none"> - Invitation and reception of opposition groups from other ASEAN member states - Recognition of rebel groups - Financial and material support of rebels or opposition groups - Provision of sanctuary to rebels
4. Supporting counter-insurgencies	<ul style="list-style-type: none"> - Questioning an ASEAN member state's sovereignty or territorial integrity - Refusing to provide financial and material assistance for counter-insurgency measures - Refusing to mediate if requested

Source: Author's compilation based on Acharya 2002.

Table 2 shows that the ASEAN interpretation of non-interference goes far beyond a refusal to confront fellow member states directly, and includes a widely shared desire not to upset or embarrass states in the region (Thio 1999, 51). To avoid this, bilateral conflicts have rarely been a matter of public debate among ASEAN states, since other members cannot openly comment on disputes among or within fellow ASEAN states. Former Malaysian foreign minister Syed Hamid Albar elaborates how non-interference is understood in the region:

We only talk about internal matters in closed-door discussions. ASEAN diplomacy has been very much a quiet diplomacy, ensuring that proper language is respected. I had a European Union delegation here the other day and a representative asked me how we talk to each other about things that are not right. Usually we do,

especially in the case of Myanmar or Aceh, but it is always within the boundaries of the four walls. Public, open interference we do not have.²

Non-interference as understood within ASEAN therefore entails a commitment to not publicly embarrass another member state by commenting on internal affairs. Open discussion of a member state's internal affairs and involvement of a third party only become possible by invitation from the conflicting parties (Anwar 1994, 167). Hence charges of interference can be circumvented where the consent to involvement has been given. Within this context, governments have gone as far as prohibiting conferences on contentious issues affecting other ASEAN states as well as foreign non-governmental or opposition events to be held on their territory (Kraft 2005, 11). In sum, what is in fact unique to ASEAN's interpretation of non-interference compared to the international norm of non-intervention is the absence of legitimate exceptions to the norm.³ Where even verbal comments are ruled out as a legitimate means of expressing discontent in situations of human rights violations, the conflict between extraterritorial human rights protection and non-interference becomes very difficult to 'interpret away.' In a region in which even gross human rights violations that endanger the life and liberty of domestic populations are still a matter of concern, the conflict between the two norms is also relatively frequent.

As a final note regarding Southeast Asia as a regional context for studying responses to norm conflict, it is important to mention that the tension between non-interference and extraterritorial human rights protection exists not only on the member state level. It is actually enshrined in the organization's normative framework. With the adoption of the ASEAN Charter in 2007 and its ratification by member states in 2008, both norms and their obligations were legitimized on a regional level. The ASEAN framework now provides a justification for the prioritization of both norms without creating a hierarchy of order between them or specifying the conditions for their application. As Ciociari comments, "the Charter's carefully chosen words do not paint a picture in which rights rest on one side of a scale and national interests or security imperatives rest on the other" but instead the picture "depicts a struggle of rights against rights" (Ciociari 2012, 712). It pitches against each other equally important state rights on the one hand, and

² Author's interview with former foreign minister of Malaysia Tan Sri Syed Hamid Albar, 2 September 2016, Kuala Lumpur, Malaysia.

³ Author's interview with the Thai representative to the AICHR (2009-2012) Sriprapha Petcharamesree, 16 June 2016, Bangkok, Thailand.

human rights on the other hand. As a consequence, the regional organization cannot provide and enforce a solution to the problem of choice between the two norms experienced by individual member states. In situations of norm conflict member states thus cannot simply align their individual responses in accordance with the organization's normative standards.

2. Extraterritorial Human Rights Violations as Cases of Norm Conflict

In order to study state responses to norm conflict and discern patterns in response, it is necessary to identify those situations that appear to require compliance with two conflicting norms. In the case of non-interference and human rights protection, the conflict manifests when human rights are violated within a foreign jurisdiction. Although Southeast Asian states have in practice extended their commitment to non-interference to cases outside the region, as a shared norm in its strict form it only applies to ASEAN states. Accordingly, cases of human rights violation from within the region are particularly suitable for study. The regional dimension of the non-interference norm implies that in addition to the domestic and international audiences, regional expectations regarding legitimate action need to be considered in the analysis of state responses to norm conflict. Regional expectations can be defined as the majority opinion of the ASEAN member states.

Within the Southeast Asian region Myanmar has been the prime offender of human rights both in terms of the 'quantity' and 'quality' of violations in the past. As a consequence, the comparison of state responses to norm conflict undertaken in this dissertation concentrates upon three instances of gross human rights violations in Myanmar. They include the Saffron Revolution in 2007, Cyclone Nargis in 2008, and the Rakhine Riots in 2012 that later evolved into the ongoing Rohingya Crisis. Focusing on these three cases from within Myanmar serves to control for a number of important factors for studying state responses to norm conflict over time.

First and foremost, the three cases of gross human rights violations are most comparable in terms of the scope and severity of the rights abuses within ASEAN. They are among the worst large-scale human rights violations seen in the more recent history of the region and received attention amongst the member states as well as on a global scale. Very few cases of human rights violations outside of Myanmar are comparable to the scope and severity of the violations that occurred in these instances. In all three cases the right to life and liberty of individuals was severely violated by Myanmar state

forces. Although the Cyclone Nargis case initially started as a humanitarian crisis, transnational human rights organizations agree that over time it quickly evolved into a case of widespread human rights violations. Referring to the UN Guiding Principles on International Displacement, Human Rights Watch (HRW) argued that by “deliberately blocking life-sustaining aid,” the government of Myanmar had violated the human rights of its citizens to life, food and health.⁴ The right to life and liberty is among the most fundamental human rights and includes the right to be free from extrajudicial killings and forced disappearance, freedom from slavery and torture, arbitrary arrest and detention. These rights are not only at the heart of the international human rights regime (Risse, Ropp, and Sikkink 1999), but also central to the ASEAN Human Rights Declaration and the ASEAN Charter, which requests the protection of fundamental freedoms from its member states. Other social and political rights, in contrast, are more readily seen as subject to limitations even by ASEAN’s more democratically advanced member states, as defined in national law. As a consequence, the norm conflict between extraterritorial human rights protection and non-interference is most evident in the above-mentioned instances of large-scale human rights violations. It is questionable whether the governments of ASEAN’s democratizing states and their domestic populations would equally perceive of human rights violations that do not relate to fundamental freedoms as situations of norm conflict between the protection of human rights and non-interference. In sum, choosing cases from within one state, namely Myanmar, made sense in order to compare ‘most similar’ situations of the norm conflict between non-interference and human rights protection.

The second reason to analyze state responses to the Saffron Revolution, Cyclone Nargis and the Rakhine Riots has less to do with their setting within the same state, and more to do with their timing. The cases occurred in relative temporal proximity, thereby reducing the risk of far-ranging contextual changes within the responding states’ domestic realms. More importantly, however, with respect to timing as a factor to control for, the three human rights violations in Myanmar all occurred at a time when the regional institutionalization of human rights protection was still on the rise and before individual countries, such as Thailand in 2014, started to democratically regress, thereby eroding the commitment to human rights protection and the perception of a norm conflict between non-interference and extra-territorial human rights protection.

⁴ “Burma: China should push to get aid in,” HRW, 10 May 2008, accessed 6 April 2014, <http://www.hrw.org/news/2008/05/09/burma-china-should-push-get-aid>.

Finally, in order to test some of the strategies, most evidently context-specific norm replacement, it is actually important to use a context of human rights violations that is constant over time. In doing so it becomes possible to identify recurrent justifications for the violation of one of the two norms that would not be obvious if responses were tested across different contexts. In sum, studying responses to norm conflict with the help of three instances of gross human rights violations within one country – Myanmar – guaranteed not only a most comparable in-depth study of response strategies, but also allowed the study to account for factors such as bilateral relations or neighborhood in the findings that might lead to the adoption of a specific response strategy. At the same time, however, controlling for those factors came at the cost of reducing the generalizability of the findings. In order to be able to generalize to other contexts both within ASEAN and outside the region, further testing will be necessary in future research (Lijphart 1971, 685). In what follows, the three instances of human rights violation in Myanmar are introduced. They provide the backdrop to the three case study chapters, which will each discuss the state response to norm conflict in one of three ASEAN countries.

2.1. Myanmar's Violent Crackdown: The Saffron Revolution 2007

On 15 August 2007 the Myanmar government unexpectedly announced the removal of subsidies on fuel and natural gas. Following the 500 percent increase of commodity prices, nonviolent street protests commenced in Yangon.⁵ In the following weeks, small groups of protesters demonstrated almost every day in various parts of the country. Early on in the protests, Amnesty International reported beatings and intimidation by enforcement agencies of the State Peace and Development Council (SPDC). Amongst the first to be detained were fourteen prominent activists of the 88 Generation Student Group.⁶ The 88 Generation is a pro-democracy movement known for its activism against Myanmar's military junta.⁷ Following these detainments, the government started arresting people on a daily basis in an effort to halt the protests. By the end of August, more than 100 people had been confined, including many officials of the opposition

⁵ "Burma: Arbitrary detention of protesters," HRW, 22 August 2007, accessed 6 April 2014, <http://www.hrw.org/news/2007/08/21/burma-arbitrary-detention-protesters>.

⁶ The group takes its name from the 8888 Uprising, a series of student-led protests in 1988 opposing the military rule of General Ne Win. The 88 Generation Student Group was founded in 2005. Many of its members were imprisoned by the junta on charges of forming an illegal organization.

⁷ "Myanmar: Authorities must allow peaceful demonstrations," Amnesty International, 31 August 2007, accessed 6 April 2014, <http://amnesty.org/en/library/asset/ASA16/006/2007/en/b7b0aa77-d36c-11dd-a329-2f46302a8cc6/asa160062007en.html>.

National League for Democracy (NLD) (Human Rights Watch 2007b, 23). The peaceful marches soon went beyond the initial price protests, reflecting people's build-up anger and demand for political reform.⁸ They reached a turning point on 5 September when a group of Buddhist monks marched in Pakokku, a town in Central Myanmar. The army intervened, beating monks and bystanders with bamboo sticks. The following day security forces raided at least 130 monasteries in Mandalay and hundreds of monks were de-robed and arrested. Some of them were sentenced to long prison terms.⁹

The army's violence against the monks, who have a unique moral standing in Myanmar, resulted in revulsion and anger spreading throughout the country (Human Rights Watch 2007b, 28–29). The protests intensified after 22 September when a group of about 500 monks passed through the barricades of the home of Nobel Peace Prize Winner and opposition leader Aung San Suu Kyi to pray with her.¹⁰ In the aftermath, demonstrations exploded in size to an estimated 150,000 people shouting slogans for the release of Aung San Suu Kyi, who had been under house arrest since 1989 (Human Rights Watch 2007b, 42). Those mass demonstrations were the biggest the country had seen since 1988, when the military regime used deadly force against massive pro-democracy uprisings. Following the protests on 26 September, the government reacted brutally. Some 1,000 people were detained. The army beat down unarmed demonstrators, initiated mass arbitrary arrests and shootings.¹¹ In an official statement, the authorities in Myanmar acknowledged the death of ten persons, including a Japanese journalist. Without access to all areas affected, HRW reported and documented the killing of twenty people in Yangon alone and assumed that the actual death toll was much higher.¹² Speaking before the UN General Assembly, the UN Human Rights Council's Special Rapporteur Paulo Sérgio Pinheiro said that independent sources had reported that thirty to forty monks and fifty to seventy civilians had been killed during the crackdown.¹³ On 7

⁸ "Myanmar's protests. On the brink," *The Economist*, 27 September 2007.

⁹ "Myanmar needs a comprehensive international arms embargo," Amnesty International, 28 September 2007, accessed 6 April 2014, <http://www.amnesty.org/pt-br/library/asset/ASA16/014/2007/en/2b0bc76c-d366-11dd-a329-2f46302a8cc6/asa160142007es.pdf>.

¹⁰ "Myanmar's protests. On the brink," *The Economist*, 27 September 2007.

¹¹ "Myanmar demonstrators defiant in face of escalating repression," Amnesty International, 27 September 2007, accessed 6 April 2014, <http://www.amnesty.org/en/library/asset/ASA16/010/2007/en/8f053137-d366-11dd-a329-2f46302a8cc6/asa160102007en.pdf>.

¹² "Burma: Crackdown bloodier than government admits," HRW, 7 December 2007, accessed 6 April 2014, <http://www.hrw.org/news/2007/12/06/burma-crackdown-bloodier-government-admits>.

¹³ "Myanmar: UN rights expert to probe allegations of abuses during crackdown," UN News, 24 October 2007, accessed 21 January 2018, <https://www.un.org/apps/news/story.asp?NewsID=24405&Cr=myanmar&Cr1=#.WmiK1LQ-dAY>.

December 2007 Pinheiro put the final confirmed death toll at thirty-one. He corroborated that 2,927 persons had been detained in connection with the pro-democracy protests of which eighty people, including twenty-one monks, were still in custody in December 2007.¹⁴

2.2. Myanmar's Shutdown: Cyclone Nargis 2008

Less than a year later, Myanmar was struck by disaster again. In May 2008, the country was hit by tropical Cyclone Nargis, which was the worst natural disaster in the recorded history of the country. Making landfall on 2 May, the storm surge swept through the densely populated Irrawaddy Delta, causing catastrophic destruction. The cyclone destroyed entire villages, leaving hundreds of thousands of survivors without food and shelter.¹⁵ It severely affected about 2.4 million people, with about 140,000 killed or missing and more than one million people displaced.¹⁶

Unlike the Saffron Revolution, Cyclone Nargis started as a natural disaster and can therefore be seen as qualitatively different. While it is true that the initial destruction and human suffering were caused by a cyclone, internationally the case was soon framed as a large-scale human rights violation. According to Myanmar government sources cited by the *Bangkok Post*, on the eve of the cyclone officials in Myanmar were ordered not to issue warnings to the public – the instructions coming from President Than Shwe himself. At the same time, air force fighters and private passenger planes from Bagan Air and Air Mandalay were moved the evening before the storm from Yangon to Mandalay for safety, indicating that the junta was aware of the severity of the forthcoming storm.¹⁷ Following the cyclone, the junta delayed aid and humanitarian relief missions for weeks. According to Phil Robertson, deputy Asia Director of HRW and at the time independent consultant in Bangkok, the human suffering that succeeded the cyclone was clearly a case of large-scale human rights violations:

Cyclone Nargis for sure was not just a humanitarian disaster. The neglect President Tan Shwe and his fellow generals showed was criminal. When you deny people

¹⁴ "Burma toll at least 31, UN says," *BBC*, 7 December 2007.

¹⁵ "Burma: Cyclone donors should ensure transparency and accountability," HRW, 23 July 2008, accessed 6 April 2014, <http://www.hrw.org/news/2008/07/22/burma-cyclone-donors-should-ensure-transparency-and-accountability>.

¹⁶ "Myanmar Briefing. Human rights concerns a month after Cyclone Nargis," Amnesty International, 5 June 2008, accessed 6 April 2014, <http://www.amnesty.org/en/library/asset/ASA16/013/2008/en/85931049-32e5-11dd-863f-e9cd398f74da/asa160132008eng.pdf>.

¹⁷ Larry Jagan, "For Than Shwe, to hell with compromise," *Bangkok Post*, 31 May 2008.

assistance and care in a time of complete and total destruction of their villages, when they have no water, no clothes and no way to help themselves and your response is to stop international aid from being distributed and to bar humanitarians from getting in there by holding them up at Bangkok airport, then that is criminal.¹⁸

Instead of focusing on the disaster and relieving the human suffering, the government pursued its plans to have a constitutional referendum scheduled for 10 May 2008.¹⁹ It denied the United Nations request to waive visas for relief workers assembled in Bangkok in order to swiftly start their work in the affected areas.²⁰ Instead, foreign aid teams had to negotiate with the regime to get access, which barred the UN and most Western disaster assessment teams from entering the country.²¹ Responding to a request from the UN World Food Programme to use their own personnel to distribute food supplies, Myanmar's Foreign Ministry insisted that the government would deliver international aid "with its own labor."²² The first two planes dispatched by the UN, carrying high-energy biscuits, medicine and other supplies, had to wait for two days while the organization negotiated with the junta to allow the material into the country.²³ The restrictions on aid workers reflected the junta's deep concern over outside interference in the country. The regime was highly suspicious not only of the US and other Western powers, but also of the UN and their international aid agencies, which they assumed to be in cahoots with the West in an attempt to whip up opposition to the military rule inside the country. The military feared that foreign aid workers entering the country would also gather important intelligence that later might be used to undermine the military regime.²⁴ According to Southeast Asian media, President Than Shwe ignored several attempts by UN secretary-general Ban Ki-Moon to contact him in order to discuss access for international aid workers.²⁵ As a result of the junta's isolationism, even seven weeks after the cyclone hit

¹⁸ Author's interview with the deputy director of Human Rights Watch Asia division Phil Robertson, 8 June 2016, Bangkok, Thailand.

¹⁹ "Burma. Postpone Referendum to save lives," HRW, 9 May 2008, accessed 6 April 2014, <http://www.hrw.org/news/2008/05/07/burma-postpone-referendum-save-lives>.

²⁰ "Relief groups left waiting; UN asks Burma to waive visas for aid workers Bangkok Post," *Bangkok Post*, 8 May 2008.

²¹ "Burma denies US access; relief supplies from UN starting to get through," *Bangkok Post*, 9 May 2008.

²² Nirmal Ghosh, "Give, but stay away," *The Straits Times*, 10 May 2008.

²³ "Burma denies US access; relief supplies from UN starting to get through," *Bangkok Post*, 9 May 2008.

²⁴ Larry Jagan, "Why the reclusive generals shun international aid," *Bangkok Post*, 16 May 2008.

²⁵ Min Zin, "Burma politics of rescue," *Bangkok Post*, 18 May 2008.

Myanmar, only 1.3 million of an estimated 2.4 million people affected had been reached by humanitarian agencies.²⁶

2.3. Myanmar's Rohingya Problem: The Rakhine Riots 2012

Finally, three years later a now nominally civilian, but still heavily military controlled Myanmar government was once again in the limelight of international attention as violence erupted between the Buddhist and Muslim communities in the impoverished Rakhine state.²⁷ The violence had commenced in early June 2012 after reports spread on 28 May 2012 that a Buddhist woman had been raped and killed by three Muslim men. On 3 June a large group of Buddhist villagers stopped a bus and brutally killed ten Muslims, which caused thousands of Rohingya to riot. In return Buddhist mobs burned down the homes of up to 10,000 Rohingya and non-Rohingya Muslims.²⁸ Local police and soldiers either stood by and passively watched the killings or became actively involved in the conflict through mass arrests and arbitrary violence (Human Rights Watch 2012b, 1). As Human Rights Watch reported, police and military forces “opened fire on Rohingya with live ammunition.”²⁹ International human rights watchdogs, most prominently Amnesty International and Human Rights Watch, criticized the authorities for failing to act swiftly and assertively enough to the riots, including the deadly violence exercised by its own enforcement agencies against (primarily Muslim) civilians.³⁰ On 10 June 2012 the government of Myanmar declared a state of emergency in its Western province.³¹ In instigating martial law, which gave the administration control of the region, it essentially handed over control to the military, which had a history of treating the Muslim minority in Rakhine in the most brutal ways.³² After what appeared a brief ceasefire, violence recommenced in October 2012.³³

²⁶ “Burma: New Rules further delay relief,” HRW, 12 June 2008, accessed 6 April 2014, <http://www.hrw.org/en/news/2008/06/11/burma-new-rules-further-delay-relief>.

²⁷ In April 2012 opposition politicians led by Aung San Suu Kyi entered the Burmese parliament, following historic by-elections.

²⁸ “Burma. Government forces targeting Rohingya Muslims,” HRW, 31 July 2012, accessed 5 April 2014, <http://www.hrw.org/news/2012/07/31/burma-government-forces-targeting-rohingya-muslims-0>.

²⁹ “HRW cites ‘atrocities’ in Myanmar,” *The Jakarta Post*, 1 August 2012; “Burma. Mass arrests, raids on Rohingya Muslims,” HRW, 5 July 2012, accessed 5 April 2014, <http://www.hrw.org/news/2012/07/05/burma-mass-arrests-raids-rohingya-muslims>.

³⁰ “Burma faces more unrest in Rakhine state,” *BBC*, 12 June 2012.

³¹ “State of emergency declared for western Myanmar,” *The Jakarta Post*, 11 June 2012.

³² “Burma faces more unrest in Rakhine state,” *BBC*, 12 June 2012.

³³ “Burma. New Violence in Arakan State”, HRW, 26 October 2012, accessed 5 April 2014, <http://www.hrw.org/news/2012/10/26/burma-new-violence-arakan-state>.

According to an official statement issued by the Myanmar government in May 2013, the total number of casualties since June 2012 comprised 211, among them 152 'Bengalis,' as the Rohingya are officially called in Myanmar (Human Rights Watch 2013b, 146–47). Human rights organizations such as HRW considered these numbers to be grossly underestimated, with unofficial calculations ranging between 300 and 650.³⁴ Moreover, the UN High Commissioner for Refugees assumed that up to 140,000 Rohingya have been displaced since the outbreak of the riots, many of whom remain in displacement camps today.³⁵ As a result of the riots thousands of people from the minority group have been forced to flee the country.³⁶ While both communities, the Rakhine and the Rohingya, were affected by the violence, an estimated 95 percent of the displaced are Muslims (Fen and Krebs 2014, 9).

At the time of the riots in 2012 about 800,000 Rohingya lived in Rakhine state, the second poorest province of Myanmar.³⁷ The Rohingya and the Rakhine, both non-Burmese ethnic minorities in Myanmar, have lived together in Rakhine for centuries with periodic outbreaks of violence. For the past twenty years prior to the riots in 2012, they had coexisted relatively peacefully, albeit very separately, as hostility was kept under control by the military government.³⁸ At the same time, the Rohingya have been systematically discriminated against in the country. As the ASEAN Inter-Parliamentary Myanmar Caucus (AIPMC) reported, on-going and systematic violence against the Rohingya includes the massacre of children, the burning of homes, religious buildings and schools, as well as the denial of basic rights such as healthcare, education and movement.³⁹ Moreover, discriminatory policies like a two-child limit, enforced birth control, restrictions on marriage and movement, forced labor and confiscation of land have been reported as remaining in place (Fen and Krebs 2014, 9).

³⁴ Dom Hammond, "The Genocide Happening Right Now That Nobody Is Talking About," *Genocide Watch*, 28 August 2013, accessed 5 April 2014, <https://mic.com/articles/61099/the-genocide-happening-right-now-that-nobody-is-talking-about#.QzVeQ102q>; Hanna Hindstrom, "Burmese authorities targeting Rohingyas, UK parliament told," *The Democratic Voice of Burma*, 28 June 2012, accessed 5 April 2014, <http://www.dvb.no/news/burmese-authorities-targeting-rohingyas-uk-parliament-told/22676>.

³⁵ "2014 UNHCR country operations profile - Myanmar" UNHCR, accessed 5 April 2014, <http://www.unhcr.org/pages/49e4877d6.html>.

³⁶ "Editorial: Terror and democracy," *The Jakarta Post*, 6 May 2013.

³⁷ Nirmal Ghosh, "Thein Sein to act after fresh violence," *The Straits Times*, 27 October 2012.

³⁸ Author's interview with former Myanmar country officer at the Centre for Humanitarian Dialogue, Alexander Douglas, 16 March 2016, Jakarta, Indonesia.

³⁹ "Parliamentarians call on ASEAN member states to back OIC Human Rights Council resolution on anti-Muslim violence in Myanmar," AIPMC, 22 May 2013, accessed 5 April 2014, <http://www.aseanmp.org/?p=2894>.

The Rohingya have been treated far worse than other ethnic minorities by the ruling Burmese. Among the root causes of the conflict is the question of citizenship. Just like the Buddhist Rakhine, the government and the Burmese majority have never accepted the Muslims living in Rakhine as legitimate residents of the state. Instead, the Rohingya have been considered as migrants from Bangladesh who do not constitute a distinct national race of Myanmar (A. Rüländ 2017). The conflict was politicized when the Muslims living in Rakhine in the 1950s started to advocate for the independence of Northern Rakhine to become an autonomous Muslim zone or alternatively merge with East Pakistan (now Bangladesh) (Khin Maung Saw 2016, 117). Ever since the Burmese Citizenship Act of 1982, the Rohingya have been denied their civil, political, economic and social human rights in Myanmar.⁴⁰ It is therefore not surprising that UN agencies have consistently identified them as one of the most persecuted minority groups in the world.⁴¹ Having introduced the three cases of human rights violation that will form the backdrop to state response to norm conflict, the following section addresses the selection of three Southeast Asian case study countries.

3. Responding States: Why Indonesia, Thailand and Malaysia?

In order to empirically explore the link between expectations for norm compliance and different response strategies to norm conflict, the case study countries have to be both similar and different – similar in the sense that all governments need to experience a norm conflict, which requires a credible commitment to both norms, and different in the likely structure of expectations for norm compliance that they face – in order to empirically explore different response strategies.

Southeast Asia is considered to be “arguably the most diverse region in the world in terms of political regimes” (Peou 2014, 24).⁴² Since the 1980s, a number of countries have transitioned from authoritarian rule or dictatorship into a type of governance more oriented towards democratic procedures and the rule of law (Rathgeber 2015, 132). Among those states that can be classified as more democratic, democratization and liberalization have advanced to different degrees, but have always resulted in a greater

⁴⁰ Moshahida Sultana Ritu, “Ethnic cleansing in Myanmar,” *International Herald Tribune*, 14 July 2012; Syed Zain al-Mahmood, “Persecuted for decades,” *The Guardian*, 8 August 2012.

⁴¹ “Communal violence in Burma,” *BBC*, 24 January 2014.

⁴² On Southeast Asian diversity see also (Kuhota, Slater, and Vu 2008, 8; Slater 2012, 8).

concern for human rights (Renshaw 2014; H.-L. Tan 2011).⁴³ The dual process of political democratization and societal liberalization in Southeast Asia peaked during the first decade of the twenty-first century, but has been rolled back in more recent times as populist leaders and the military have taken control in several ASEAN countries and Islamization is on the rise in the region.

In treating democracy as a proxy for a greater concern for human rights, this dissertation builds on the widespread view that they are “two sides of the same coin” (Carothers 1994, 109), and that “human rights, equal rights and government under law are important attributes of democracy” (Fox and Roth 2000, 5). The Human Rights Council has reinforced this position, arguing that “democracy, the rule of law and human rights are profoundly interconnected” (Gomez and Ramcharan 2015, 8). In March 2012 the Council passed a resolution entitled “Human Rights, Democracy and the Rule of Law” which reaffirmed that democracy, and the development of and respect for human rights and fundamental freedoms, are “interdependent and mutually reinforcing.”⁴⁴ For the purposes of this study a ‘greater concern for human rights’ among those in power relates to the obligations they feel towards their nationals as well as strangers. Compliance with international human rights standards at home signals a credible commitment to the norm that goes beyond mere rhetoric. However, in order to create a norm conflict in their foreign policy, their concern for human rights needs to be extended to strangers.

The classification of regime types in ASEAN, especially among those that can be considered more democratic, varies considerably depending on which study one consults. Prior to Thailand’s 2014 military coup, Indonesia, the Philippines, Thailand, Malaysia and Singapore tended to be identified as liberally or illiberally democratic (Peou 2014, 24; Rodan and Hughes 2014, 57).⁴⁵ Indonesia, Thailand and Malaysia have been chosen as case study countries that share a commitment to the two norms but are most likely to adopt different response strategies to norm conflict given their specific domestic features. For the analyzed period of time (2007-2012), Indonesia and the Philippines were the

⁴³ Democratization is understood as a transitional period experienced by a country with a non-democratic political system as it becomes a democracy. On democratization in Indonesia and its effect on foreign policymaking see (Wirajuda 2014).

⁴⁴ Human Rights Council Resolution 28/14, *Human Rights, Democracy and the Rule of Law*, A/HRC/RES/28/14, 9 April 2015, available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/073/79/PDF/G1507379.pdf?OpenElement>.

⁴⁵ A military coup in 2006, ousting democratically elected Prime Minister Thaksin Shinawatra, resulted in a brief suspension of democratic rule in Thailand, but democratic elections in the following year swiftly restored accountability.

most democratic among the ASEAN states, with open political systems, and were progressive in their domestic commitment to human rights protection (Davies 2014, 112; Renshaw 2014, 61; H.-L. Tan 2011, 10). The two countries, moreover, resembled each other in a number of important aspects and therefore their response to the norm conflict between human rights protection and non-interference could be expected to be quite similar. Both countries are large, difficult to govern archipelagic states with long legacies of Western colonial rule. They share similar levels of economic development and have equally complex multi-ethnic as well as multi-religious societies with ongoing separatist movements (Case 2002, 4). Given the countries' democratic credentials as well as the endemic secessionist conflicts, it seems likely that at least at the domestic level there are both expectations for compliance with human rights protection and a desire to maintain the validity of non-interference within the region. Neither of these expectations appears to be easily malleable for the government through argumentation and persuasion. While domestic expectations for human rights protection are closely interlinked with a collective democratic identity, expectations for non-interference relate to the countries' territorial integrity and thereby the essence of the state. In order to convince their domestic audiences of the general replacement of either of the norms from which the expectations flow, governments would need to initiate far-ranging domestic identity change or a pacification of their restive regions. Therefore, some form of attempted norm reconciliation in response to norm conflict seems more likely in the case of Indonesia and the Philippines. Because of Indonesia's slightly more visible role as a human rights promoter on the regional and global levels, and for reasons of feasibility such as access to political institutions and language skills, Indonesia and not the Philippines was included in the study.

The other two case study countries are Thailand and Malaysia. Of the three states, Thailand can look back at the longest history of democratization and engagement with human rights. But it is also a direct neighbor of Myanmar and as such has suffered most from internal events within that country in the past. The proximity of the countries and the risk of spillover effects from internal crises in Myanmar make Thailand the perfect case for exploring context-specific norm replacement. In contrast, Malaysia has been the most cautious of the three countries in terms of human rights commitment. While ensuring the rule of law, authorities have been more reluctant to embrace international human rights standards, especially of the civil and political kinds (Davies 2014, 112). In addition, the country went through a major domestic crisis in 2007 and 2008, which

coincided with parts of the Saffron Revolution and Cyclone Nargis. The lower levels of internalization of the human rights protection norm increase the chance that situations are not yet consistently interpreted in light of the norm, thereby making it the most likely candidate for a mixed response strategy.

In sum, the three cases were chosen firstly because of their credible commitment to both norms, meaning that they can be expected to experience a norm conflict between non-interference and human rights protection. It is hypothesized that this prior commitment to the norms gives rise to expectations for norm compliance at the domestic, regional and international levels. Secondly, Indonesia, Thailand and Malaysia were chosen as suitable case studies to empirically explore different response strategies to norm conflict, because of certain domestic features that are expected to influence the structure of expectation regarding norm compliance. In other words, the variation in the structure of expectations will be used to test different response strategies to norm conflict. The rationale for the case study selection is again summarized in Table 3. The final part of this research design chapter discusses the research methods employed in the study.

Table 3: Rationale for case selection

Case	Most likely response strategy	Reasons for adoption
Indonesia	Norm Reconciliation	<ul style="list-style-type: none"> - most 'liberal' democracy; most progressive in human rights protection and promotion - ongoing secessionist conflicts - strong domestic support for both norms
Thailand	Context-specific norm reconciliation	<ul style="list-style-type: none"> - 'liberal' democracy with long history of engagement with the West - does not want to be seen as indifferent to human rights violations; does not want to weaken human rights protection regionally - direct neighbor of Myanmar
Malaysia	Mixed response strategy	<ul style="list-style-type: none"> - weakest internalization of human rights protection, making shifts in expectations easier - domestic crisis between 2007 and 2008

Source: Author's own compilation

4. Research Methods

On the previous pages the choice of Southeast Asia as a suitable context to study norm conflict was addressed and the selection of instances of norm conflict as well as responding states justified. This final section focuses on the means of answering the

central research question, namely how states respond to norm conflict and why they respond the way they do. In the following the comparative method as the central research strategy, coupled with process tracing as a research technique, will be introduced. Finally, interviews and content analysis as the means of gathering the necessary data upon which this dissertation builds will be discussed.

4.1. Structured-Focused Comparison and Process Tracing

To examine responses to norm conflicts this study relies on a qualitative comparison across *space* (Indonesia, Thailand, Malaysia) and *time* (2007-2012). Qualitative research that attempts to answer problems that can only be uncovered by asking questions to the actors involved, and by attending to the particularistic circumstances of the case study countries and the region, requires a level of depth and detail that suggests a comparative method (Renshaw 2014, 18). Not only does this approach allow for in-depth historically informed explanations of individual cases, but through their comparison, it is also particularly useful in an area that is theoretically underdeveloped (George 1979; Gerring 2004).

More explicitly, the analysis follows George's approach of a structured-focused comparison. Limiting its scope to a few countries, a structured-focused comparison typically uses qualitative data to offer comprehensive accounts of certain historical events or political phenomena (Kuhota, Slater, and Vu 2008, 6). Since a historical case can be relevant for a variety of theoretical interests, the analysis needs to be *focused* (George 1979, 50). This means that the cases depict "well-defined aspects of a historical episode [...] rather than a historical event itself" (George and Bennett 2005, 18). A focused comparison therefore deals selectively with a certain aspect of a historical case. For the purpose of this analysis, the focus has been placed on large-scale violations of human rights that manifest norm conflicts. The historical analysis is also *structured* with the same set of general questions employed in the interviews to guide the data collection in all of the cases (George 1979, 61).

As a research technique, process tracing has been used to trace the motivational forces that determine the response. Process tracing is valuable in "carefully accumulating observations across time as well as space" (Kuhota, Slater, and Vu 2008, 7), and thereby tracing "the links between possible causes and observed outcomes" (George and Bennett 2005, 6). In practice process tracing is based on accurately mapping a causal process and exploring the extent to which it coincides with prior, theoretically derived expectations

about the workings of a particular mechanism or causal relation (J. T. Checkel 2008, 79). In doing so, it is a useful approach to identify the intervening causal process through which a particular outcome arises and thereby an important tool for theory-oriented explanation (Hall 2006, 24). In the case of this thesis, the purpose of process tracing as a research method is to carefully map the hypothesized intervening causal process – namely a government’s desire to minimize the social costs of violating one norm and prioritizing the other, which include a concern for domestic legitimacy and international reputation – to explain the effect of domestic, regional and international expectations for norm compliance as the independent variable on state responses to norm conflict as the dependent variable (George and Bennett 2005, 206). To establish the structure of expectations as an important explanatory factor for response to norm conflict that works through the government’s desire to reduce social costs as an intervening variable, the task of the empirical analysis will be twofold. First, the case studies have to show a correlation between the articulated expectations for norm compliance at the various levels and the government’s choice of norm compliance. Second, they have to highlight the accompanying justifications for norm compliance to go beyond correlation towards causation (Bennett 2010, 208). In order to successfully trace a process, a large array of qualitative data needs to be gathered.

4.2. Content Analysis and Elite Interviews

Another advantage of studying norm conflict in Southeast Asia is the region’s accessibility. This is important, since process tracing requires the collection of a large amount of data. To gather the governments’ respective responses to norm conflict in the three studied instances of human rights violation in Myanmar, the project drew on a wide variety of primary and secondary sources. The bulk of the data was collected with the help of a qualitative content analysis of the international, regional and local media coverage of the events. In the region, the analysis focused on high-quality English-language newspapers. In Indonesia and Malaysia, it also included the main local newspapers, *Berita Harian* and *Kompas*, which are published in the Malay and Indonesian languages. Given the language barrier, this was not possible in Thailand.

The data of the media content analysis was complemented with published speeches and statements by key actors in the foreign policy realm and human rights sector, as well as a series of elite interviews conducted in the region. In total, seventy interviews were conducted, each lasting between one and two hours. Given the research

question, accounts by state officials with a foreign policy background were of particular interest. At the highest level this included former foreign ministers as well as their deputies and staff. The interviewees can be roughly grouped into the following four categories: government and foreign ministry officials; parliamentarians; academics and journalists; and human rights activists.⁴⁶ The interviewees were chosen based on their ability to provide additional insights into the government's response to norm conflict, given their direct or indirect involvement in the decision-making process; their professional knowledge of the subject matter; and/or their own research activities. Asking questions to key foreign policy actors in the region proved particularly important in understanding their individual motivations and learning about events in ASEAN's oftentimes closed-doors negotiations (Lilleker 2003, 208). The objective was not to draw a representative sample of a larger population, but rather to draw a sample that includes the most important political and societal actors who participated in the events (Tansey 2007, 765). In other words, the goal was to *reduce* randomness. On the one hand, this provided me with greater control over the selection process by enabling me to identify those actors valuable to my study. On the other hand, it risked introducing selection bias. To mitigate this problem, a combination of snowball sampling and purposive sampling was used. In doing so, the selection of interviewees was influenced both by existing knowledge of the population and by the identification of further interviewees by the initial set of relevant respondents (Tansey 2007, 768–70). The questions asked were semi-structured to reconstruct the respective political episodes on the basis of the respondents' testimonies. In doing so, the research tried to compensate for the fact that important negotiations in ASEAN often lack an accompanying body of documentation (Leech 2002, 667).

5. Conclusion

This dissertation investigates the question of how states respond to norm conflicts in practice and why they respond the way they do. In order to explore the proposition that governments try to minimize the social costs of norm compliance through tailored response strategies to norm conflict, this chapter laid out a research design for the study. It firstly identified Southeast Asia as a suitable context for studying responses to norm

⁴⁶ Being aware of the limitations of interviewing as a research tool the interviews are not considered in isolation but are used complementary to a large amount of additional data.

conflict given the region's particularly strict interpretation of non-interference, coupled with an increased commitment to human rights protection in the wake of democratization and liberalization processes in several ASEAN member states. Secondly, three large-scale cases of human rights violations from Myanmar were singled out in order to study state responses to norm conflict: the Saffron Revolution in 2007, Cyclone Nargis in 2008 and the Rakhine Riots in 2012. And thirdly, of the ten ASEAN member states, Indonesia, Thailand and Malaysia were chosen as suitable 'responding' case study countries. They have in common a shared commitment to the two norms, but amongst ASEAN's more democratically advanced states are otherwise 'most different' in ways that can be expected to influence the factors that shape responses to norm conflict, thereby increasing the chances of empirically finding varying response strategies to norm conflict. Of the three, Indonesia has been the strongest advocate of regional human rights protection, whereas Malaysia has taken a more cautious stance. Thailand falls between the two in its commitment to human rights protection within the region. However, as a direct neighbor to Myanmar, it has been particularly affected by events in the bordering state. Finally, the chapter addressed the methods used to assess the research questions, which involve a comparative case study approach coupled with process tracing, as well as content analysis and interviews to gather the necessary data.

Chapter 3: Commitment to the Norms

There are problems with the assumption that ASEAN leaders had simply done away with the non-interference norm or just stick to it where it suits their interests, as they democratized. Because time and again they would stand up and defend the norm and I wonder if they were just keeping it for the sake of maximizing their interests, then they would not defend it like this. Or they would defend it and then kind of wink at you – but they don't do that. They wholeheartedly believe in it and still there are occasions where they wholeheartedly contravene it. That's fascinating.

– See Seng Tan¹

Introduction

The purpose of this chapter is to establish the conflicting pull of human rights protection and promotion and non-interference as action-guiding forces for the Indonesian, Thai and Malaysian governments in cases of extraterritorial human rights violations. This is not to say that non-interference has been observed absolutely in the past by Southeast Asian countries (Jones 2011), or that the entire repository of human rights norms has been fully internalized within the three states. Instead, the chapter shows that the governments of Indonesia, Thailand and Malaysia have expressed a credible commitment to both norms that arguably creates legitimate expectations for compliance at the domestic, regional and international levels in situations of norm conflict. In order to demonstrate the presence of both norms within the normative structure of the three case study countries and differences in the degrees of internalization of the two norms, the chapter uses a three-fold measure of norm commitment: formal *norm adoption*, *norm implementation* and *norm compliance*. In doing so, it becomes possible to establish a government's commitment to a norm on a deeper level than has usually been done within the discipline, as scholars have mostly focused only on formal norm acceptance and adoption at the international level.

The chapter will proceed as follows: First, it outlines the shortcomings of constructivist scholarship in adequately establishing a state's commitment to a norm and introduces an alternative measure for determining norm commitment on a deeper level. The chapter then moves on to a discussion of the two conflicting norms non-interference and human rights protection. It addresses the commitment of the three case study countries to non-interference by tracing its adoption at the international level,

¹ Author's interview with professor for International Relations at Rajaratnam School of International Studies See Seng Tan, 30 May 2016, Singapore, Singapore.

implementation at the regional and domestic levels and the ways in which the three states individually continue to apply and defend the norm. Subsequently, the chapter turns its attention to commitment to human rights protection in the three states. Using the same measures of norm adoption, implementation and compliance, the section compares the domestic human rights institutions of the countries as well as the role of human rights protection and promotion in their foreign policies.

1. Determining Norm Commitment

Within the discipline norm commitment has traditionally been measured on a rather superficial level. Constructivist scholars have mostly focused on a state's acceptance of an internationally institutionalized norm through processes of formal adoption such as treaty ratification (Finnemore and Sikkink 1998; Lutz and Sikkink 2000; Sikkink 2011; J. Checkel 1999; Dobbin, Simmons, and Garrett 2007; Percy 2007; Legro 1997). Once governments have signed and ratified treaties, the task of IR scholarship has implicitly been understood to be complete. However, by focusing on formal norm adoption only, constructivism can say relatively little about the actual level of commitment to the norm, which could fall anywhere on a spectrum from mere rhetoric to a deeply internalized belief in the appropriateness of the norm.

Amongst the first to criticize this state of the art, Betts and Orchard have highlighted an "institutionalization-implementation gap," according to which the same levels of institutionalization of a given norm across states can manifest in radically different outcomes in terms of state practice (Betts and Orchard 2014, 2). In order to better account for the variation seen in how the same norms play out in practice, they focus on the domestic process of norm implementation. In showing how norms translate into domestic law through implementation, they make an important first step towards establishing the levels of actual norm commitment exhibited by a state and its government. Yet it is not enough to show how international norms translate into national law without also analyzing government efforts to comply with those laws. Without their actual enforcement, commitment to norms remains relatively hollow.

From the perspective of studying norm conflict, understanding the levels of 'real' commitment to a norm matters first and foremost because it determines whether a state actually experiences a norm conflict. While a norm conflict can exist on paper, where governments have adopted and ratified conflicting norms, it only manifests in the decision making and creates a dilemma if those in power actually believe in the conflicting norms

and are expected by others at the domestic and international levels to comply with their normative directives. In order to establish a government's commitment to a norm on a deeper level than just formal norm adoption, the chapter suggests a three-fold measure of norm commitment. Building on Betts and Orchard's emphasis on domestic processes, while going beyond their focus on norm implementation, I emphasize *norm adoption*, *norm implementation* and *norm compliance*.

I define formal norm adoption as an act that follows the institutionalization of a norm through collective processes of argumentation and persuasion at the international level (Betts and Orchard 2014, 4–5; Sandholtz 2009, 12). Through the act of ratification, norm adoption indicates the expression by a state of its consent to be bound and held accountable to the provisions of an international norm. But as Betts and Orchard have rightly pointed out, the international institutionalization of a norm and its subsequent adoption are followed by a domestic process, namely norm implementation. In line with Betts and Orchard, I define norm implementation as the steps taken to introduce a norm's obligations into formal legal and policy mechanisms within a state (Betts and Orchard 2014, 2–3). Hence it requires an investigation into how the norm's obligations have been incorporated into national law. Indicators of implementation include changes in public policy and the establishment of institutions to preserve and further particular norms. In the context of human rights norms this could include for example the adoption or amendment of a bill of rights, of measures to strengthen the independence of the judiciary or the establishment of a National Human Rights Commission (Renshaw 2014, 11). Yet measuring commitment is not complete without also examining compliance with the norm in practice and discourse. The three-fold measure of adoption, implementation and compliance not only establishes commitment to a norm on a deeper level than usually practiced within the discipline, it allows to determine differences in the degree of internalization of non-interference and human rights protection. In the following, commitment to the two conflicting norms in Indonesia, Thailand and Malaysia will be analyzed.

2. The Commitment to Non-Interference

The first part of the chapter assesses Indonesia, Thailand and Malaysia's commitment to the non-interference norm. It traces the origins of the norm back to the international level and then proceeds to assess its implementation at the regional level, as one of the cornerstones of the 'ASEAN Way.' It subsequently highlights differences in the

prominence of the norm at the national level by comparing references to non-interference in the three countries' constitutions and foreign policy documents. The section ends with a discussion of the accompanying discourse and the ways in which the three states defend the norm of non-interference in international forums.

2.1. International Adoption of Non-Intervention/Non-Interference

Although the idea is often expressed that non-interference as a principle is peculiar to ASEAN, the norm has been influential for much longer and is internationally known as non-intervention.² Sovereign equality and non-intervention have underpinned the system of inter-state relations since the Treaty of Westphalia in 1648 (R. Severino 2006, 85–86). As Western constructs that predated statehood in many regions of the world, the norms already governed the international system when Southeast Asian states gained independence in the twentieth century (H.-L. Tan 2011, 63). Following the horrors of the Second World War, they were enshrined in the United Nations Charter to govern inter-state relations. In acquiring UN membership following their independence, 'Third World' states not only accepted the dominant values of the Westphalian system as part of the terms of inter-state relations, but their state elites also internalized them to a remarkable degree (Ayooob 1995, 3; Jackson 1990, 21–25; Acharya 2008, 3). Along with the principle of state sovereignty, developing countries embraced the corollaries of sovereignty, namely rigidly demarcated and sacrosanct boundaries, mutual recognition as sovereign political entities and non-intervention in the internal affairs of other states (Ayooob 1995, 71). In doing so, the newly independent states tried to protect themselves from further Western interference after in some cases centuries of foreign intrusion, colonialization and humiliation (Ayooob 1995, 3). Internationally, developing states became the prime defenders of the non-interference norm and contributed to its further institutionalization in the international normative system (Stubbs 2008, 452).

As members of non-Western groupings such as the Asian-African Conference and the Non-Aligned Movement (NAM), Indonesia and Malaysia, and to a lesser extent Thailand (which only joined NAM in 1993), were influential in the evolution of the norm. They helped reinvent the principal feature of what Acharya calls the 'sovereignty game' by moving away from positive sovereignty, understood as the capacity to act independently through a balance of power system, towards negative sovereignty, defined

² I will consistently use the term non-interference to refer to the ASEAN interpretation of the norm. Non-intervention will only be used in reference to the international norm.

as freedom from outside interference (Acharya 2008, 3). At the Bandung Conference sponsored by Indonesia in 1955, Asian and African states reiterated “respect for the sovereignty and territorial integrity of all nations” and “abstention from intervention or interference in the internal affairs of another country” as some of the central principles of good neighborly and friendly relations.³ Their commitment to non-interference reflected the twin fears of Chinese communist interference and superpower rivalry, as the ideological polarization of the Cold War was becoming more pronounced (Acharya 2008, 10). Non-Aligned states produced a similar final document at their first summit in Belgrade in 1961, stating that “the participating countries express their determination that no intimidation, interference or intervention should be brought in the exercise of the right of self-determination of peoples [...]”⁴ The principle was further refined and reiterated at the 1964 Cairo Summit.

As part of a growing non-Western, developing-world majority in the General Assembly, Indonesia, Thailand and Malaysia also contributed to the specification of the norm in numerous General Assembly Resolutions from the mid-1960s to the 1980s (Jamnejad and Wood 2009, 347). In total some 35 resolutions address the principles of intervention or non-intervention. The three most important ones are the *1965 Declaration on the Inadmissibility of Intervention*, the *1970 Friendly Relations Declaration* and the *1981 Declaration on the Inadmissibility of Intervention and Interference* (Jamnejad and Wood 2009, 350). They specifically address the problem of civil wars and particular types of intervention that fall short of threatening or using armed force (Cutler 1985, 99).

2.2. The Birth of Non-Interference as an ASEAN Norm

As the discussion above has shown, non-intervention had long been established in the international normative system. As an international principle, Southeast Asian leaders had already adopted it when ASEAN was founded in 1967. For ASEAN’s five founding members (Malaysia, Indonesia, Thailand, Singapore and the Philippines), non-intervention had become a central tenet to defend their newly found independence in a global system they perceived as hostile and biased to their disadvantage. With the exception of Thailand, all members of ASEAN have a long history of colonialism (Dunn,

³ The Indonesian Ministry of Foreign Affairs, *Final Communiqué of the Asian-African conference of Bandung*, Bandung, 24 April 1955, Art. G2 and G4.

⁴ The Non-Aligned Countries, *Belgrade Declaration of Non-Aligned Countries*, Belgrade, 6 September 1961, Art. 14.

Nyers, and Stubbs 2010, 297; R. C. Severino 2004, 181). While interference in Thailand's case did not imply complete foreign domination, it still came at the cost of forced territorial transfers to Britain and France in the nineteenth century (Storey 2010, 49). This legacy of foreign interference left Southeast Asian governments "with a strong distaste for coercive external influences" and the belief "that a state must have exclusive control over all that goes on within its borders" (Dunn, Nyers, and Stubbs 2010, 297–98). Coupled with the geopolitical instability that characterized the region prior to ASEAN's establishment in 1967, it is thus of little surprise that upon ASEAN's formation its member states were primarily concerned with protecting their newly gained independence and statehood, instead of pooling it through integration (M. Clark 2011, 296; Stubbs 2008, 460).

Accordingly, the Association emphasized diplomatic norms and practices designed to manage intergovernmental relations by discouraging member states from intruding into one another's domestic affairs. The Bangkok Declaration, the founding document of ASEAN, called Southeast Asian states to "ensure their stability and security from external interference in any form or manifestation."⁵ Non-interference became a centerpiece of the 'ASEAN Way,' a decision-making process that favors a high degree of consultation and consensus as well as regional cooperation and interaction based on discreetness, informality, consensus-building and non-confrontational bargaining styles (Acharya 2002, 225; Haacke 2003, 4; Thio 1999, 9; A. C. Guan 2001, 468). This set of social norms was perceived as a crucial standard for building trust among the member states and thereby overcoming regional foes (Ciorciari 2012, 697). As a "judge not and be not judged yourself" guarantee, non-interference allowed the member states to concentrate on nation-building without neighbors commenting on their internal affairs (H.-L. Tan 2011, 145–46). In fostering stability and trust among ASEAN's member states, the commitment to non-interference made cooperation possible and the organization's success in maintaining stability within the region reinforced and solidified non-interference as a guiding feature of ASEAN interaction (Kraft 2000, 462). It became binding as an ASEAN principle with the ratification of the Treaty of Amity and Cooperation in 1976, which stated that relations among member states should be guided by "non-interference in internal affairs of one another."⁶ In doing so, it effectively froze the existing national boundaries of 1976, officially recognizing state authority in contested territories such as

⁵ ASEAN, *The ASEAN Declaration (Bangkok Declaration)*, Bangkok, 8 August 1967, Preamble.

⁶ ASEAN, *Treaty of Amity and Cooperation in Southeast Asia*, Bali, 24 February 1976, Art. 2.

East Timor, Irian (now Papua), Sabah, southern Thailand and Mindanao (Anwar 1994, 171).

Since the formation of ASEAN the principle has been reaffirmed in all major documents, including the ASEAN Charter, which provides the organization with a legal status. It recognizes the “fundamental importance of amity and cooperation and the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity.”⁷ A reference to the principle can also be found in ASEAN’s regional human rights mechanism, the ASEAN Intergovernmental Commission on Human Rights (AICHR), which claims in its Terms of Reference that it “shall be guided by [...] respect for the independence, sovereignty, equality, territorial integrity and national identity” as well as “non-interference in the internal affairs of ASEAN Member States.”⁸

2.3. The Implementation of Non-Interference at the National Level

As a consequence of Southeast Asia’s post-colonial identities and the continuous socialization of state elites into the non-interference norm within the ASEAN context, non-interference is well represented in the foreign and defense documents of Indonesia and Malaysia. It features slightly less prominently in Thailand. As a norm that was at least originally based on prudence and the desire to keep others outside their national jurisdictions, references to the safeguarding of *self-determination*, *national sovereignty* and *territorial integrity* are treated as proxies for commitment to non-interference.

2.3.1. Indonesian Foreign and Defense Policies

The principles of Indonesian foreign policy, described as “independent and active,” were first summarized by Mohammad Hatta on 2 September 1948 in a session of the Working Group of the Central National Committee of Indonesia.⁹ Most fundamentally, they are guided by the principles of the Indonesian state philosophy, *Pancasila*, which stipulates the unity of Indonesia (*Persatuan Indonesia*). Under President Suharto, Indonesian foreign policy was further outlined in Resolution No. II/MPR/1993 of the People’s Consultative Assembly. Still used as a policy document to guide the country’s foreign relations today, the protection of the territorial integrity of Indonesia is stated as one of

⁷ ASEAN, *Charter of the Association of Southeast Asian Nations*, Singapore, 20 November 2007, Preamble.

⁸ ASEAN, *Terms of Reference ASEAN Intergovernmental Commission of Human Rights*, July 2009, Art. 2, 2.1.

⁹ “Foreign Policy, Vision and Mission,” The Indonesian Ministry of Foreign Affairs, 2015, accessed 18 February 2016, <http://www.kemlu.go.id/en/kebijakan/landasan-visi-misi-polugri/Default.aspx>.

its three main objectives, next to support of national development and the preservation of internal and regional stability.¹⁰ Following the downfall of Suharto's authoritarian New Order regime in 1998, the country's foreign policy was codified in Law No. 37/1999 concerning Foreign Relations. The preamble stresses that foreign relations are to be "conducted on the principles of equality, mutual respect, mutual advantage, and non-intervention in the domestic affairs of other nations."¹¹ As highlighted in Indonesia's Defense White Paper from 2008, the primary purpose of Indonesian foreign and defense policy is to protect its "vital interests" whose "upholding is absolute."¹² They include maintaining state sovereignty, territorial integrity and the unitary state of the Republic of Indonesia as well as the safety of the entire nation from all forms of threats.¹³ To realize these objectives, the white paper further states that "Indonesia will not allow any business that would interfere with the existence and integrity of the Unitary Republic of Indonesia."¹⁴ In sum, the documents highlight a pronounced concern for the unity and territorial integrity of the Indonesian Republic, which interacts with the commitment to non-intervention as a guarantor of its unity.

2.3.2. Malaysian Foreign and Defense Policies

The norm of non-interference also features centrally in Malaysia's foreign policy documents. The Ministry of Foreign Affairs defines it as one of the fundamental principles that guide the country's relations with other states:

These [fundamental principles] refer to sovereign equality and mutual respect for territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, peaceful settlement of disputes as well as mutual benefit in relations and peaceful co-existence.¹⁵

¹⁰ "Indonesia's Foreign Policy/The Principles of Foreign Policy," Indonesian Embassy DC, 2016, accessed 13 January 2016, http://www.embassyofindonesia.org/wordpress/?page_id=118.

¹¹ Indonesian Government, *Law of the Republic of Indonesia No. 37/1999 concerning Foreign Relations*, Preamble.

¹² The Indonesian Ministry of Defense, *Buku Putih Pertahanan Indonesia 2008* [Indonesia's Defense White Paper 2008], Jakarta, 2008, 39-40, accessed 18 February 2016, <https://www.kemhan.go.id/wp-content/uploads/2015/12/04f92fd80ee3d01c8e5c5dc3f56b34e31.pdf>.

¹³ Indonesian Government, *Peraturan Presiden Republik Indonesia No. 7 Tahun 2008 Tentang Kebijakan Umum Pertahanan Negara* (Presidential Regulations No. 7/2008 on General Policy Guidelines on State Defense Policy), 2008, Art. 4.

¹⁴ The Indonesian Ministry of Defense, *Buku Putih Pertahanan Indonesia 2008* [Indonesia's Defense White Paper 2008], Jakarta, 2008, 40, accessed 18 February 2016, <https://www.kemhan.go.id/wp-content/uploads/2015/12/04f92fd80ee3d01c8e5c5dc3f56b34e31.pdf>.

¹⁵ "Malaysia's Foreign Policy," The Foreign Ministry of Malaysia, 2016, accessed 13 January 2016, http://www.kln.gov.my/web/guest/foreign_policy.

In formulating the prime objectives of Malaysian Foreign Policy, the Foreign Ministry, *Wisma Putri*, further states that “it is geared towards promoting a peaceful regional and international environment, which would give Malaysia space to achieve all its national objectives without disruption of external threats.”¹⁶ It highlights that “Malaysia has repeatedly stressed the importance of adhering to the especially important principle of non-interference in internal affairs.”¹⁷ In line with this, the Strategic Plan 2009-2015 (and revised Strategic Plan 2011-2015) emphasizes the importance of “safeguarding and protecting national sovereignty in the international arena” by presenting it as the first objective of Malaysian Foreign Policy.¹⁸ Moreover, it reiterates that the guiding principles of Malaysia’s foreign policy are, firstly, protection of Malaysia’s sovereignty and territorial integrity, and secondly, adherence to non-interference in the internal affairs of other countries.¹⁹ In the same manner the country’s National Defense Policy is geared towards defending “Malaysia’s sovereignty, territorial integrity and economic prosperity.”²⁰

2.3.3. Thai Foreign and Defense Policies

In comparison to Indonesia and Malaysia, the principle of non-interference features less prominently in Thailand’s foreign policy documents, which might reflect the facts that the country has never formally been colonized and that it has a longer history of engagement with democracy and human rights norms than most of its ASEAN peers. Thailand’s national foreign policy is outlined under Article 77 of the Constitution. While non-interference is not directly mentioned, the Constitution states that “the state shall protect and uphold the institution of monarchy, the independence, sovereignty and integrity of the territorial jurisdiction of the state [...]”²¹ Further direct references to national sovereignty and territorial integrity can be found in the National Defense Policy sections of the Policy Statements of the Council of Ministers. The Policy Statement of 2008 states that the objective of national defense is to “strengthen and develop the national defence

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ministry of Foreign Affairs, *The Strategic Plan 2009-2015*, Putrajaya, 2009, xiii.

¹⁹ Ibid, 22.

²⁰ Ministry for Defense, *Malaysia’s National Defence Policy*, Preface, accessed 18 February 2016, <http://www.mod.gov.my/phocadownload/DASAR-PERTAHANAN/ndp.pdf>.

²¹ The Government of Thailand, *Constitution of the Kingdom of Thailand, B.E. 2550 (2007)*, 2007. Part 2, Section 77.

capability in safeguarding the independence, sovereignty and territorial integrity of the state.”²²

Having discussed the adoption and implementation of non-interference at the ASEAN level and within the individual member states, the following section will review the ASEAN practice of non-interference as an important factor in shaping regional expectations for compliance with the norm.

2.4. Non-Interference in ASEAN Practice

Since the foundation of ASEAN, its elites, especially in the foreign policy sphere, have been continuously socialized into the ‘ASEAN Way’ as part of their daily interactions. As a norm that regulates inter-state relations, expectations for compliance with non-interference have been frequently articulated either by individual member states or the grouping as a whole. Acharya therefore argues that over time non-interference has become part of the ASEAN identity (Acharya 2001). Indeed, there is a wide consensus among scholars working on Southeast Asia that ASEAN nations have generally stuck to the non-interference principle (Narine 2002; Drummond 2010; Haacke 2003; H.-L. Tan 2011; Dosch 2007; Ramcharan 2000; Acharya 2001). Collectively, compliance with the norm is well documented in the organization’s response to critical junctures such as Indonesia’s annexation of East Timor in 1976, the Vietnamese invasion of Kampuchea (Cambodia) in 1978 and the UN humanitarian mission in East Timor in 1999 (Jones 2011; Narine 2009; Ramcharan 2000; Thio 1999). For example, individual member states including Thailand, Malaysia and the Philippines only took part in the peacekeeping operations in East Timor after Indonesian consent had been given.²³ Especially following the last round of ASEAN enlargement, which granted membership to the former communist countries Vietnam, Myanmar, Laos and Cambodia, a renewed emphasis has been put on the norm. This is due to the fact that less developed new member states regularly invoke the norm, but also because non-interference is believed to sustain ASEAN solidarity in an increasingly heterogeneous environment (Kraft 2000, 462).

²² The Government of Thailand, *Policy Statement of the Council of Ministers*, 30 December B.E. 2551 (2008), 7, accessed 18 February 2016, http://planipolis.iiep.unesco.org/upload/Thailand/Thailand_policy_statement.pdf, accessed 18 February 2016.; similarly see The Government of Thailand, *Policy Statement of the Council of Ministers*, 23 August B.E. 2554 (2011), 9, accessed 18 February 2016, <http://www.eppo.go.th/doc/gov-policy-2554-E.pdf>, accessed 18 February 2016.

²³ Kavi Chongkittvorn, “Enforcing the charter against rogue members,” *The Nation*, 15 June 2009.

It is against this backdrop that the norm was reaffirmed by the majority of the member states in 1998, when Thai foreign minister Surin Pitsuwan, following the Asian financial crisis in 1997, suggested a review of non-interference as practiced in the region (Kraft 2000, 464). Thailand regarded the so-called ASEAN Way and Asian values as central factors that had contributed to the crisis and argued to its ASEAN peers that for the organization to remain a regional force to be reckoned with, it needed to change.²⁴ In order to be able to properly respond to the reality of globalization and the increasing interdependence within the region, Pitsuwan argued that ASEAN members needed to be able to more closely coordinate their policies on trade, investment and finance, as well as cross-border security problems (Haacke 2005, 585–87). To do so, Thailand suggested a loosening of ASEAN’s rigid interpretation of non-interference and its replacement with ‘flexible engagement,’²⁵ which would allow ASEAN member states to discuss each other’s domestic affairs openly, if these had impact outside their borders (Kraft 2005, 14). However, Pitsuwan’s initiative was criticized by other ASEAN member states. They accused Thailand of “carrying a Western agenda” and “trying to echo the US’ foreign policy objectives.”²⁶ Surin Pitsuwan recalled:

My colleagues were not willing to concede. It was the late foreign minister of Indonesia, Ali Alatas, who said ‘I know where you are coming from Surin, but the phrase sounds a bit aggressive. Let us say from now on we will do enhanced interaction.’ So the phrase enhanced interaction was somehow adopted – not formally – but it was used in order to avoid the complete rejection of the approach, thereby showing the world that we do evolve and transform.²⁷

Accepted as a compromise, in practice ‘enhanced interaction’ meant a continuity of the ‘ASEAN Way’ and the regional non-interference policy. In view of the strong resistance to Pitsuwan’s proposal, foreign ministers Shunmugam Jayakumar of Singapore and Abdullah Badawi of Malaysia praised the decision as the reaffirmation of a time-tested principle (Kraft 2000, 465).

²⁴ “Surin sees benefits in intervention policy,” *The Nation*, 27 June 1998.

²⁵ “Opening Statement by His Excellency Dr. Surin Pitsuwan Minister of Foreign Affairs of Thailand at the 31st ASEAN Ministerial Meeting, Manila, Philippines, 24 July 1998,” ASEAN, 3 July 2012, accessed 14 March 2018, http://asean.org/?static_post=opening-statement-by-his-excellency-dr-surin-pitsuwan-minister-of-foreign-affairs-of-thailand-at-the-31st-asean-ministerial-meeting-manila-philippines-24-july-1998.

²⁶ Kavi Chongkittavorn, “ASEAN needs ‘flexible engagement’,” *The Nation*, 21 July 1998.

²⁷ Author’s interview with the former foreign minister of Thailand and later ASEAN secretary-general Surin Pitsuwan, 22 June 2016, Bangkok, Thailand.

However, this is not to say that compliance with the norm has always been absolute. As Tan aptly puts it, the 'ASEAN Way' with its emphasis on non-interference, has not always prevented individual member states from "sable rattling and unfriendly posturing in bilateral disputes" (H.-L. Tan 2011, 146).²⁸ But these instances of occasionally stretching or even breaching the norm have generally become immediate subjects of complaint, highlighting the common expectation that non-interference ought to be respected amongst member states. To give an example: Following protest from Indonesia, which was under international scrutiny for its brutal oppression of the East-Timorese independence movement, the president of the Philippines, Fidel Ramos, banned forty prominent foreign delegates, including South African Archbishop Desmond Tutu, from entering the country to attend the first Asia Pacific Conference on East Timor (APCET) in 1994. In doing so, Ramos refused to allow the use of his country as a base for condemning Indonesia. Two years later, in a similar vein, Malaysia was discomfited by plans to hold the second APCET in Kuala Lumpur. In a last minute decision, the Malaysian cabinet decided not to permit the meeting and announced that foreign delegates would be deported. The local media was instructed not to cover the conference (Thio 1999, 51). Actual and perceived violations of the norm usually led to unfriendly diplomatic exchanges, as a result of which apologies had to be made. Moreover, outright breaches of the norm have generally been perceived as surprising and hence are seen as exceptions to the rule (Kraft 2005). The continued commitment to the norm of non-interference is especially visible in discourse, which will be addressed in the following.

2.5. Defending Non-Interference Internationally

Despite occasional violations of the norm, all three states that this study focuses on – Indonesia, Malaysia and Thailand – continue to defend non-interference and criticize the violation of Westphalian norms internationally. Nonetheless, there is again a noteworthy difference between Indonesia and Malaysia on the one hand and Thailand on the other. While the latter is less vocal in defending non-interference, it routinely invokes the norm within its own domestic context.

2.5.1. Indonesia at the UN

²⁸ See also (Jones 2011).

Indonesia was a staunch supporter of non-interference within the region and internationally during the period of its authoritarian New Order regime. While it started to emphasize democratic values, including human rights protection, more frequently following its democratic transition in 1998, the importance given to Westphalian values, such as non-intervention, in international forums has not diminished. In 2003, Indonesia declared that the United Nations was still “bearing witness to a world beset by terror, civil wars, armed conflicts and violence, acts of aggression and interference in the internal affairs of states.”²⁹ Following the Russo-Georgian War in 2008, Indonesia expressed its “great concern” in view of recent infringements of the principle of the territorial integrity and political independence of states. The conflict had led to the secession of part of a state and involved a major power:³⁰

It is of the greatest importance to Indonesia and, I believe, to many developing countries that those recent cases do not set an ill-advised and dangerous precedent. Developing countries in the midst of nation-building and state-building would be extremely vulnerable to such precedents. The danger is that it takes only one misstep to kill principles that have been enshrined in the Charter of the United Nations, such as the principle of the sovereignty and territorial integrity of states. If we kill those principles, we have killed the ideal that holds the United Nations together.³¹

Indonesian president Bambang Susilo Yudhoyono concluded his speech at the UN General Assembly debate in 2008 by stating that “the sovereignty of states must be preserved if there is to be a democratic spirit in international relations.”³² When the South China Sea conflict once again flared in the region and reached the top of the regional agenda in 2012, Yudhoyono described ASEAN’s approach to managing the territorial and sovereignty disputes as one of “restraint and confidence-building” in line with the long-cherished ‘ASEAN Way.’³³

²⁹ Speech by the Indonesian president Megawati Soekarnoputri at the 58th session of the General Assembly, New York, 23 September 2003, A/58/PV.8.

³⁰ Speech by the foreign minister of Indonesia Hassan Wirajuda at the 63rd session of the General Assembly, New York, 27 September 2008, A/63/PV.14.

³¹ Ibid.

³² Ibid.

³³ Speech by the Indonesian president Susilo Bambang Yudhoyono at the 67th session of the General Assembly, New York, 25 September 2012, A/67/PV.6.

2.5.2. Malaysia at the UN

Similar to Indonesia, Malaysia has long stressed the importance of non-interference internationally. This did not change after the retirement of Prime Minister Mahathir Mohamad in 2003 and the opening of greater political space under Prime Minister Abdullah Badawi. That same year, Malaysia emphasized at the UN General Assembly that there was much that small nations like itself had to be grateful for:

From being the colonies of the Europeans we are now independent and we are granted membership of the United Nations with the right to speak [...]. As independent nations, we believe that we have a right to manage our internal affairs ourselves without foreign interference.³⁴

Commenting on the need for reform of the UN as a world body, Malaysia declared in the following year that these changes had to take place “without sacrificing certain immutable principles, such as sovereign equality, non-interference in the domestic affairs of states, peaceful settlement of disputes and respect for international law.”³⁵ It further highlighted that for Malaysia, as a small country, the United Nations was a crucial guarantor of the sanctity of its existence as a sovereign nation.³⁶ Along similar lines, Malaysia therefore criticized in 2007 “the repeated use of force by the powerful over the weak to secure strategic or territorial gains” describing those interferences as “wars of control and domination.”³⁷ In explicitly referring to the Iraq War of 2003, Malaysia stressed that it was the international community’s clear responsibility not only to assist the people of Iraq to achieve peace and stability, but also to guarantee that the unity of Iraq as a nation was preserved and the territorial integrity of Iraq as a state was not compromised.³⁸ Similar to Indonesia, it expressed its concern in 2008 over “recent attempts of powerful member states to question the national law of countries and the administration of justice under those laws.” As Malaysian prime minister Badawi stated: “It needs to be restated: we have no right

³⁴ Speech by the Malaysian prime minister Mahathir Mohamad at the 58th session of the General Assembly, New York, 25 September 2003, A/58/PV.11.

³⁵ Speech by the Malaysian prime minister Abdullah Badawi at the 59th session of the General Assembly, New York, 27th September 2004, A/59/PV.11.

³⁶ Ibid.

³⁷ Speech by the Malaysian prime minister Abdullah Badawi at the 62nd session of the General Assembly, New York, 28 September 2007, accessed 14 March 2018, <http://www.un.org/webcast/ga/62/2007/pdfs/malaysia-eng.pdf>.

³⁸ Ibid.

to meddle – in any form or manifestation, or under any pretext or circumstances – in the conduct of the internal affairs of other countries.”³⁹

2.5.3. Thailand at the UN

Thailand’s support for non-intervention internationally has been less pronounced and has appeared less frequently than the Indonesian and Malaysian reaffirmations of Westphalian norms. Especially in the time after Surin Pitsuwan’s initiative to review the non-interference norm within the region in 1998, Thailand stressed the need to think beyond the exclusive preoccupation with the security and sovereignty of states and emphasized human security. Yet Thailand also warned that before the international community could think about intervention on humanitarian grounds, UN member states had to reach agreement about what it was that the community of states wanted to protect and promote.⁴⁰ “The scope of what falls within the realm of human security is still not [...] well defined, except to place people at the centre of our definition of security,” Foreign Minister Surin Pitsuwan noted during his address to the UN General Assembly in 1999.⁴¹ With regards to actual conflicts, however, such as the situation in Iraq, Thailand prioritized the upholding of Westphalian norms. In 2003 it declared its support for the UN in “paving the way for the stability, security and sovereignty of Iraq.”⁴²

Similarly, Thailand refused to define any of its domestic crises as cases that legitimized regional or international interference. In 2004, Prime Minister Thaksin Shinawatra responded angrily to international scrutiny of his crackdown on Islamic radicals in the southernmost provinces bordering Malaysia. When the UN High Commissioner for Human Rights in Geneva asked Thailand to investigate the killings, citing international treaties that require security forces “to refrain from using force exceeding that strictly required by the exigencies of the situation,” Thaksin responded: “Don’t intervene. Please leave us alone. It is my job and we can cope with this matter.”⁴³ At the regional level, he threatened to walk out of an ASEAN summit in 2004 should the

³⁹ Speech by the foreign minister of Malaysia Rais Yatim at the 63rd session of the General Assembly, New York, 27 September 2008, A/63/PV.14.

⁴⁰ Speech by the foreign minister of Thailand Surin Pitsuwan at the 54th session of the General Assembly, New York, 25 September 1999, A/S-20/PV.5.

⁴¹ Ibid.

⁴² Speech by the foreign minister of Thailand Surakiart Sathirathai at the 58th session of the General Assembly, 30 September 2003, A/58/PV.17.

⁴³ “Thaksin warns foreigners not to criticize crackdown,” *Taipei Times*, 2 May 2004, accessed 26 February 2018, <http://www.taipeitimes.com/News/world/archives/2004/05/02/2003153822/1>.

foreign ministers attempt to address the matter even if done behind closed doors.⁴⁴ Especially with regards to neighboring Malaysia, the Thai government has since then repeatedly insisted that the conflict in its southern provinces is an internal affair and has urged the Malaysian government not to interfere.⁴⁵ The need to reaffirm Westphalian norms including non-intervention also became a matter of concern during Thailand's presidency of the Human Rights Council in 2011. In the context of its task of reviewing the methods of work and operation of the forum, Thailand stressed that "every government must find its own solutions and move at its own pace in a manner appropriate to its specific context and conditions." For its part, the role of the international community was to support and promote constructive dialogue and engagement, while respecting state sovereignty, territorial integrity and the will of the people.⁴⁶

3. Commitment to Human Rights Protection and Promotion

The previous sections highlighted the shared socialization of ASEAN policy-makers into non-interference as a regional norm, but also identified some variation in the degree of emphasis on the norm at the national level. It made clear that while Indonesia and Malaysia continued to stress the norm within their domestic documents and acted as forceful defenders of non-intervention and its proxies at the international level, Thailand was more reserved in its support for the norm both domestically and internationally. At the same time, however, the country continues to routinely invoke the norm in its own internal crises. In the second part of this chapter, the three states' commitment to human rights protection at the domestic and international levels will be further assessed.

3.1. International Adoption of Human Rights

In contrast to the Westphalian principles of sovereignty and non-interference, human rights as a matter of state concern is a much more recent development within the individual ASEAN member states and within the region as a whole (Acharya 2002, 225). Having experienced colonialism, ASEAN governments "believed that human rights were merely [another] tool of Western imperialism" (H.-L. Tan 2011, 43). This is partly owing

⁴⁴ "Syed Hamid tells Thaksin: Don't stop ASEAN from discussing southern Thailand," *Malaysiakini*, 27 November 2004.

⁴⁵ "Surayud's visit to Malaysia focuses on Southern Thai Unrest," Public Library of US Diplomacy, 19 October 2006, accessed 30 November 2017, https://wikileaks.org/plusd/cables/06KUALALUMPUR1976_a.html.

⁴⁶ Speech by the foreign minister of Thailand Surapong Tovichakchaikul at the 66th session of the General Assembly, New York, 27 September 2011, A/66/PV.28.

to the fact that at the time when universal human rights were first spelled out as “a common standard of achievement for all peoples and nations” in the Universal Declaration of Human Rights (UDHR) in 1948, Southeast Asian states were not well represented at the UN. With the exception of Thailand (Siam) and the Philippines, they had not yet become UN members. But even membership did not guarantee a say in the deliberations. As poor, small and underdeveloped nations, their voices were essentially muted on matters other than decolonization and the self-determination of non-Western nations (H.-L. Tan 2011, 26). Western powers, by contrast, were in a central position to advance their ideas of human rights, which were therefore initially perceived as a Western concept, applicable first and foremost to Western societies (Forsythe 2012, 30).

The fact that other regions of the world were not given the chance to influence the deliberations leading to the UDHR has since then repeatedly been a matter of contention in the relations between the West and the Global South (Forsythe 2012, 45). It was prominently raised during the ‘Asian values’ debate of the 1990s, when Malaysia called for a review of the UDHR. Supported by China, Indonesia and the Philippines, it claimed that the Declaration was outdated and unrepresentative of the larger global community, having been drafted by superpowers when a much smaller number of states existed (Thio 1999, 26). Criticizing the individualism that underpinned the Western liberal democratic model and global agenda, former Malaysian prime minister Mahathir Mohamad stipulated a rights concept that centered on communitarian ideals of harmony and consensus (Verma 2002, 113). The popularity of the concept, however, waned in the aftermath of the Asian financial crisis, when it became evident that the region lacked any comprehensive institutional mechanisms to deal with crises. Now, very few government officials within the region would regard human rights as being completely outside their national agenda, even if the emphasis put on economic, social and cultural rights often still supersedes political and civil rights (H.-L. Tan 2011, 26). This is especially true for ASEAN’s more liberal and democratically advanced societies, where a wide range of human rights are constitutionally guaranteed. Yet the general acceptance of the UDHR and recognition of the state’s responsibility to uphold these rights within its jurisdiction has not translated into an equal endorsement of the accompanying international human

rights treaties. While Indonesia and Thailand have ratified almost all of the nine core international human rights treaties, Malaysia lags far behind, having ratified only three.⁴⁷

3.2. Regional Implementation of Human Rights

Until the 1990s, human rights agendas were largely absent in ASEAN diplomacy (Katsumata 2009, 622). The first time that the question of human rights was addressed was at the 1993 ASEAN Ministerial Meeting in Singapore. The joint communiqué “reaffirmed ASEAN’s commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration.”⁴⁸ Practically, however, the document had little impact on member states’ behavior, which mostly continued to subordinate human rights protection to considerations of national sovereignty, territorial integrity and non-interference (Kraft 2005, 11).

It was only with the democratic transition of some ASEAN states – particularly Indonesia – that universal human rights started to matter as a subject of debate in Southeast Asia. In the following decade, officials from Indonesia, in tandem with their counterparts from the Philippines and Thailand, were active in pushing for change on the matter of human rights in the region (Kraft 2005, 4). With the adoption of the ASEAN Charter in 2007 and its ratification by member states in the following year, democratic norms, including the promotion and protection of universal human rights, entered the body of shared norms within the Association. The Charter expressly requires the member states to commit themselves to the protection of these values.⁴⁹

The Charter also established the ASEAN Intergovernmental Commission of Human Rights (AICHR), which started its work in 2009.⁵⁰ It was followed by the adoption of an ASEAN Human Rights Declaration in 2012. The Declaration further details ASEAN nations’ commitment to human rights and acknowledges their endorsement of the main international human rights instruments.⁵¹ Despite criticism, the ASEAN Human Rights Declaration stands as the first ever Southeast Asian Charter of human rights and contains commitments not only to economic, cultural and social rights, but also to far more

⁴⁷ These include the Convention on the Elimination of all Discrimination against Women 1981, the Convention on the Rights of the Child 1990 and the Convention on the Rights of Persons with Disabilities 2008.

⁴⁸ ASEAN, *Joint Communique of the Twenty-Sixth ASEAN Ministerial Meeting Singapore 23-24 July 1993*, Singapore, 24 July 1993, Art. 16-18.

⁴⁹ ASEAN, *Charter of the Association of Southeast Asian Nations*, Singapore, 20 November 2007, Art. 1.7.

⁵⁰ *Ibid.*, Art. 14.

⁵¹ ASEAN, *ASEAN Human Rights Declaration*, Phnom Penh, 18 November 2012.

contentious civil and political rights.⁵² Together, the ASEAN Charter, the AICHR and the ASEAN Declaration of Human Rights represent a “major Asian acknowledgement of human rights” (Galligan 2011, 215). Even if international human rights standards are far from being met in many ASEAN countries, the regional human rights instruments signal that “human rights are indeed legitimate and right for Asian countries” (ibid). The following section will assess how the regional acknowledgement of human rights is reflected at the domestic level in the three ASEAN member states.

3.3 Domestic Implementation of Human Rights

In order to demonstrate that the commitment to human rights within their own jurisdictions is not just superficial, but has been followed up by legal efforts to enshrine these rights in national laws, the following sections briefly outline the implementation of human rights and their enforcement in Indonesia, Thailand and Malaysia. While it shows a shared greater concern for human rights and their protection at home, the institutional safeguards and the range of constitutionally guaranteed rights still vary across the three countries.

3.3.1. Human Rights in Law and Practice in Indonesia

In the wake of its democratic transformation, following the downfall of former president Suharto in 1998, Indonesia has considerably adjusted its national human rights protections to be more in line with international human rights standards. Amendments to the constitution were introduced in a four stage process (1999, 2000, 2001, 2002), most importantly adding ten entirely new human rights articles. Chapters 10, 10A and 11 set forth the basic rights and obligations of Indonesian citizens. These constitutional safeguards stand at the apex of the hierarchy of all Indonesian legislation and take the form of a Bill of Rights closely modeled along the lines of the UDHR (Herbert 2008, 457). The right to life and liberty lies at the heart of Article 28. As Clark (2003) argues, the amendments represent the first meaningful protection of human rights in Indonesia and stand for a “radical shift in Indonesia’s constitutional philosophy from essentially authoritarian to more liberal-democratic model” (Clarke 2003, 3). Thereby the constitutional coverage of protection is far ranging and arguably more extensive than those of many developed countries (Herbert 2008, 457). Next to the rights guaranteed in

⁵² Ibid, Art. 10.

the Constitution, a complementary piece of legislation exists that explicitly addresses human rights. Law No. 39/1999 on Human Rights elaborates on Indonesia's human rights obligations. It protects a number of additional rights that are not explicitly listed in the Constitution, such as gender equality.⁵³

The legal prosecution of violations is regulated by the Indonesian Penal Code and Special Human Rights Courts that can be convened to deal with cases of torture or crimes against humanity (Herbert 2008, 459). Next to these Courts, the National Human Rights Commission (Komnas HAM) exists as a national accountability institution in relation to human rights protection. Established in 1993 through presidential decree by former president Suharto, its mandate was considerably broadened in the wake of Indonesia's democratic transition. In passing Law No. 39/1999, the Indonesian government detailed the functions of Komnas HAM, namely "to study, research, disseminate, monitor and mediate human rights issues" in Indonesia.⁵⁴ It is further meant to "improve the protection and upholding of human rights in the interest of the personal development of Indonesian people as a whole."⁵⁵ To do so, the commission has the power to independently investigate human rights abuses. Komnas HAM holds UN accreditation and even during the Suharto era fostered a reputation as "an independent, forthright and diligent national human rights institution" that often directly criticized government policies (Herbert 2008, 461).⁵⁶

While Indonesia's human rights track record is far from perfect, in many areas the far-ranging shifts in Indonesia's legal human rights framework were accompanied by an "unprecedented level of substantive change in rights infrastructure and governance" (Ford 2011, 43). The post-Suharto government released political prisoners and trade unions multiplied, as Convention No. 87 of the International Labour Organization (ILO) was not only enshrined in law but also applied in practice (ibid). Moreover, the institutional changes opened space in the decision-making process to a wide number of actors. Today the country has a diverse and vibrant media sector and civil society, including "many effective, outspoken human rights groups."⁵⁷ Moreover, the judicial branch has shown some will to defend constitutionally guaranteed rights. In 2008 the

⁵³ The Government of Indonesia, *Law No. 39/1999 concerning Human Rights*, Art. 45-51.

⁵⁴ Ibid, Art. 98.

⁵⁵ Ibid, Art. 75.

⁵⁶ On Komnas HAM see also (Thio 1999, 63-39; Tan 2011, 83).

⁵⁷ "Indonesia. Freedom in the World 2007," Freedom House, 2007, accessed 13 January 2016, <https://freedomhouse.org/report/freedom-world/2007/indonesia>.

Constitutional Court declared Articles 154 and 155 of the Indonesian Criminal Code unconstitutional on the ground that they prohibit free expression.⁵⁸ Despite these positive developments during the first decade after its transition to democracy, problems remained, particularly with respect to minority rights, rights of religious freedom as well as the upholding of civil and political rights in Papua.

3.3.2. Human Rights in Law and Practice in Thailand

Thailand's path to democracy since the first elections were held in 1932 has not been smooth. It has been repeatedly interrupted by coups and lengthy periods of military rule (Connors 2011, 104; H.-L. Tan 2011, 101). While engagement with democracy and human rights has a much longer history than in other ASEAN states, it was not until the ratification of the so-called People's Constitution of 1997 that a juncture in terms of human rights protection was reached in Thailand. For the first time it introduced an extensive catalogue of rights. Following the 2006 military coup, the People's Constitution was replaced by the 2007 Constitution, which then comprised the primary source of human rights protection. It provided a large range of constitutional guarantees, including the right to life and liberty.⁵⁹ It has since then been replaced by a much less human rights-friendly document, enacted after the latest coup in 2014, which reinstalled a military regime in Thailand. Problems with the previous 2006 Constitution primarily related to loopholes that allowed the rights and liberties enshrined in the document to be restricted by law. Legal provisions such as the *lese-majeste* laws (Article 112) of the Thai Penal Code, which criminalize acts against the dignity of a reigning sovereign or state, could challenge constitutional rights such as freedom of expression (Connors 2011, 105).

To oversee the state's compliance with the human rights addressed in the Constitution and to investigate possible violations, the Thai government in 1999 established a National Human Rights Commission (NHRC). It was a reaction to clashes between pro-democracy demonstrators and the military in May 1992 and came into force in June 2001. The NHRC's mandate was first spelled out in Section 15 of the National Human Rights Commission Act and was reiterated in Sections 256 and 257 of the 2007 Constitution.⁶⁰ Its main task is "to examine and report on the commission or omission of

⁵⁸ "Indonesia. Freedom in the World 2008," Freedom House, 2008, accessed 13 January 2016, <https://freedomhouse.org/report/freedom-world/2008/indonesia>.

⁵⁹ Government of Thailand, *Constitution of the Kingdom of Thailand 1997*, Section 32-69.

⁶⁰ The Government of Thailand, *National Human Rights Commission Act, B.E. 2542 (1999)*, Sec. 15; The Government of Thailand, *Constitution of the Kingdom of Thailand, B.E. 2550 (2007)*, Sec. 256-257.

acts which violate human rights or which do not comply with the obligations under international treaties to which Thailand is a party.”⁶¹ The Commission is supposed to promote respect for human rights, propose policies and amendments to laws, rules and regulations for the protection of human rights and encourage human rights education and research, as well as co-ordination and cooperation with other agencies. The 2007 Constitution additionally empowered the NHRC to take cases directly to court, in its own name and on behalf of those whose rights had been violated (Rathgeber 2014, 155). In a significant step underlining the Commission’s independence at the time, the NHRC cooperated with the UN Human Rights Committee in undertaking a joint review of Thailand’s compliance with the International Covenant on Civil and Political rights (H.-L. Tan 2011, 108).

Prior to the military coup of 2014, Thailand had generally been viewed as nurturing a human rights-friendly environment. The constitutional guarantees for political participation allowed a vibrant civil society and free media to develop. Infringements of human rights were most often the results of violent political conflict between the two polarized political camps, the so-called Red and Yellow Shirts. Following the coup of 2006 and in the run up to the general elections in 2011, excessive use of force by Thai security forces was relatively common. In response to the events of 2010, an independent Truth for Reconciliation Commission of Thailand was established. In its final report the Commission blamed both sides for the violence, but indicated that the security forces were responsible for the majority of deaths and injuries, having used weapons of war and live ammunition on protestors, and requested that the government at the time take legal action (Human Rights Watch 2013a, 374; Amnesty International 2013, 267). Thailand’s second trouble spot is the conflict in southern Thailand, where fighting continues between Muslim insurgents and the Thai security forces. Killings and serious human rights abuses have been reported on both sides (Human Rights Watch 2007a, 329). In 2006, following the military coup d’état, the interim government apologized for the violations previously committed by the state and announced a new counter-insurgency strategy in the wake of which the number of abuses committed by security forces dropped considerably (Human Rights Watch 2008, 340).

3.3.3. Human Rights in Law and Practice in Malaysia

⁶¹ Ibid, Sec. 256(1)

In contrast to Indonesia and Thailand, Malaysia has not ratified an extensive number of international human rights treaties, but its constitution nevertheless protects basic rights that mirror those in the UDHR. In Malaysia fundamental liberties are set out in Articles 5 to 13 of the Constitution.⁶² However, such rights are not absolute, but subject to limitations. This primarily affects freedom of expression, association and assembly, where derogations from the constitutional guarantees are permitted on the grounds of national security, public order and morality, or “to provide against contempt of court, defamation, or incitement of any offence” (H.-L. Tan 2011, 114). The Malaysian government has continued to insist that Malaysia’s multi-ethnic society is too fragile to sustain genuine freedom of assembly and expression or full due process rights for all suspects (Human Rights Watch 2009, 266).

Nevertheless, the country did experience a number of human rights improvements during the period analyzed in this thesis. In 2007, the Criminal Procedure Code was amended to provide increased protection to people under arrest. The changes required the police to inform detainees arrested without a warrant of the circumstances of their arrest and to allow them to contact a family member or a lawyer (Amnesty International 2009, 199). Among Malaysia’s most problematic regulations was the Internal Security Act (ISA), which permitted long-term detention without trial. In September 2011 Prime Minister Seri Najib Tun Razak announced the government’s intention to repeal the law. It was replaced by the Security Offences Act in 2012, reducing the limit on initial detention without charge from 60 to no more than 28 days. It now requires that a suspect be charged in court or released thereafter (Human Rights Watch 2012a, 341). The Malaysian government has also taken steps to implement the rights of special groups, including the human rights of women, children and people with disabilities, in line with the international human rights treaties it has ratified. To incorporate its international obligations into national law, Malaysia included gender equality in the Constitution, passed the Child Act in 2001 and the Persons with Disabilities Act in 2008.

Malaysia also acknowledges the need for a human rights protection mechanism. The government therefore established a National Commission of Human Rights (SUHAKAM) under the Human Rights Commission of Malaysia Act 1999, which began its work in April 2000. Its mandate includes the promotion of human rights education, advice on legislation and policy, and conducting of investigations.⁶³ Although the Commission

⁶² The Government of Malaysia, *Federal Constitution as of 1 November 2010*, Art. 5(1); Art. 8(2)

⁶³ The Government of Malaysia, *Human Rights Commission of Malaysia Act 1999*, Art. 4.

has been criticized for its lack of independence, as members are appointed either by the King or on the recommendation of the prime minister, it has put forth a large number of human rights recommendations to the government and has openly expressed its concern over several laws. As Tan highlights, it has frequently released press statements and reports on human rights abuses such as punishment in schools, abuse of the ISA and has called for a review of human trafficking laws. It has also investigated the longstanding problem of corruption and abuses within the Malaysian police force (H.-L. Tan 2011, 118).

While in practice human rights problems persist, especially in the area of civil and political rights, due to their constitutional limitations, Malaysia has experienced a noticeable liberalization of society following the retirement of Prime Minister Mahathir Mohamad in 2003. With the appointment of Abdullah Badawi as his successor, pressure on human rights groups and lawyers decreased considerably (Human Rights Watch 2007a, 284). The clearest manifestation of this trend was the reversal of the judiciary's verdict on former deputy prime minister Anwar Ibrahim, which led to his release from prison (Taya 2010, 4). Since then Malaysia has witnessed the growth of an active civil society. There is now a large number of public interest groups and NGOs which concentrate on human rights in Malaysia and which have established a public dialogue on the key values contained in the UDHR (Milner 2011, 100; Taya 2010, 7).

While implementation of and compliance with human rights in national law are an important parts of demonstrating credible commitment to the norm, focusing on the internalization of human rights at home is not enough to establish the norm conflict between non-interference and human rights protection in cases of human rights violations in foreign jurisdictions. The following section will therefore discuss how far domestic recognition of human rights protection extends to a concern for the rights of strangers in the region and beyond by examining references to the norm in the foreign policy statements of the three states.

3.4. From Domestic to Extraterritorial Human Rights Protection

Since the end of the Cold War, the discussion on human rights has shifted from being solely a domestic affair to being a matter of legitimate international concern (Higgins 1995, 34). One illustration of this development is the unanimous adoption of the UN World Summit Outcome Document in 2005, which establishes and endorses the terms of

Responsibility to Protect (RtoP). Articles 138 and 139 of the Document claim that both national governments and the international community bear the responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing.⁶⁴ While it would be false to argue that ASEAN states have been enthusiastic about the initiative, Indonesia, Thailand and Malaysia have all expressed some support for the principle that the commission of atrocity crimes is a matter of international concern.

There has also been a greater awareness more generally of human rights within the region (H.-L. Tan 2011, 8). Due to the combined efforts of governments, civil society, international organizations like the UN and a politically aware and active citizenry, ASEAN has seen an impressive amount of human rights institution building in the last decade (T. Davis 2011, 2; H.-L. Tan 2011, 8). The ASEAN Charter not only requires the member states to commit themselves to the protection of these values, it also gives the organization a role in their protection and promotion. It states that among others “the purposes of ASEAN are [...] to strengthen democracy, enhance good governance, and the rule of law, and to promote and protect human rights and fundamental freedoms.”⁶⁵ A regional concern for human rights protection and promotion has also been reflected in the advocacy of some member states, leading to the establishment of the AICHR, which started its work in 2009 (H.-L. Tan 2011, 11). Even though the commission’s lack of ‘teeth’ has been criticized by many, together with the ASEAN Human Rights Declaration, it “depicts the ultimate expression of concern for human rights” in Southeast Asia and provides the missing link between domestic and regional human rights issues (Davies 2014, 111). All three case study countries have been supportive of the human rights clause in the ASEAN Charter and the establishment of the AICHR. In the following section their individual positions on human rights protection outside their own domestic jurisdictions will be analyzed.

3.4.1. Extraterritorial Human Rights Promotion and Protection in Indonesia

Given the strong domestic support for human rights, the Indonesian government has not only been under considerable pressure to implement human rights domestically, but also to act internationally upon its democratic values (Syailendra 2013, 1). While commitment to human rights protection on a regional or global scale is not explicitly spelled out in the

⁶⁴ United Nations, *2005 World Summit Outcome*, A/RES/60/1, (24 October 2005), Para. 138-140.

⁶⁵ ASEAN, *Charter of the Association of Southeast Asian Nations*, Art. 1.7.

country's national laws, Law No 37/1999 on Foreign Relations states that Indonesia's Foreign Relations and Foreign Policy shall be based on a "just and civilized humanity" and "democracy promotion."⁶⁶ In addition, Indonesia has always maintained that democracy and human rights go hand in hand, as only elected governments are accountable to the people.⁶⁷ The mainstreaming of democracy and human rights as part of the country's foreign policy has been more explicitly articulated as part of the Foreign Ministry's Strategic Plan 2010-2014, which identifies "realizing the advancement and protection of human rights" as an objective.⁶⁸

Regionally, democracy and human rights became a foreign policy focus in 2003 when Indonesia assumed the ASEAN chairmanship (Wirajuda 2014, 30). President Megawati's administration, spearheaded by Foreign Minister Hassan Wirajuda, pushed the principles in the region via the concept of the ASEAN Political-Security Community (Sukma 2011, 111). The idea was to supplement the already existing economic cooperation with a political pillar to push democratization in the region. Believing that "democracy works best in a democratic environment," former foreign minister Hassan Wirajuda tried to actively foster the growth of democratic values in Indonesia's neighborhood (Sukma 2011, 117). This goal was furthered particularly during President Susilo Bambang Yudhoyono's two consecutive terms (2004-2014). In his first foreign policy speech given to the Indonesian Council on World Affairs in 2005, Yudhoyono outlined Indonesia's responsibilities as the world's third largest democracy (Anwar 2010, 132).⁶⁹ He stressed that in its upcoming function as chair of the reformed Human Rights Commission, Indonesia would strive to do as much as it could to advance "all human rights all over the world."⁷⁰ Within its own region, it was Indonesia's intention to help ASEAN develop and nurture common values, particularly those that reflected due reverence for human dignity and freedom. "The cause of democracy and human rights will thereby be advanced in this part of the world," Yudhoyono proclaimed.⁷¹ Accordingly, the Indonesian

⁶⁶ The Government of Indonesia, *Law No. 37/1999 concerning Foreign Relations*, Preamble 1.

⁶⁷ Speech by the foreign minister of Indonesia Hassan Wirajuda at the 61rd session of the General Assembly, 25 September 2006, A/61/PV.18.

⁶⁸ "Strategic Objectives of the Indonesian Foreign Policy," Indonesian Ministry of Foreign Affairs, accessed 10 November 2017, <https://www.kemlu.go.id/en/kebijakan/landasan-visi-misi-polugri/Pages/Strategic-Objectives-of-Indonesian-Foreign-Policy.aspx>.

⁶⁹ "Speech by H.E. Dr. Susilo Bambang Yudhoyono, President of the Republic of Indonesia before the Indonesian Council on World Affairs (ICWA)," Indonesian Ministry of Foreign Affairs, Jakarta, 20 May 2005, accessed 14 March 2018, <https://www.kemlu.go.id/en/pidato/presiden/Pages/Speech-by-H.E.-Dr.-Susilo-Bambang-Yudhoyono-President-of-the-Republic-of-Indonesia-before-the-Indone.aspx>.

⁷⁰ Ibid.

⁷¹ Ibid.

Foreign Ministry campaigned for the inclusion of democratic norms, including good governance, the rule of law, and protection and promotion of human rights and fundamental freedoms in the ASEAN Charter and the establishment of an ASEAN human rights body in line with international standards (Emmers 2014, 556; H.-L. Tan 2011, 77). Looking back at the period, Yudhoyono recalled that Indonesia's hard work behind the Charter had been fueled by its determination to ensure that its members were committed to democracy and democratization, and to the promotion and protection of human rights.⁷² "In our time, we in ASEAN can no longer afford to be allergic to democracy and human rights," he said.⁷³

Yudhoyono continued to emphasize the importance of human rights promotion and protection within the region throughout his tenure as president. In a keynote speech delivered to the ASEAN Forum in 2007, he stressed that the concept of security had greatly broadened, no longer just implying defense of the state, but extending to what is called 'human security':

This means that we have a common obligation to protect the physical integrity and the dignity of the human being, whether alone or part of a group, against all attackers [...]. The human being must be protected even when – perhaps especially when – the assailant is the state, which is supposed to protect him. And if we are going to have an ASEAN that is a 'community of caring societies' then it must care not only about the livelihood and the social amenities but also about the fundamental rights of the human being.⁷⁴

To promote an environment in Asia that fostered respect for human rights, in 2008 Indonesia launched the Bali Democracy Forum to establish a central point where mainly Asian countries could share their experiences of democracy building and human rights protection (Wirajuda 2014; Murphy 2009; Currie 2010). As ASEAN chair in 2011, Indonesia reiterated its commitment to human rights protection. The foreign minister at the time, Marty Natalegawa, stressed that during its chairmanship Indonesia would continue to foster an ASEAN Community "that serves as the vanguard for the promotion

⁷² Susilo Bambang Yudhoyono, "Indonesia: Regional Role, Global Reach," speech at the London School of Economics, London, 31 March 2009, accessed 14 March 2018, http://www.lse.ac.uk/assets/richmedia/channels/publicLecturesAndEvents/transcripts/20090331_BambangYudhoyono_tr.pdf.

⁷³ Ibid.

⁷⁴ "Keynote speech by H.E. Susilo Bambang Yudhoyono, President of the Republic of Indonesia at the ASEAN Forum: Rethinking ASEAN Towards the ASEAN Community 2015, Jakarta, 7 August 2007," ASEAN, 27 July 2012, accessed 14 March 2018, http://asean.org/?static_post=keynote-speech-by-he-susilo-bambang-yudhoyono-president-republic-of-indonesia-at-the-asean-forum-rethinking-asean-towards-the-asean-community-2015-jakarta-7-august-2007.

of democratic values, human rights and tolerance at the global level.”⁷⁵ Outside its region, moreover, the country followed international calls to reform the OIC, where Indonesia promoted cooperation in areas including democracy, human rights and the role of women in the Islamic world, and acted as a mediator in relations between the West and the Middle East.⁷⁶ During Yodhoyono’s presidency, Indonesia also actively participated in the international human rights framework, successfully making its first bid for membership of the UN Human Rights Council in 2006. It argued that its candidacy was a “reflection of its strong commitment to the promotion and protection of Human Rights.”⁷⁷ Its membership was renewed in 2007, 2010 and 2014.

3.4.2. Extraterritorial Human Rights Promotion and Protection in Thailand

As one of the United States’ prime allies in the Southeast Asian region, Thai technocrats and politicians have long been “the product of Westernization” with a more or less liberal stance towards politics (Lynch 2008, 9). As Lynch points out, successive generations of Thai elites have eagerly, if selectively, borrowed Western models to reorganize domestic governance arrangements (ibid). Following the end of the Cold War and in response to the effects of the Asian financial crisis of 1997, this increasingly entailed the inclusion of human rights, not only domestically but also as part of the country’s foreign policy. As a consequence, Thailand’s foreign policy became one of the most liberal among developing countries, with the broadest appeal internationally (Samudavanija 2002, 11). The Democrat-led government under Chuan Leekpai in 1997 issued a seven-point foreign policy that emphasized the universal value of human rights and democracy, as well as good governance.⁷⁸ It was against this backdrop that Surin Pitsuwan, in his function as Thai foreign minister in 1998, suggested a review of ASEAN’s non-interference norm. Defending the initiative against criticism from within the region, Thai commentators wrote that “Thailand cannot back down” as the initiative was about Thailand’s determination to implement a “human and principled diplomacy and to enhance and expand ASEAN’s reputation and its international leverage.”⁷⁹

While successive governments have positioned their commitment to democracy

⁷⁵ Marty Natalegawa, “Annual Press Statement 2011 of the Foreign Minister of the Republic of Indonesia,” speech by the foreign minister of Indonesia, Jakarta, 7 January 2011.

⁷⁶ Author’s interview with the Indonesian Representative to AICHR Rafendi Djamin, 11 March 2016, Jakarta, Indonesia.

⁷⁷ Permanent Mission of the Republic of Indonesia to the UN, *Commitment and voluntary pledges of Indonesia in the field of Human Rights*, New York, 28 April 2006, 306/SOC-101/IV/06.

⁷⁸ Kavi Chongkittavorn, “Thai diplomacy an utter failure over past year,” *The Nation*, 26 November 2007.

⁷⁹ Kavi Chongkittavorn, “ASEAN needs ‘flexible engagement,’” *The Nation*, 21 July 1998.

and human rights protection less centrally in their foreign policies, policy statements still emphasize human security as a priority (Snitwongse 2001, 191). In his 2004 UN General Assembly speech, Foreign Minister Surakiart Sathirathai stressed that Thailand has long advocated a balanced development with “freedom from fear and freedom from want as the two inseparable prongs of human security.”⁸⁰ The following year he reiterated that as chair of the Human Security Network, Thailand was pleased that a human-centered approach to security had been embraced as an integral part of the new collective security consensus.⁸¹ The foreign policy section of the Policy Statement of 2006, moreover, explicitly mentions human rights. It reads that Thailand will “play a constructive role in the framework of the United Nations as well as other multilateral frameworks in the promotion of peace, democracy and human rights.”⁸² In its 2012 Annual Report, the Foreign Ministry also stated that “Thailand has implemented a foreign policy that looks beyond the country’s immediate interests. This foreign policy direction has been based on cooperation with other countries in addressing new security challenges such as [...] human rights and democracy” (AR 2012: 34).

In line with its expressed commitment, Thailand acted as a strong promoter of human rights during the ASEAN Charter negotiations. Despite the domestic turmoil following the military coup in 2006, Thai negotiators maintained that ASEAN needed a human rights mechanism that could promote the principles of democracy, good governance and human rights in the region (Pibulsonggram 2009, 82). In the wake of restructuring the organization, Thailand insisted that ASEAN had to become a more “rule-based” and “people-centered” organization, and membership had to carry with it both rights and obligations.⁸³ As the ASEAN chair in 2009, Prime Minister Abhisit Vejjajiva, furthermore, stressed that ASEAN needed to become a more sharing and caring society, ensuring that the human security needs of its people were met:

We need to make ASEAN more people-centred. Protection and promotion of human rights and fundamental freedoms is a key feature of our Community. The establishment of an ASEAN human rights body by this year, the first ever of this

⁸⁰ Speech by the foreign minister of Thailand Surakiart Sathirathai at the 58th session of the General Assembly, New York, 30 September 2003, A/58/PV.17.

⁸¹ Speech by the foreign minister of Thailand Kantathi Suphamongkhon at the 60th session of the General Assembly, New York, 18 September 2005, A/60/PV.12

⁸² The Government of Thailand, *Policy Statement of the Council of Ministers*, Bangkok, 3 November 2006; Thai Government of Thailand, *Policy statement of the Council of Ministers*, Bangkok, 7 October 2008.

⁸³ Speech by the chairman of the Thai delegation Don Pramudwinai at the 63rd session of the General Assembly, New York, 29th September 2008, A/63/PV.16.

kind in the region, will be a big step in this direction.⁸⁴

Following the establishment of the ASEAN Intergovernmental Commission on Human Rights, the Thai government appointed Sriprapha Petcharamesree, an experienced civil society leader, as the Thai representative and endowed her with an independent mandate (H.-L. Tan 2011, 160).

3.4.3. Extraterritorial Human Rights Promotion and Protection in Malaysia

In an important policy shift from Mahathir's 'Asian values' approach, successive Malaysian governments have come to adopt a more open-minded attitude towards human rights, including in their foreign policies. Human rights for the first time became a matter of concern under Prime Minister Abdullah Badawi. Emphasizing a people-centered approach to domestic policymaking, he transferred those ideals into the foreign policy sphere. As a consequence, foreign policymaking under Badawi moved towards a policy in favor of human rights protection and good governance, especially in relation to ASEAN affairs and within the Muslim community (Musa 2012, 61). In line with this, the Malaysian foreign minister insisted in 2004 at the Second East Asian Forum in Kuala Lumpur that the ASEAN security community perspective had to be expanded to include the new challenges faced by states in the region, including human rights issues.⁸⁵ When suggesting the concept of the ASEAN Charter in its capacity as ASEAN chair in 2005, Prime Minister Badawi therefore called for a bottom-up consultative process. ASEAN had to be transformed to become a more 'people-centered' community, he argued (Caballero-Anthony 2009, 55). At the ASEAN Ministerial meeting in 2006, the prime minister went on to argue that "there must be adherence, by community members, to a common set of community values."⁸⁶ At the top of this list of values had to be the acceptance of good governance in ASEAN countries and societies. Moreover, member states had to be allowed

⁸⁴ "Statement by His Excellency Abhisit Vejjajiva Prime Minister of the Kingdom of Thailand at the Opening Ceremony of the 14th ASEAN Summit and related Summits," ASEAN, Cha-am Hua Hin, 28 February 2009, accessed 14 March 2018, http://asean.org/?static_post=statement-by-he-abhisit-vejjajiva-prime-minister-of-the-kingdom-of-thailand-at-the-opening-ceremony-of-the-15th-asean-summit-and-related-summits.

⁸⁵ Syed Hamid Albar, "Building an East Asian Security Community," speech by the foreign minister of Malaysia at the Second East Asia Forum, Kuala Lumpur, 6 December 2004.

⁸⁶ "Address by the Honourable Dato' Sero Abdullah Ahmad Badawi, Prime Minister of Malaysia at the Opening of the 39th ASEAN Ministerial Meeting Kuala Lumpur, 25 July 2006," ASEAN, accessed 14 March 2018, http://asean.org/?static_post=address-by-the-honourable-dato-seri-abdullah-ahmad-badawi-prime-minister-of-malaysia-at-the-opening-of-the-39th-asean-ministerial-meeting-kuala-lumpur-25-july-2006-2.

to take a role in assistance when fellow member states faced humanitarian crises.⁸⁷ That same year, Malaysian foreign minister Syed Hamid Albar stated that “humanitarian intervention has become necessary with increased human security concerns, more so since globalization has made such issues borderless.”⁸⁸ Albar stressed that the “protection of human life and the promotion of human dignity should not only be the preserve of domestic governments;” instead, “the international community too has a role and responsibility to play in this regard.”⁸⁹ While expressing an increased concern for human security, he underlined at the same time that Malaysia upholds the principle of non-interference, thereby once again highlighting the tension between the two norms.⁹⁰ When it came to a deadlock in the negotiations of a regional human rights mechanism for ASEAN in 2007 between supporting and opposing member states, Malaysia backed Indonesia, Thailand and the Philippines in the establishment of a regional human rights mechanism (Koh 2009, 59). But Malaysia has also been careful to call only “for appropriate approaches which do not impinge on the ASEAN member states’ interest” (H.-L. Tan 2011, 109).

Following the resignation of Prime Minister Badawi in 2009, the Foreign Ministry introduced a new strategic plan (2009-2015) which states that protection and promotion of human rights will continue to be of concern for Malaysia’s foreign policy.⁹¹ It acknowledges that “as a result of globalization and free access to information, human rights and democracy have become prominent issues in global discourse.”⁹² Next to the maintenance of international peace and the tackling of security issues, the protection of human rights would therefore constitute one of Malaysia’s interests in the international arena.⁹³

4. Conclusion

The purpose of this chapter was to demonstrate a commitment to both non-interference and human rights protection in Indonesia, Thailand and Malaysia, while simultaneously highlighting differences in the degree of internalization of the norms. Unlike most traditional norm research within the discipline of International Relations, which tends to

⁸⁷ Ibid.

⁸⁸ “Syed Hamid: Intervene, don’t interfere,” *Malaysiakini*, 14 June 2006.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Malaysian Ministry of Foreign Affairs, “Strategic Plan 2009-2015,” Putrajaya, 29 January 2009, 21.

⁹² Ibid, 2.

⁹³ Ibid, 40.

equate a state's commitment to a norm with its adoption at the international level and subsequent treaty ratification, the chapter established norm commitment on a deeper level. It emphasized not only norm adoption, but more importantly also assessed processes at the domestic level, including norm implementation and compliance. For research on norm conflict, the establishment of a credible commitment to both norms is necessary as the first step of the analysis in order to demonstrate that a particular government actually perceives of situations to which both norms apply as a norm conflict. Therefore, their commitment needs to go beyond rhetoric and involve an actual effort of adhering to the normative directives.

In tracing commitment to the conflicting norms at both the international as well as domestic levels, the chapter also identified the sources that give rise to legitimate expectations for norm compliance from a government's relevant audiences. It established the foundation of both non-interference and human rights protection within the region and the individual states. While the original reasons for the tight embracing of non-interference in Southeast Asia lie in the countries' experiences of Western domination as well as the geo-political instability of the region, it has evolved over the decades to become an integral part of the states' regional identity. As such, it can be expected to create a strong expectation for compliance among the ASEAN member states. In contrast, the commitment to human rights protection has been driven by a bottom-up process, following domestic demands for societal change. The measures in the interest of protection and enforcement of human rights at the domestic level in tandem with references to human rights protection in the states' foreign policies, represent an important source for international and domestic expectations regarding action on behalf of human rights within the region and beyond.

Chapter 4: Indonesia's Response to Norm Conflict

Introduction

As the first of three case studies, the purpose of this chapter is to assess how the Indonesian government in practice responded to situations of norm conflict in its foreign policy. Driven by an interest in the tension between non-interference and human rights protection, it analyses the Indonesian response to three crises in Myanmar: the Saffron Revolution in 2007, Cyclone Nargis in 2008 and the Rakhine Riots in 2012. Each of these crises was internationally framed as a case of large-scale human rights violations, thereby pitting the behavioral standards inherent in the two norms against each other. The chapter demonstrates that the Indonesian response to norm conflict was not consistent, at times prioritizing human rights protection and at other times non-interference. In order to explain the Indonesian response pattern, the chapter analyses the government's choice of which norm to prioritize in the context of the domestic, regional and international expectations regarding legitimate action set by its commitment to both norms. Confronted with conflicting expectations in the three situations of norm conflict, it shows that the Indonesian government pursued a strategy of norm reconciliation to minimize the legitimacy and reputation costs associated with the necessary violation of one of the two conflicting norms.

1. Analysis of the Response Pattern

This first section of the chapter systematically analyses the government's response to the three instances of human rights violations in Myanmar. It shows that the Indonesian government at first complied with the human rights protection norm during the Saffron Revolution in 2007, but later in the crisis shifted to a policy of non-interference. It again prioritized human rights protection in the aftermath of Cyclone Nargis in 2008, but complied with the non-interference norm during the Rakhine Riots in 2012.

1.1. The Saffron Revolution

Following a month of large-scale pro-democracy protests, on 26 September 2007 the military government of Myanmar violently cracked down on the demonstrating monks and civilians. The initial response of the Indonesian government to the junta's use of force

against the protestors was critical and very outspoken. It openly condemned the state violence and individually as well as in concert with its ASEAN colleagues called for restraint. In commenting on the events unfolding in Myanmar and making a judgment on the appropriateness of the government's treatment of its citizens, Indonesian authorities violated the non-interference norm as interpreted in the ASEAN context and complied with the human rights protection norm. However, as the conflict progressed, the Indonesian government altered its stance and switched to a policy of non-interference.

Immediately following the junta's violence, Indonesian foreign minister Hassan Wirajuda stated on 25 September that "Indonesia urges Myanmar not to resort to coercive measures in handling the peaceful rallies."¹ He suggested that the latest developments in Myanmar proved that the so-called road map to democracy was at a standstill despite the junta's repeated promises of progress. Stressing that it was "premature to discuss the deployment of peace-keepers to Myanmar," Wirajuda instead suggested that "taking the junta to the UN Human Rights Council would be a good move."² The foreign minister expressed a preference for engagement and promised that the foreign ministers of ASEAN would table a debate on Myanmar to discuss the issue.³

What followed was an uncharacteristically frank and critical ASEAN statement issued on 27 September 2007 at the sidelines of a UN General Assembly debate in New York. The ASEAN foreign ministers urged Myanmar's authorities to exercise restraint and find a political solution for national reconciliation without resorting to violence.⁴ They collectively expressed their "revulsion to Myanmar Foreign Minister Nyan Win over reports that the demonstrations in Myanmar are being suppressed by violent force and that there has been a number of fatalities."⁵ The collective ASEAN stance was strongly reaffirmed several days later by Indonesia's representative to the UN, Marty Natalegawa, who urged the authorities in Yangon to resume national reconciliation with all parties working towards peaceful transition to democracy and to release all political detainees, including Aung San Suu Kyi.⁶ He also reiterated ASEAN's demand for Myanmar to recognize the visit of United Nations Special Envoy Ibrahim Gambari:

¹ Tony Hotland, "RI urges military restraint in Myanmar," *The Jakarta Post*, 27 September 2007.

² Ibid.

³ Ibid.

⁴ "Singapore's Foreign Minister George Yeo on the crackdown in Myanmar," *The Straits Times*, 28 September 2007.

⁵ Ibid.

⁶ Marty Natalegawa, "Myanmar government puts ASEAN charter at risk," *The Jakarta Post*, 9 October 2007.

On the part of Myanmar itself we again urge the government to exercise restraint and to urgently work to substitute the climate of fear with the power of democratic persuasion and inclusive dialogue [...]. As the government and people of Myanmar tackle the challenges in attaining such a noble goal, Indonesia remains ready to continue to support the country bilaterally, and within ASEAN.⁷

In addition to the collective action by ASEAN, in which Indonesia took part, the Indonesian government initiated a number of individual steps that constituted interference in the crisis. The Indonesian Foreign Ministry sent a strong signal to the junta on 28 September when ministry officials staged an act of solidarity with the protestors. Wearing red clothes, the color of the monks' robes, they gathered together and observed a period of silence in Jakarta.⁸

In view of the brutal state-orchestrated crackdown on peaceful protests in Myanmar, the Indonesian government initially chose to favor the human rights protection norm by repeatedly condemning the violence. However, in the course of the conflict, this stance changed and became more cautious. Moving away from directly criticizing the regime, on 6 October Indonesian foreign minister Wirajuda suggested the introduction of a transition period in which Myanmar's military could share power with a civilian leadership for five years, after which time the country could hold a democratic election. Building on Indonesia's experiences during its own democratization process, Wirajuda argued that the power-sharing arrangement might ease the "insecurity feelings the junta must be harboring."⁹ In a meeting with UN Special Rapporteur Gambari on 18 October Wirajuda expressed a concern about potential regime disintegration and state breakup. He stressed that in addition to human rights concerns, the anxieties of the regime had to be addressed:

I would add that we should also address the psychological problems that the regime is facing, mainly the great sense of insecurity. What would be the status of the military in the new, more open and democratic, context of Myanmar? That is why we had been mentioning that perhaps a transitional period would be good, in which there would be a power sharing between the military and the civilian government.¹⁰

⁷ Ibid.

⁸ "Protesters rally across Asia against Myanmar," *Reuters*, 29 September 2007; "Disparate views in Asean on crisis in the family," *The Straits Times*, 10 October 2007.

⁹ Abdul Khalik, "UN resolution crucial to diffuse Myanmar's problems," *The Jakarta Post*, 6 October 2007.

¹⁰ "Transkripsi keterangan pers bersama menteri luar negeri RI, Dr. N. Hassan Wirajuda, dan utusan khusus PBB, Prof. Ibrahim Gambari," Kementerian luar Negeri, 18 October 2007, accessed 6 April 2014, <http://kemlu.go.id/Pages/SpeechTranscriptionDisplay.aspx?Name1=Transkripsi&Name2=Menteri&IDP=196&l=id>.

Wirajuda's warning came shortly after the US ambassador to the UN, Zalmay Khaalilzad, had said it was "time to prepare for a transition" in Myanmar.¹¹ In line with Wirajuda's statement, the Indonesian Defense Minister Juwono Sudarsono cautioned the following day that "instant democracy in Myanmar could create another Iraq," by facilitating a power struggle between the country's ethnic minorities, many of which were still armed.¹² In line with its now more cautious stance, the Indonesian Foreign Ministry underlined that it had no plans to table the Myanmar issue at the UN during its presidency of the Security Council in November.¹³

It was only on the sidelines of the ASEAN summit that Indonesian president Susilo Bambang Yudhoyono addressed the issue again in a forty-minute private 'heart-to-heart' talk with Myanmar's prime minister Thein Sein. *The Jakarta Post* reported that during an informal 'family dinner' on 19 November they discussed how reform could be introduced gradually to benefit Myanmar.¹⁴ Even though Yudhoyono instructed Foreign Minister Wirajuda to follow up on the discussion with his Myanmar counterpart, the Indonesian government effectively took no further steps to address the conflict.¹⁵ Moreover, after the informal meeting presidential spokesperson Dino Patti Djala reiterated vis-à-vis the media the position that "reforms should not be applied by revolution,"¹⁶ and that the "process of democracy must maintain Myanmar's territorial integrity."¹⁷ The Indonesian government also emphasized the non-interference norm when backing Prime Minister Thein Sein's objection to a briefing with UN Special Envoy Gambari on the situation in Myanmar as part of the ASEAN summit.¹⁸ Furthermore, at the end of the ASEAN summit, the Indonesian government stressed that it would not join other countries in imposing sanctions on Yangon in connection with the political and human rights situation in Myanmar.¹⁹ Instead, Indonesia indicated that it would prefer a soft power approach "giving constructive input rather than imposing sanctions."²⁰

¹¹ Kyaw Zwa Moe, "Reconciliation is far away, but a transition plan," *Bangkok Post*, 16 October 2007.

¹² Urop Hudiono, "Envoy urges talks on Myanmar," *The Jakarta Post*, 19 October 2007.

¹³ Abdul Khalik, "RI won't raise Myanmar at UNSC," *The Jakarta Post*, 27 October 2007.

¹⁴ Abdul Khalik and Kornelius Purba, "RI takes diplomatic approach to junta," *The Jakarta Post*, 20 November 2007.

¹⁵ Abdul Khalik and Kornelius Purba, "SBY pursues alternative approach to Myanmar," *The Straits Times*, 21 November 2007.

¹⁶ "Indonesian president: Burma should not apply reforms 'by revolution'," *BBC*, 20 November 2007.

¹⁷ *Ibid.*

¹⁸ Abdul Khalik and Kornelius Purba, "SBY pursues alternative approach to Myanmar," *The Straits Times*, 21 November 2007.

¹⁹ "Update Report No. 2: Myanmar," Security Council Report, 18 March 2008, accessed 6 April 2014, <http://www.securitycouncilreport.org/update-report/lookup-c-glKWLeMTIsG-b-3961583.php>.

²⁰ "Indonesia not to impose sanctions in Myanmar: president," *Xinhua News Agency*, 22 November 2007.

In sum, the Indonesian response to human rights violations during the Saffron Revolution shifted from initially favoring human rights protection, which involved a condemnation of the crackdown and the highly symbolic act of exhibiting sympathy with the protestors, to a more cautious stance of non-interference.

1.2. Cyclone Nargis

On 2 May 2008, Myanmar was hit by tropical Cyclone Nargis, which severely affected at least 1.5 million people, leaving them without shelter or access to food and medicine. Despite the destruction and the magnitude of human suffering, the junta refused to allow international relief workers to enter the country and to help deliver aid. Indonesia's individual response and the role it took within ASEAN to pressure the junta to open up to a coordinated relief effort proved to be in line with its commitment to the human rights protection norm.

Among the first countries to react following the cyclone, Indonesia announced on 6 May that it would donate aid worth US\$1million to Myanmar.²¹ As presidential spokesperson Dino Patti Djalal stated, "the tragedy has reminded the President of the December 2004 tsunami in Aceh," and thus Indonesia immediately decided to offer help to Myanmar.²² Addressing concerns regarding the junta's willingness to cooperate with the international community in the disaster relief efforts, Djalal emphasized in an interview with *Kompas* on the same day that Indonesian president Yudhoyono would vigilantly monitor the situation on the ground and continuously request information from the government of Myanmar about the needs of the people.²³ In 'requesting information' from Myanmar, the president effectively violated the terms of non-interference as defined within the ASEAN context.

On 9 May, Indonesia dispatched two Hercules aircraft carrying 24.8 tons of emergency relief supplies to Yangon.²⁴ Despite the junta's refusal to issue visas for foreign observers and to allow relief teams to enter the country, the Indonesian president insisted on an Indonesian delegation to accompany the aid. It included officials not only from the ministries of Public Social Welfare Coordination, Foreign Affairs and the National Coordinating Board for Disaster Management, but also from the Indonesian Armed

²¹ Abdul Khalik and Desy Nurhayati, "RI offers \$1m in aid for Myanmar," *The Jakarta Post*, 7 May 2008.

²² *Ibid.*

²³ "RI bantu Myanmar 1 juta dollar AS," *Kompas*, 6 May 2008.

²⁴ "Hercules TNI AU siap angkut bantuan ke Myanmar," *Kompas*, 7 May 2008.

Forces. It was the only delegation to enter the country at this early stage (ASEAN 2010, 80). The aid arrived in Yangon together with a letter from President Yudhoyono to Myanmar's military junta leaders, addressing some 'lessons learned' from Indonesia's relief experience in the aftermath of the tsunami in 2004.²⁵

But despite aid deliveries from several ASEAN countries and Myanmar's direct neighbors, the humanitarian situation in the affected areas worsened. The junta still denied access to any international aid workers and cooperation with the UN had stalled. In view of the deadlock a special meeting of ASEAN foreign ministers was convened in Singapore on 19 May (ASEAN 2010, 19). During the intense negotiations with the Myanmar representative, it was Indonesian foreign minister Wirajuda, who took the lead and "broke the barrier."²⁶ This recollection by Wirajuda illustrates Indonesia's broader policy of interference:

At that meeting I said that I would give Myanmar three options: Number one, Myanmar should follow in Indonesia's steps in how we dealt with the tsunami in Aceh. We opened Aceh for everyone, even foreign troops with light arms. As a result we succeeded in the process of rehabilitating the region. But knowing how isolated Myanmar was, I didn't think this was a realistic option for the country. Option two therefore suggested that Myanmar agree to an ASEAN-led mission, which meant that ASEAN would stand between Myanmar and the international community. I said this is the best option, because Myanmar would not need to deal directly with the international community – ASEAN would do that. I said this is a good option, and I recommend you [Myanmar] do this. Thirdly, you do nothing. But then you should ask yourself what the purpose of you joining ASEAN is, if you only create problems, even when your people are suffering.²⁷

Wirajuda's statement underlines that Indonesia did not only make unsolicited recommendations. The foreign minister denounced Myanmar's chosen path of isolation in view of the suffering population. At least implicitly, he also threatened Myanmar by questioning the purpose of its ASEAN membership.²⁸ "ASEAN is blamed for what you do. So don't forget that we, the other ASEAN members, will also assess what the advantage is of having you in the Association," Wirajuda stressed in the discussion with his Myanmar counterpart.²⁹ Verifying Wirajuda's account of the ASEAN meeting, Singapore's foreign minister George Yeo recalled in an interview with the *The Straits*

²⁵ Abdul Khalik and Lilian Budianto, "UN wants RI to lead Myanmar relief efforts," *The Jakarta Post*, 10 May 2008.

²⁶ Author's interview with former director of public diplomacy at the Foreign Ministry Umar Hadi, 9 March 2016, Jakarta, Indonesia.

²⁷ Author's interview with former foreign minister Hassan Wirajuda, 15 August 2014, Jakarta, Indonesia.

²⁸ Abdul Khalik, "ASEAN's task force to channel foreign aid to Myanmar," *The Jakarta Post*, 21 May 2008.

²⁹ Author's interview with former foreign minister Hassan Wirajuda, 15 August 2013, Jakarta, Indonesia.

Times that the Indonesian foreign minister “intervened passionately” when asking the basic question of what ASEAN means to Myanmar and what Myanmar means to ASEAN.³⁰ At the ASEAN-UN International Pledging Conference in Yangon, which followed on 25 May 2008, Foreign Minister Wirajuda reinforced the pressure on the junta by calling on them directly to open up:

In return for the good will of the international community to help, the Myanmar Government should be more open by giving greater access, not only to humanitarian relief and goods to enter Myanmar and distribute them to the families of the victims, but also granting access to humanitarian relief workers, be they of government or non-governmental organizations.³¹

Overall, Indonesia clearly prioritized human rights protection over non-interference in the case of Cyclone Nargis. In the face of Myanmar’s determination to continue its isolation and keep international aid workers out of the country, the Indonesian foreign minister intervened passionately. He not only pointed out the junta’s role in aggravating the suffering of its people, but also questioned the country’s status within ASEAN as a means of pressuring the generals to open up.

3.3. The Rakhine Riots

Following the deadly clashes between the Muslim Rohingya and Burmese Rakhine in Western Myanmar, violence against the Rohingya community intensified in the fall of 2012. It increasingly included deadly force executed by the state’s enforcement agencies themselves against the Rohingya. The Myanmarese government failed to stop the discrimination and persecution of the Rohingya, which led to numerous deaths and the displacement of large groups of Rohingya across the entire region. But despite the scale of human suffering involved in the crisis, the Indonesian government opted for a policy of non-interference in response to the Rakhine Riots.

On 31 July, Indonesian foreign minister Marty Natalegawa made the first official statement on the crisis. It came more than a month after the sectarian violence had started in Myanmar and the Myanmarese government had declared a state of emergency. Natalegawa stated that Indonesia would emphasize its opposition to any kind of human

³⁰ Nirmal Ghosh, “Asean has grown stronger after cyclone: Geroge Yeo,” *The Straits Times*, 2 July 2008.

³¹ “Statement by H.E. Dr. N. Hassan Wirajuda Minister of Foreign Affairs of the Republic of Indonesia at the ASEAN-UN International Pledging Conference, Yangon, Myanmar, 15 May 2008,” Ministry of Foreign Affairs, accessed 6 April 2014, <http://www.kemlu.go.id/Pages/SpeechTranscriptionDisplay.aspx?Name1=Pidato&Name2=Menteri&IDP=50&l=en>.

rights violations. Yet he shied away from directly criticizing the human rights abuses against the Rohingya.³² Instead, President Yudhoyono claimed on 4 August that Myanmar “had done its best to handle long-lasting tensions between ethnic Rakhine and Rohingyas.”³³ Yudhoyono further stressed that the violence in Myanmar had nothing to do with religion and that no ethnic cleansing was taking place in the country.³⁴ He went on to state that Indonesia had done whatever was necessary to help settle the issue, particularly through diplomatic relations as well as international forums such as ASEAN, the Organization of Islamic Cooperation, and the UN.³⁵ He did not offer a plan of action beyond calling on Indonesians to “help provide humanitarian aid to our Rohingya brothers.”³⁶ The official Indonesian stance did not change despite renewed fighting in October 2012, which proved to be even more intense.

The Indonesian government only became involved in the crisis after Myanmar, following the ASEAN summit in November 2012, issued a formal invitation asking the Indonesian government for help.³⁷ Since by definition interference in the domestic affairs of a foreign state only happens *without the consent* of the host state, by issuing an invitation, Myanmar accepted Indonesian involvement in the Rohingya crisis (J. Welsh 2004, 6). The invitation was followed by a meeting between the governments in early January 2013.³⁸ During a dialogue with the Minister of Border Affairs Lieutenant General Thein Htay in Sittwe, Foreign Minister Natalegawa discussed the possibility of assisting Myanmar’s government in dealing with the issue of citizenship of the Rohingya people.³⁹ According to Natalegawa, Indonesia was prepared to provide aid for the building of shelters, schools and community centers to improve the economic opportunities in Rakhine state as it recovered from ethnic conflict.⁴⁰ “We must move quickly beyond emergency response. The people in the affected area are showing resilience; they are showing constant willingness to recover quickly, but they need crops to harvest and seeds

³² Margareth Aritonang and Bagus Saragih, “RI ready to fight for Rohingya,” *The Jakarta Post*, 31 July 2012.

³³ Bagus Saragih, “Myanmar trying to reconcile groups: SBY,” *The Jakarta Post*, 5 August 2012.

³⁴ “UN, NGO staff in Rakhine released,” *The Nation*, 22 August 2012.

³⁵ Bagus Saragih, “Myanmar trying to reconcile groups: SBY,” *The Jakarta Post*, 5 August 2012.

³⁶ *Ibid.*

³⁷ Novan Iman Santosa, “Myanmar asks RI to help settle Rohingya problem,” *The Jakarta Post*, 21 November 2012.

³⁸ *Ibid.*; “Indonesia calls for long-term support for Rohingya,” *The Nation*, 10 January 2013.

³⁹ Kurniawan Hari, “Indonesia to promote reconciliation in Rakhine,” *The Jakarta Post*, 9 January 2013; Hussain, “Indonesia’s Marty to visit Rakhine state,” *The Straits Times*, 5 January 2013.

⁴⁰ Zakir Hussain, “Indonesia to help heal Myanmar’s Rakhine conflict scars,” *The Jakarta Globe*, 10 January 2013.

to grow,” he said after visiting those areas in Rakhine affected by the conflict.⁴¹ Natalegawa emphasized that Indonesia would be willing to help Myanmar in developing the region and share its own experience in handling ethnic conflict. At the same time, he stressed that the conflict between the Rakhine and Rohingya was an internal problem of Myanmar. Natalegawa underlined that Indonesia was not interfering in Myanmar’s domestic affairs, but was only responding to an invitation.⁴²

In sum, the Indonesian government chose to interfere as little as possible in the Rohingya crisis, until the junta issued an official invitation. Even after this point the government explicitly stressed that in supporting Myanmar it was not violating the ASEAN norm of non-interference. The Indonesian government therefore prioritized non-interference over human rights protection in its response to the Rakhine Riots.

2. Explaining Indonesia’s Response to Norm Conflict

The above analysis of Indonesia’s response to the three situations of norm conflict in Myanmar shows that the Indonesian government continued to apply both norms in its foreign policy. After initially interfering forcefully in Myanmar’s affairs in response to the Saffron Revolution, by condemning the junta’s crackdown and providing unsolicited policy recommendations, the Indonesian government changed its stance towards non-interference as the crisis in Myanmar progressed. In the case of Cyclone Nargis, which hit the poverty stricken country less than a year after the Saffron Revolution, Indonesia again prioritized human rights protection. It even threatened to reassess the junta’s ASEAN membership, as the generals refused to allow international aid into the country. Finally, in stark contrast to the government’s firm stance during Cyclone Nargis, the Indonesian response following the Rakhine riots was characterized by silence and an emphasis on its compliance with the non-interference norm.

In this section, the variation in Indonesia’s compliance with the two norms will be explained in light of the structure of domestic, regional and international expectations set by Indonesia’s commitment to the two conflicting norms. Assuming that a government is motivated by the objective of reducing legitimacy and reputation costs in responding to norm conflict, theoretically the mixed response pattern suggests a shift in the perceived strength of expectations for norm compliance by at least one of the government’s relevant audiences (see Table 1). In accordance with the altered expectations, the government’s

⁴¹ “Indonesia calls for long-term support for Rohingya,” *The Nation*, 10 January 2013.

⁴² Kurniawan Hari, “Refugees lives in Myanmar,” *The Jakarta Post*, 19 January 2013.

perception of the costs of non-compliance with the two norms would change. However, in the discussion that follows, I not only explain Indonesia's response as a choice to comply with one norm rather than the other, but also assess its response as an effort to manage expectations. I argue that in light of conflicting expectations regarding legitimate action, primarily articulated at the domestic level, the government adopted a strategy of 'norm reconciliation' to minimize the legitimacy and reputation costs of its response to norm conflict.

2.1. Early Saffron: Indonesian Solidarity with the Protestors

Following the junta's brutal use of force against the peaceful protestors, there was a strong public outcry in Indonesia. In particular, Indonesian legislators and human rights activists expressed their horror regarding the events in Myanmar. Responding immediately, the Indonesian House of Representatives (DPR) asked President Yudhoyono, on 24 September "to direct the UN General Assembly's attention to the mounting tension in Myanmar," and thereby force the military junta to restore democracy.⁴³ Highlighting the extent of human suffering in Myanmar, Indonesian legislator Djoko Susilo demanded that the Indonesian president urge the military junta to return to the negotiation table with the NLD. Susilo's call was supported by Theo Sambuaga, chairman of *Komisi I*, the parliamentary commission for foreign affairs, who encouraged Yudhoyono to take "the initiative [...] to ask the junta to engage in national reconciliation" as the country was on the brink of civil war.⁴⁴ He argued that the Indonesian president should assign a special envoy to Myanmar to discuss with the junta the concrete measures that could be taken to end the tensions. In order to isolate the junta, Sambuaga also called on the government to lobby other ASEAN member states and exclude Myanmar from the next ASEAN summit in Singapore.⁴⁵

In line with the demands put forward by *Komisi I*, legislators from Golkar and the National Mandate Party (PAN) contended that the mounting tensions in Myanmar were no longer Myanmar's internal affair and thus ASEAN and the UN had to take concrete measures to end the human rights abuses. To achieve this, it was argued, Indonesia, the United States and other democratic countries had to intensify their lobbying of China,

⁴³ Ridwan Max Sijabat, "President asked to bring Myanmar issue to the front at UN assembly," *The Jakarta Post*, 24 September 2007.

⁴⁴ Ibid.

⁴⁵ Ibid.

Russia and India to abandon their support for the junta. In addition, the legislators demanded that Indonesia, as a non-permanent member of the UN Security Council, should play an intensive role in issuing “a resolution imposing firm sanctions on the military junta.”⁴⁶ The following day, 25 September, the DPR’s strong condemnations were followed by a letter from Indonesian legislators and members of the ASEAN Inter-Parliamentary Myanmar Caucus (AIPMC) in which they urged the Indonesian government to take a stronger role in ensuring that the military junta refrained from using repressive approaches in handling the mass protests.⁴⁷ The legislators insisted that in order to solve the political crisis peacefully, the regime in Myanmar had to release Aung San Suu Kyi and other political prisoners and “come together to start a dialogue for peace, reformation and national reconciliation in order to secure democracy in Myanmar.”⁴⁸

However, pressure for action on behalf of human rights protection did not only emanate from the government’s domestic audience. It was reinforced at the international level as a concerned international community, headed by UN secretary-general Ban Ki-Moon, forcefully condemned the violence. In his opening address to the annual UN General Assembly debate on 25 September 2007, he urged the authorities in Myanmar to exercise utmost restraint and to engage without delay in dialogue with all the relevant parties in the national reconciliation process.⁴⁹ Numerous Western heads of state reiterated his message to the junta while speaking to the Assembly that same day. In his speech, US president George W. Bush, for example, underlined that “Americans are outraged by the situation in Burma,” announcing further economic sanctions against the regime.⁵⁰ Bush appealed to the authorities in Myanmar directly “not to use violence against their fellow citizens.”⁵¹ Addressing the international community, the US president emphasized that every civilized nation had a responsibility to stand up for people suffering under dictatorship. Therefore, he urged the UN and all nations to use their

⁴⁶ Ibid.

⁴⁷ “In solidarity with the struggle for Democracy in Myanmar,” AIPMC, 25 September 2007, accessed 6 April 2014, <http://www.aseanmp.org/?p=1225>.

⁴⁸ Ibid.

⁴⁹ Ban Ki-Moon, “A stronger UN for a better world,” speech by the UN secretary-general at the 62nd session of the General Assembly, New York, 25 September 2007, accessed 15 March 2018, <http://www.un.org/webcast/ga/62/2007/pdfs/sg-english.pdf>.

⁵⁰ “President Bush addresses the United Nations General Assembly,” The White House, 25 September 2007, accessed 6 April 2014, <http://georgewbush-whitehouse.archives.gov/news/releases/2008/09/20080923-5.html>.

⁵¹ “AS bekukan asset 14 pejabat tinggi Myanmar,” *Merdeka*, 28 September 2007.

diplomatic and economic leverage to help the Burmese people reclaim their freedom.⁵² The condemnations issued by the international body and representatives of the Western world clearly framed the Saffron Revolution as a case of extraterritorial human rights protection. The international response served as a reference point for the Indonesian government, as it indicated what kind of action the international community perceived as appropriate for responding to the crisis. It suggested that Indonesia, as a state committed to human rights protection and promotion, should not remain silent in view of the state violence in Myanmar. The Indonesian government thus faced strong expectations for compliance with the human rights protection norm at the domestic and international level. Hence, in prioritizing human rights protection in accordance with those expectations, the Indonesian government avoided both domestic legitimacy and international reputation costs.

“Of course we heard the call,” Dewi Fortuna Anwar, foreign-policy advisor to the Indonesian vice-president, said:

Ever since our democratization process started, there have been strong domestic voices asking the president to push for democratic reform in Myanmar. At the same time, we have started to look towards the West for assistance and orientation in our democratic transformation. Following the Saffron Revolution the world was outraged and, of course, this meant that we, too, could not remain silent.⁵³

In view of the strong domestic and international predisposition towards human rights protection, the Indonesian government instantly made a statement on 25 September 2007 condemning the violence. Elaborating on his motivation to speak up on the matter, Foreign Minister Hassan Wirajuda said:

At the Second World Conference on Human Rights in 1993, we had all agreed that gross violations of human rights are a matter of international concern. Accordingly, I believed that it was wrong to claim that the human rights violations in Myanmar were an internal affair, like my Burmese colleague had previously argued. Of course, they did not want us to comment on the matter. But I decided to speak up, because I did not agree with this static conception of non-interference. Our intention was not to harm, but to help.⁵⁴

⁵² Speech by the president of the United States George W. Bush at the 62nd session of the General Assembly, New York, 25 September 2007, accessed 15 March 2018, <http://www.un.org/webcast/ga/62/2007/pdfs/usa-eng.pdf>.

⁵³ Author's interview with the deputy secretary for political affairs to the vice president of the Republic of Indonesia Dewi Fortuna Anwar, 7 April 2016, Jakarta, Indonesia.

⁵⁴ Author's interview with former foreign minister Hassan Wirajuda, 15 August 2013, Jakarta, Indonesia.

Wirajuda also announced on 25 September that despite Myanmar's call for non-interference, ASEAN would table a debate on the issue. While ruling out a peacekeeping mission as premature, he suggested to take the case to the UN Human Rights Council. This move is striking, given that ASEAN member states have traditionally opposed even non-legally binding and primarily symbolic collective UN measures against their ASEAN peers. However, as a member of the UN Human Rights Council, the Indonesian government on 2 October supported a resolution issued by the body that strongly deplored "the continued violent repression of peaceful demonstrations in Myanmar," and urged "the Government of Myanmar to exercise utmost restraint and to desist from further violence against peaceful protestors."⁵⁵ In backing the resolution, the Indonesian government demonstrated its acceptance of human rights protection as a legitimate matter of international concern, even where a fellow ASEAN member state was concerned.

Following Indonesia's initial statement on the crisis, international pressure continued. In a joint statement on 26 September, the European Union and the United States expressed that they were "deeply troubled by reports that security forces have fired on and attacked peaceful demonstrators and arrested many Buddhist monks and others."⁵⁶ Similar statements were issued by, among others, UK prime minister Gordon Brown, French president Nicolas Sarkozy, the Japanese Foreign Ministry, EU foreign policy chief Javier Solana and UN High Commissioner for Human Rights Louise Arbour.⁵⁷ By 27 September, international pressure started to shift towards ASEAN and its role in response to the human rights violations occurring in one of its member states. At first, it was only transnational human rights organizations that targeted ASEAN, but Western governments soon followed suit in calling the regional organization to action. On 27 September, Amnesty International emphasized that ASEAN countries needed to increase the pressure on Myanmar's authorities:

The current situation demands resolute intervention to prevent the threat of massive human rights violations. By using its influence to ensure the Myanmar authorities respect human rights, ASEAN will send a crucial signal to its member

⁵⁵ Human Rights Council Resolution S-5/1, *Situation of human rights in Myanmar*, A/HRC/RES/S-5/1, 2 October 2007.

⁵⁶ "EU-US Statement on Burma/Myanmar," European Union at United Nations, 26 September 2007, accessed 6 April 2014, http://www.eu-un.europa.eu/articles/en/article_7339_en.htm.

⁵⁷ "In quotes: Burma reactions," *BBC*, 27 September 2007.

states and the world that it is committed to the protection and promotion of human rights.”⁵⁸

In a letter sent to ASEAN secretary-general Ong Keng Yong, Amnesty International urged the ASEAN foreign ministers to call for peaceful demonstration to be allowed and for those arbitrarily arrested to be immediately and unconditionally released.⁵⁹ Amnesty’s call was echoed in a direct appeal to ASEAN by French foreign minister Bernard Kouchner and British foreign secretary David Miliband on 27 September, who asked the ASEAN member states to use their influence on the Myanmar general.⁶⁰

These international expectations were reinforced domestically. On the same day *The Jakarta Post* wrote that it would be shameful if the leaders of ASEAN continued their “obsolete indifference toward the brutality of their colleagues in Myanmar.”⁶¹ Indonesia especially, it argued, as the largest member of the regional grouping, should not wait for thousands of people to die before taking action to stop the generals from killing civilians who have lost their patience with oppression and poverty. The paper not only appealed to Indonesia’s self-perceived leadership role in the region, but also referred to the government’s international ambition to be seen and recognized as a rising democracy. *The Jakarta Post* called upon President Susilo Bambang Yudhoyono to take the crisis in Myanmar as an opportunity to act on his favorite topic, namely boosting the country’s international image. The paper suggested that as a retired army general, Yudhoyono should remind his colleagues in Myanmar not to use violence against citizens.⁶²

Responding to the international pressure now directed squarely at ASEAN, on 27 September 2007 the member states followed up on Foreign Minister Hassan Wirajuda’s announcement of an ASEAN debate on the topic. It resulted in an exceptionally strong collective ASEAN statement which openly condemned the junta’s violent crackdown. For the Indonesian government the collective statement was a way of addressing the strong expectations regarding action on the domestic and international levels. The statement, which was a clear violation of the regional non-interference norm, instantaneously prompted loud protest from Myanmar. Indonesian secretary-general of the Foreign

⁵⁸ “Myanmar: Prompt action needed from ASEAN countries,” Amnesty International, 27 September 2007, accessed 6 April 2014, <http://www.amnesty.nl/nieuwsporaal/pers/myanmar-prompt-action-needed-asean-countries>.

⁵⁹ “Open letter to ASEAN member states on the situation in Myanmar,” Amnesty International, 27 September 2007, accessed 6 April 2014, <http://www.amnesty.org/en/node/4922>.

⁶⁰ “ASEAN expresses ‘revulsion’ at Myanmar’s violent repression,” *The Star*, 28 September 2007.

⁶¹ “Shame on ASEAN,” *The Jakarta Post*, 27 September 2007.

⁶² *Ibid.*

Ministry at the time, Imron Cotan, remembered Myanmar's resistance to the informal ASEAN meeting:

Of course they were not happy. My colleagues in Myanmar tried to lobby Cambodia, Vietnam and Laos. And at the initial stage, some of them were very reluctant, arguing that Indonesia cannot put another ASEAN member on the spot like this.⁶³

But despite Myanmar's protests, a collective ASEAN statement of unprecedented frankness came about. Indonesian foreign minister Wirajuda recalled the discussion among the Ministers and Indonesia's role in the debate:

When we have internal discussions like this at the foreign minister level, normally most of my ASEAN colleagues will shy away from raising a controversial issue. But I chose not to. In the discussion we had, I said to those ASEAN states reluctant to interfere that this should not be seen as an interference in domestic affairs. I told them that we Indonesians had been very open in the past to discuss the situation in Aceh, following the tsunami. So I asked them to be equally open to a discussion that concerns another member state.⁶⁴

While a consensus could be reached among the attending ASEAN representatives, leading to the collective ASEAN statement, Myanmar continued to reject any external interference. Myanmar's permanent representative to the UN, Ambassador Kyaw Tint Swe, claimed that the ASEAN statement communicated by the Singaporean chairperson Lee Hsien Loong was "not on behalf of ASEAN." This claim was later repudiated by Singapore.⁶⁵ At the UN General Assembly debate, Myanmarese foreign minister Nyan Win, called upon the international community to respect Myanmar's right to self-determination as "the destiny of each and every country can only be determined by its government and people" and "cannot be imposed from outside."⁶⁶ On national television, Myanmar's Information Minister, Kyaw Hsan, reiterated that "Myanmar will never allow any outside interference to infringe on the sovereignty of the state."⁶⁷ In view of the junta's continuous resistance to interference and despite their consent to the collective

⁶³ Author's interview with former ambassador and secretary-general of the Department of Foreign Affairs Imron Cotan, 7 April 2016, Jakarta, Indonesia.

⁶⁴ Author's interview with former foreign minister Hassan Wirajuda, 15 August 2013, Jakarta, Indonesia.

⁶⁵ Thalif Deen, "Burma Crisis: ASEAN backs neither US nor China," *Malaysiakini*, 9 October 2007.

⁶⁶ Speech by Myanmar's minister of foreign affairs Nyan Win at the 62nd session of the General Assembly, New York, 1 October 2007, accessed 15 March 2018, <http://www.un.org/webcast/ga/62/2007/pdfs/myanmar-eng.pdf>.

⁶⁷ Larry Jagan, "Will the generals dare release the Lady?" *Bangkok Post*, 17 November 2007.

ASEAN statement, ASEAN's non-democratic regimes including Brunei, Vietnam, Laos and Cambodia, remained silent in their individual responses to the crisis. They abstained from criticizing the junta and thereby prioritized the non-interference norm.⁶⁸ Indonesia, on the other hand, appeared relatively unconcerned by the junta's continued protest. While Foreign Minister Wirajuda had initially justified Indonesia's interference by referring to the grouping's shared commitment to the 1993 Vienna Convention and Indonesia's past openness to regional concerns regarding internal events in its own territory, he did not again address the generals' expectations for compliance with the non-interference norm.

Internationally the unusually open and frank collective ASEAN statement was met with widespread recognition. French foreign minister Kouchner described the regional grouping as "the strongest tool" to deal with the crisis and its "tough declaration"⁶⁹ as "a victory for the pro-democracy movement in Myanmar."⁷⁰ In line with this, US Secretary of State Condoleezza Rice called the ASEAN reaction "a very good statement," when concluding a meeting with the ASEAN ministers on the same day.⁷¹ The Security Council also welcomed the statement, stressing "the important role played by the ASEAN countries in urging restraint, calling for a peaceful transition to democracy, and supporting the good offices mission."⁷² Even Human Rights Watch commended ASEAN for its "strong statement."⁷³

On the following day the Indonesian government once more underlined its support for the protesting monks in Myanmar, as the Foreign Ministry staged an act of solidarity by wearing red and observing a minute of silence for the protestors. One of the organizers of the Foreign Ministry initiative, Umar Hadi, at the time Director for Public Diplomacy, recalled:

Of course, the Myanmar government did not like it very much, but we were frustrated with what was happening in Myanmar and the normal (ASEAN) way of responding to the situation would not have been sufficient. That was why I grabbed about 200 people from the Foreign Ministry. We were all wearing red batik, and we all stood in front of *Monas* in solidarity. Hassan and I played 'good cop, bad cop.' Our deal at the time was that I was allowed to do whatever I needed to do for Indonesia to be seen as what we were: a young democracy on its way up. Because

⁶⁸ "Myanmar crackdown: Global reaction," *CNN*, 26 September 2007.

⁶⁹ "ASEAN expresses 'revulsion' at Myanmar's violent repression," *The Star*, 28 September 2007.

⁷⁰ "Foreign leaders hail Asean's tough stand," *The Straits Times*, 29 September 2007.

⁷¹ *Ibid.*

⁷² Security Council, *Statement by the President of the Security Council*, S/PRST/2007/37, 11 October 2007.

⁷³ "Burma: End attacks on protesters, account for monks," HRW, 28 September 2007, accessed 6 April 2014, <http://www.hrw.org/news/2007/09/27/burma-end-attacks-protestors-account-monks>.

of this initiative Hassan did not have to say anything further, as Myanmar and the world realized where Indonesia stood.⁷⁴

In siding with the pro-democracy protesters and condemning the crackdown, the Indonesian government aimed to give a clear signal to the world, as Hadi stressed: “After staging the act of solidarity with the protestors, we were asked by the West to step up when things went wrong in Myanmar. They knew exactly how we felt about the crackdown and that we have ideals we want to address.”⁷⁵

In sum, Indonesia’s initial forceful response to the Saffron Revolution reflects the presence of strong domestic and international expectations regarding action in favor of human rights protection. By addressing the articulated concerns, the government avoided both legitimacy and reputation costs at the domestic as well as international levels. Running a comparatively weak coalition government, whose actions at the time were painstakingly scrutinized by a highly active parliament and a critical *Komisi I*, Indonesian decision makers were extremely vulnerable and responsive to domestic expectations. Following the country’s democratic transition, respect for human rights in particular had become a central element of political legitimacy in Indonesia, as highlighted by former presidential spokesperson Wimar Witolar: “Every president bent over backwards to show sensitivity to human rights in order to legitimize himself or herself. It was just not politically viable anymore to ignore demands for human rights, be it at home or in the region.”⁷⁶ Within the region, Indonesian parliamentarians and civil society activists focused in particular on the situation in Myanmar. The government’s stance towards the recalcitrant regime had become a measure for its own commitment to and credibility as a democracy and human rights promoter in the region.

In a situation in which domestic pressure was coupled with Western expectations regarding action on behalf of human rights protection, a strong case for compliance by the Indonesian government with the human rights protection and promotion norm could be made. After decades of international scrutiny during the New Order regime of former president Suharto, improving the country’s international reputation by joining the ‘democratic club’ represented an important motivational force in Indonesia’s foreign policy (Acharya 2015, 2; Katsumata 2009, 620; Gorjão 2002; Carbone 2009). Following

⁷⁴ Author’s interview with former director of public diplomacy at the Foreign Ministry Umar Hadi, 9 March 2016, Jakarta, Indonesia.

⁷⁵ Ibid.

⁷⁶ Author’s interview with journalist and former spokesperson for Indonesian president Abdurrahman Wahid, Wimar Witolar, 14 March 2016, Jakarta, Indonesia.

Indonesia's democratic transition the established democracies and representatives of the so-called West thus became the country's main international audience. "In understanding Indonesian foreign policy, its evolving sense of self-awareness as a democracy, I think, is critical," ASEAN scholar See Seng Tan argued:

This ties back to the earlier days of Indonesia under the leadership of Sukarno and Suharto, who fostered a sense of national greatness. You do get a certain frustration in Indonesia with ASEAN, evidenced in initiatives of thinking post-ASEAN. In their view, Indonesia is now a world power and is expected to lead ASEAN, but the rest of ASEAN is holding it back.⁷⁷

While previous leadership ambitions were based primarily on the country's sheer size and demographic characteristics, following *Reformasi* a set of more normative ambitions was incorporated (J. Rüländ 2017, 62). Having successfully transformed itself from an authoritarian into a democratic regime, Indonesian foreign policymakers justified the country's self-perceived role as a regional leader with reference to its democratic credentials and its democracy and human rights activism within the region (P. J. Tan 2007). In order to gain the recognition it desired from its democratic peers on the international level, it was crucial for the Indonesian government to live up to its stipulated role conception and address Western expectations regarding human rights protection, especially when they occurred in its own backyard.

Internationally, Indonesia's transformation and its role within ASEAN have not gone unrecognized. Following Indonesia's successful bid in the Security Council elections in 2006, US president George W. Bush, for example, described Indonesia as an "example of how democracy and modernization can provide an alternative to extremism." Supporting Indonesia's growing international role, the US president lauded Yudhoyono's leadership and democratic credentials, which made "Indonesia strong" and enabled the country "to play a positive role in Southeast Asia and the world."⁷⁸ Similarly, Indonesia's "positive role within the Association of Southeast Asian Nations" was also acknowledged by transnational human rights NGOs (Human Rights Watch 2010, 312). HRW repeatedly endorsed Indonesia's efforts to strengthen ASEAN's human rights body, the AICHR, and the appointment of an independent expert as the Indonesian representative (ibid).

⁷⁷ Author's interview with professor for International Relations at Rajaratnam School of International Studies See Seng Tan, 30 May 2016, Singapore, Singapore.

⁷⁸ "President Bush meets President Yudhoyono of Indonesia," The White House, Bogor, 2 October 2007, accessed 17 February 2017, <https://2001-2009.state.gov/p/eap/rls/rm/76326.htm>.

And yet in the eyes of many Indonesians, the country has not yet received the international recognition it deserves. Today a feeling of being internationally “underrated, undervalued and underrepresented” remains, which fuels continued striving for an international reputation as a good democracy.⁷⁹ The following statement by Imron Cotan, former secretary-general of the Foreign Ministry, speaks to this feeling: “We are a maturing democracy. We need recognition and we deserve it, as we have successfully moved from an authoritarian regime towards democracy. Someone should tap our shoulder for once and say ‘hey you are doing well.’”⁸⁰ Equally reflecting this stance, Gadjah Mada academic Mohammad Iqal stated:

International recognition is important for Indonesia. There is a strong sense of nationalism among Indonesians: they want Indonesia to reclaim the role it had in the past, when it was seen as the tiger of Asia. A president, who could give this feeling back to the Indonesian people, would be a very popular president indeed.⁸¹

The lingering sense of not having received the recognition it deserved made the country particularly eager to impress on the international stage. Thereby a positive international reputation as a good democracy and promoter of democratic values, especially within the region, was pursued not only as a motive in its own right, but importantly was believed to also feed back into the government’s domestic assessment and perceived legitimacy (Finnemore and Sikkink 1998, 903).

Taken together, the government’s vulnerability to domestic pressures and its quest for social recognition internationally made Indonesia particularly responsive to domestic and international expectations towards legitimate action in situations of norm conflict. These considerations, together with the articulated expectations were significant in the decision-making process, indicating what kind of response was possible without suffering legitimacy and reputation costs in relation to the audiences. The perceived strength of domestic as well as international expectations in favor of human rights protection therefore explain Indonesia’s initially forceful response to the crackdown. The Indonesian government appeared relatively unconcerned by Myanmar’s continued demand for compliance with the non-interference norm or the prioritization of non-

⁷⁹ Author’s interview with former ambassador and secretary-general of the Department of Foreign Affairs Imron Cotan, 7 April 2016, Jakarta, Indonesia.

⁸⁰ Ibid.

⁸¹ Author’s interview with scholar at the Gadjah Mada University Mohammad Iqbal, 10 March 2016, Bogor, Indonesia.

interference over human rights protection by the majority of ASEAN member states in their individual responses to the crisis. By referencing the region's acceptance of the Vienna Convention and highlighting Indonesia's own previous behavior, it presented interference in cases of human rights violations as acceptable, and 'normal.'

2.2. From Solidarity to Non-Interference in the Saffron Case

In order to explain the government's change in response from human rights protection to non-interference during the Saffron Revolution, a shift in the perceived strength of expectations for compliance with the norms in question must have occurred. This shift led the government to reassess its cost-benefit calculation of compliance with either norm. The following sections will provide evidence that Indonesia's change in response was motivated by the deteriorating situation in Myanmar, which increasingly involved a risk of ethnic conflict and territorial disintegration. This new territorial dimension to the conflict spoke to a strong domestic expectation for a continued validity of non-interference in cases involving secessionism or the risk of territorial disintegration, which the Indonesian government considered stronger than the simultaneous domestic and international expectations for compliance with human rights protection.

Indonesian interference in the interest of human rights protection came to a halt after the passing of the UN Human Rights Council resolution on 2 October 2007. However, domestic pressure on the Indonesian government to go even further in its support of the peaceful protesters did not subside. On 1 October Rizal Sukma, Executive Director of Indonesia's most influential foreign policy think tank, the Centre for Strategic and International Studies (CSIS) Jakarta, argued that if ASEAN could not manage the situation "Indonesia should break away from the long-cherished tradition of solidarity within ASEAN."⁸² Indonesia should learn "to disagree with other ASEAN countries that lack the nerve to stand up for the people of Myanmar:"⁸³

It is also time for Indonesia to show other ASEAN members, and the international community, that we are now a different country from the one ruled by the authoritarian New Order regime [...]. If Indonesia's government really believes in democracy and human rights, then it is our business to oppose any attempt by anyone, anywhere, to kill democracy and murder human rights.⁸⁴

⁸² Rizal Sukma, "Time for ASEAN to act against military leaders in Yangon," *The Jakarta Post*, 1 October 2007.

⁸³ Ibid.

⁸⁴ Ibid.

Similarly, representatives of religious interfaith organizations in Indonesia insisted that Indonesia should facilitate peaceful dialogue between the conflicting parties and condemned the military junta for its “irresponsible use of force.”⁸⁵ Din Syamsuddin, chairman of Indonesia’s second largest Muslim organization *Muhammadiyah* demanded on 2 October that the Myanmar government release every prisoner taken during the demonstration period. The representative of the Indonesian Bishops Conference, Benny Susetyo, added that given the situation unfolding in Myanmar, abstention in the Security Council on votes relating to Myanmar could no longer be an option for Indonesia. Since democracy had “a strong pull on the collective conscience of the Indonesian people – stronger, in fact, than does its ASEAN identity,” the Indonesian government had to do more.⁸⁶

But instead of further pressuring the junta, the Indonesian government grew more cautious in its response. The increasingly pronounced secessionist dimension to the crisis constituted a crucial impediment towards a more human rights-centered Indonesian response. The violent handling of the anti-junta demonstrations had resulted in growing tensions within the Myanmar authoritarian regime. There had been desertions amongst police and military personnel as well as a wave of cabinet reshuffles. In the process, the regime’s internal stability started to crumble. While international observers increasingly saw the crisis as a window of opportunity for regime change in Myanmar, the junta’s renewed fighting with Myanmar’s armed ethnic minorities reinforced Indonesian fears of a balkanization of the country in the wake of violent ethnic conflict and separatism. This was discussed as the so-called Iraq scenario.⁸⁷ Under no circumstances, did the Indonesian government want to get caught up in a domestic conflict with separatist dimensions by further interfering on behalf of the protestors. Its reluctance to be perceived as a violator of the non-interference norm by its regional peers in instances featured a risk of territorial disintegration reflects a deep-seated fear across Indonesian society of the unitary Indonesian state suffering territorial losses through secessionism. This fear is based on the collective memory of disintegrative forces threatening Indonesian unity ever since its independence. Since then, Indonesia has faced five major

⁸⁵ “Interfaith leaders speak out against Myanmar,” *The Jakarta Post*, 2 October 2007.

⁸⁶ *Ibid.*

⁸⁷ “Burma’s ‘Saffron Revolution’ is not over,” International Federation for Human Rights, December 2007, accessed 27 February 2018, <https://www.fidh.org/IMG/pdf/BURMA-DEC2007.pdf>.

separatist movements and many smaller ones (Weatherbee 2005, 140). Two of the major trouble spots in the past were Aceh, where a peace agreement was reached in 2005 after more than 30 years of civil war, and East Timor, which was annexed by Indonesia after its independence from Portugal in 1975. After its annexation Indonesian special forces fought Fretilin, the Timorese independence movement, until the territory became independent in 2002 following a UN-sponsored popular referendum in 1999 and the deployment of an Australian-led international peacekeeping force. The loss of East Timor (now Timor Leste) represented a traumatic experience in Indonesian history (Acharya 2000, 55). Since then, Indonesia has been preoccupied with maintaining the integrity of the republic, determined not to allow East Timor to become a precedent for further secession (Weatherbee 2005, 31). As *The Jakarta Post* editor Endy Bayuni has stressed, Indonesia's bitter experience of secessionism has led its government to vow "to defend all its territory to the death."⁸⁸ This attitude was reinforced as ethnic and religious tensions mushroomed in the immediate wake of lifting the authoritarian controls of the Suharto regime.⁸⁹ Bayuni added:

We don't have any ambitions to expand, but we are very strong about defending our existing territory. I think this is where Papua comes in. Indonesia is not willing to give up one inch of its territory. This is very much in the heads of Indonesian politicians and society at large, as it is also embedded in our schools: 'Never give up an inch of your territory.'⁹⁰

Since the transfer of administration of New Guinea (now Papua) from the Netherlands to Indonesia in 1963, the *Free Papua Movement* has been active and continues to advocate for independence. A secessionist conflict still lingers in the region today. Many Papuans do not consider themselves part of an Indonesian state and nation due to ethnic differences and their history of being differently administered by the Dutch (Anwar 2001, 358).

The Indonesian fear of territorial disintegration, and the related domestic expectation for the government to prohibit external interferences in Indonesia that could facilitate secessionism, crucially mattered in explaining the government's shift in response to the Saffron Revolution. In order to live up to the domestic expectation of maintaining Indonesia's territorial integrity, the government had to prioritize the non-interference norm over human rights protection in a human rights case with secessionist

⁸⁸ Author's interview with *The Jakarta Post* senior editor Endy Bayuni, 5 August 2013, Jakarta, Indonesia.

⁸⁹ Endy Bayuni, "The hope for peace in Papua recedes – for now," *The Jakarta Post*, 22 June 2012.

⁹⁰ Author's interview with *The Jakarta Post* senior editor Endy Bayuni, 5 August 2013, Jakarta, Indonesia.

dimensions. In complying with the non-interference norm, the government avoided the creation of precedents that could one day be put to use in relation to Indonesia's own internal affairs and ensured that non-interference remained the regional standard of behavior in secessionist conflicts or cases involving a risk of territorial disintegration. While advocating for a more relaxed interpretation of the non-interference norm, external meddling in cases of secessionism was meant to remain a regional taboo. "Indonesia remains strongly opposed to the idea of interference which could endanger the territorial integrity of the member states," the foreign-policy advisor to the vice president, Dewi Fortuna Anwar, pointed out, highlighting the evolution of Indonesia's interpretation of the norm's meaning:⁹¹

Non-interference was taken to the extreme in Southeast Asia because most of its member states for a long time were not previously democratic. Any form of criticism was seen as an act of interference. But in today's normative environment a democratizing Indonesia argues that the relationship between state and society matters, and democracy as well as human rights protection within the region are now a concern of ours. We believe that it is permissible for us to talk about the problems within other ASEAN states, such as bad governance, a lack of democracy and human rights violations. But non-interference remains important in the sense that it is not acceptable for others to interfere directly in another state by assisting rebels and supporting secessionist movements.⁹²

Confronted with conflicting domestic expectations that were set by Indonesia's simultaneous commitment to human rights protection and non-interference as the corollary of respect for territorial integrity, the government had to choose between the norms by assessing the anticipated legitimacy costs of non-compliance with either norm. In order to determine which path of action to pursue, the Indonesian government had to make a judgment regarding which of the underlying objectives its domestic audience valued more: the protection of the rights of non-nationals in Myanmar or the safeguarding of Indonesia's territorial integrity by maintaining the validity of non-interference in secessionist conflicts within the region. The fact that few Indonesians are willing to discuss the human rights violations occurring in the course of the secessionist conflict in Papua – a case which features the rights not of strangers, but rather of Indonesian *nationals* – suggests that the maintenance of territorial integrity was the overriding

⁹¹ Author's interview with the deputy secretary for political affairs to the vice president of the Republic of Indonesia Dewi Fortuna Anwar, 21 August 2013, Jakarta, Indonesia.

⁹² Ibid.

value.⁹³ Even for Indonesian NGOs that work in the human rights sector, Papua, as a case of potential secessionism, is treated as a very sensitive issue, as Malaysian human rights activist Adrian Pereira has highlighted: “Instead of defending human rights, when it comes to Papua, they refuse to discuss rights abuses at the ASEAN people’s forum.”⁹⁴ Former Indonesian ambassador Wiryono Sastrohandoyo summarized the rationale:

We are still growing into the nation we aspire to be; more solid; not threatened by separatism. For those who are critical of Indonesia it does not matter whether there are two or three Indonesias. But we are confronted with the problem of preserving the nation. We don’t want people to say things that could inspire separatism. Those countries that don’t have any [separatist] problems, for them it is easy to speak up, but not for us. We do show openness. But if it is about the country’s survival, its unity, we are nationalistic.⁹⁵

President Yudhoyono experienced such nationalist sentiments first hand in 2005 after a peace agreement had been signed in the separatist conflict in Aceh. He faced intense criticism at home when he permitted foreigners into the tsunami-devastated province to monitor the implementation of the peace agreement. Domestic critics accused Yudhoyono of internationalizing a problem, which they argued should have been handled as a domestic issue. Responding to the criticism, Yudhoyono justified his decision, arguing that the presence of foreign monitors from the European Union and ASEAN was not a foreign interference into Indonesia’s domestic affairs, as they were only overseeing the implementation of an already concluded agreement meant to end the separatist fighting and the risk of secessionism.⁹⁶ At the same time, he ruled out any foreign involvement in the resolution of the Papua conflict, thereby addressing fears of foreign interference in the province. “The issue of Papua is our own domestic issue. We decline foreign interference in settling that issue,” Yudhoyono said. Previously Indonesian parliamentarians and the media had expressed concerns over criticism from external actors. Members of the US Congress especially had repeatedly questioned the integration of the vast province into Indonesia’s territory in the late 1960s.⁹⁷

⁹³ See for example the domestic protests in Indonesia following the opening of the West Papua Office in Oxford, UK on 28 April 2012; “Indonesia protests the opening of Free West Papua office in Oxford,” *The Jakarta Post*, 5 May 2012.

⁹⁴ Author’s interview with the director of the North South Initiative Adrian Pereira, 26 July 2016, Kuala Lumpur, Malaysia.

⁹⁵ Author’s interview with former Indonesian ambassador Wiryono Sastrohandoyo, 23 August 2013, Jakarta, Indonesia.

⁹⁶ “Yudhoyono rejects Aceh peace critics,” *The Sydney Morning Herald*, 16 August 2005.

⁹⁷ *Ibid.*

Given these past experiences with Indonesian reactions to external involvement in its conflict areas, the government anticipated that even though less tangible at the moment of choice, the potential legitimacy costs of creating a regional environment which allowed for interference in secessionist conflicts were more severe than occasionally not acting upon its human rights commitment when human rights violations also involved a risk of territorial disintegration. Hence, as the Saffron Revolution developed a risk of territorial disintegration, the Indonesian government changed its initial stance of human rights protection to a policy of non-interference. In view of continued domestic pressure in favor of interference, Foreign Minister Wirajuda justified Indonesia's now cautious position by stating that "Myanmar's problems are not just about dictatorship and human rights abuses," but that "secessionism launched by minority tribes and security issues faced by the military junta are also of concern."⁹⁸ These insecurities had to be considered and addressed in the country's response to the crisis. As Myanmar's internal stability continued to deteriorate, the Indonesian shift in response became more and more obvious.

On 12 October, the prime minister of Myanmar, General Soe Win, died, which led to another cabinet reshuffle and the appointment of Lieutenant General Thein Sein as his successor.⁹⁹ At the same time, pro-democracy protests in Myanmar flared up again as new groups of activists formed. In addition, many monks resumed anti-junta demonstrations and boycotts.¹⁰⁰ As a consequence, even Myanmar experts started to warn of a possible balkanization of Myanmar in the event of sudden regime change. As Myanmar expert Bertil Lintner predicted at this time, "the transition to civilian rule is bound to be extremely difficult, given the fact that the country has not had a truly civilian government since 1962."¹⁰¹ The greatest challenge was perceived to be the prevention of fresh outbreaks of the insurgencies among ethnic minorities that have been a constant in modern Myanmar. Former UN official Thant Myint-U reiterated this point: "Rebuilding these [state] structures at the same time as easing the army out of its overall government role is an almost unprecedented task. It's hard for me to think of another situation in which that has happened peacefully."¹⁰² Both the Indonesian president and his foreign

⁹⁸ Ibid.

⁹⁹ "Myanmar PM Soe Win dies after illness," *Reuters*, 12 October 2007.

¹⁰⁰ Maung Dee, "Activists groups urge people to revive 'Saffron Revolution'" *Mizzima News*, 27 November 2007; "Monks vow to continue junta boycott," *DVB*, 19 November 2007.

¹⁰¹ Denis Grey, "If junta falls, what then?" *The Irrawaddy*, 25 October 2007.

¹⁰² Ibid.

minister believed that in order to prevent Myanmar's internal conflicts from escalating in the wake of an overthrow of the government, an equally strong new government would be needed to replace the junta – something unlikely to be achieved democratically in an *ad hoc* fashion.¹⁰³ Accordingly, the reformist general Agus Widjojo, whom the Indonesian government had assigned as its special envoy to Myanmar, argued that Indonesia and other democratic countries had to expose the isolated junta to democratic values first, before regime change and civilian rule would be possible. For real change to happen, it was argued, the transition had to begin with reform of the military:

The best bet, the shortest and least violent way, is if the military can voluntarily transfer power through a transitional mechanism and finally hand it over to a democratic government [...]. The key words are voluntary intent from the military for a transitional period of power-sharing and an agreed reconciliation process with the people of Myanmar.¹⁰⁴

But irrespective of the government's justifications, domestic expectations for a more human rights-centered response from the Indonesian government to the situation in Myanmar were articulated once again, particularly as the ASEAN summit in November 2007 approached. In advance of the summit, the chairman of *Komisi I*, Theo Sambuaga, demanded that the "President should act decisively" to ensure that Myanmar's generals would know that their "neighboring countries have lost their trust and patience."¹⁰⁵ According to the legislator, such action was not only what the international community expected but also "the demand of Indonesians."¹⁰⁶

Domestic expectations regarding human rights protection were opposed by Myanmar's clear rejection of any kind of ASEAN or member state interference. Myanmar's prime minister Thein Sein reiterated this stance on 18 November at the ASEAN summit. He insisted that the recent unrest in Myanmar was strictly home-grown and that all nations had to respect the country's sovereignty and practice non-interference while interacting with Myanmar.¹⁰⁷ Following an initiative by the Singaporean chairperson, who had invited UN Special Envoy Gambari to attend the summit and give a report on the situation in Myanmar, Thein Sein told the ASEAN leaders that Gambari should only report

¹⁰³ Ibid.

¹⁰⁴ Any Chew, "Give Myanmar a big taste of democracy," *New Straits Times*, 6 November 2007.

¹⁰⁵ Abdul Khalik and Kornelius Purba, "SBY has chance to make history with Myanmar," *The Jakarta Post*, 19 November 2007.

¹⁰⁶ Ibid.

¹⁰⁷ Larry Jagan, "Will the generals dare release the Lady?" *Bangkok Post*, 17 November 2007.

to the UN Security Council and not to ASEAN or the East Asia Summit. He thereby vetoed the chair's initiative to bring the Special Envoy in for a briefing.¹⁰⁸ In view of Myanmar's resistance, the Indonesian government rejected the Singaporean initiative, reflecting the desire not to create a precedent for interference in the internal affairs of a state facing a secessionist challenge. In order to maintain the regional validity of the non-interference norm as a standard of behavior in internal cases that featured a risk of territorial disintegration, the Indonesian president opted for what he called "a soft approach." This entailed the rejection of further interference, especially in the form of sanctions or Security Council action. In view of the strong domestic and international expectations towards interference on behalf of human rights protection, Yudhoyono once again justified the Indonesian policy of non-interference by arguing that Indonesia, like Myanmar, was facing threats of national disintegration with minority tribes fighting for separation. In doing so he emphasized the norm's continuous importance for Indonesia in the context of territorial integrity.¹⁰⁹ Following the ASEAN summit the initially strong collective ASEAN position in favor of human rights protection also softened. ASEAN chair Lee Hsien Long from Singapore stated in a press conference that Myanmar did not need ASEAN to bring about a solution to its political problems, as the situation in the country was a domestic affair and the junta was capable of handling the issue itself.¹¹⁰

In sum, Indonesia's change in position during the Saffron Revolution can be explained by an increasingly pronounced secessionist dimension to the conflict and the threat of territorial disintegration in Myanmar. Concerned with the creation of a precedent for interference in cases of secessionism, the Indonesian government chose to prioritize the non-interference norm. By complying with non-interference and thereby respecting Myanmar's expectations, Indonesia tried to maintain the validity of non-interference as a behavioral standard in such cases and avoid anticipated domestic legitimacy costs caused by external interference in Indonesia's own secessionist conflict. The government attempted to justify the choice in relation to its domestic and international audiences, by highlighting the territorial dimension of the conflict and the continuous importance of non-interference in cases of secessionism within the region.

¹⁰⁸ Ibid; Supalak Ganjanakhundee, "Burma slaps on ASEAN face," *The Nation*, 20 November 2007.

¹⁰⁹ Abdul Khalik and Kornelius Purba, "SBY declares 'soft power' approach to Myanmar," *The Jakarta Post*, 23 November 2007.

¹¹⁰ "ASEAN mired in Burma quagmire: After summit," *The Nation*, 21 November 2007.

2.3. Leading by Example: Human Rights Protection during Cyclone Nargis

Similar to the initial response in the Saffron Revolution, the Indonesian government took the regional lead in addressing the crisis caused by Cyclone Nargis and the junta's subsequent failure in responding to the humanitarian disaster. The Indonesian response once again reflected the presence of domestic and international expectations for compliance with human rights protection. While the domestic voices supported this cause, during Cyclone Nargis it was primarily Indonesia's international audience that articulated expectations for interference in Myanmar on the basis of human rights protection.

As part of the AIPMC, Indonesian parliamentarians stated on 5 May that the group "strongly urges ASEAN leaders to take a direct approach to ensure that their counterparts in Myanmar [...] allow international aid agencies full access [...] to provide aid."¹¹¹ Moreover, a large number of Indonesian human rights NGOs, united in the group called Indonesian Solidarity for the People of Burma expressed their support for the people of Myanmar by staging protests in front of Myanmar's Embassy in Jakarta on 9 May 2008. They urged the military junta to immediately grant access to international aid groups, arguing that "the junta can neither afford the necessary relief, nor is it experienced in handling this kind of disaster."¹¹² These domestic voices, which condemned the junta's lack of action to support its people, were echoed at the international level.

Following Cyclone Nargis, Western governments quickly responded to what was initially seen as a humanitarian crisis in the aftermath of a natural disaster. Among the first to react was the US government, which in the past had led a drive for economic sanctions against the regime, but now stated that it would provide aid.¹¹³ On 7 May President George W. Bush said that Washington was prepared to use the US Navy to help search for the dead and missing.¹¹⁴ The junta, however, would not accept a US military presence on its territory. Moreover, it refused to issue visa approvals to UN relief specialists, with several dozen employees of UN agencies and the US Disaster Assistance Response Team waiting in Bangkok for visas to enter Myanmar.¹¹⁵ As the United States and other Western countries continued to be denied access to cyclone-ravaged Myanmar,

¹¹¹ "Allow Humanitarian aid organizations immediate access into Myanmar," AIPMC, 5 May 2008, accessed 6 April 2014, <http://www.aseanmp.org/?p=1212>.

¹¹² "NGO Indonesia desak Myanmar buka akses bantuan asing," *Kompas*, 9 May 2008.

¹¹³ Seth Mydans and Helene Cooper, "Aid for Myanmar mobilizes, mixed with criticism," *The New York Times*, 7 May 2008.

¹¹⁴ "US envoy says Myanmar should focus on cyclone, not referendum," *The Jakarta Post*, 7 May 2008.

¹¹⁵ *Ibid.*

on 8 May French foreign minister Bernard Kouchner urged the UN to invoke the principle of the 'responsibility to protect' as the basis of a resolution to force delivery of aid into Myanmar, if necessary against the objections of the military government.¹¹⁶

Against that backdrop, HRW called upon ASEAN members directly to convince Myanmar's government to lift the restrictions on international assistance. Brad Adams, director of HRW's Asia Division, added that "Burma's inhuman response to the cyclone is yet another embarrassment for ASEAN." He urged the organization to "formally consider expelling Burma from the regional club" should Myanmar not "reverse course on this epic tragedy."¹¹⁷ In support of Kouchner's position, Javier Solana, the EU's High Representative for the Common Foreign and Security Policy, later stated that the international community "should use all possible means to get aid through to victims of Myanmar's cyclone."¹¹⁸ Adding to the international pressure, British prime minister Gordon Brown argued that the national disaster had been turned into "a man-made catastrophe" because of the junta's negligence, thereby clearly framing it as a case of human rights protection.¹¹⁹ Kouchner went so far as to describe the regime's reaction as a crime against humanity, and condemned the junta's continued limitation of aid.¹²⁰ In agreement, US Defense Secretary Robert Gates claimed that Myanmar was guilty of "criminal neglect" for blocking large-scale international aid to cyclone victims.¹²¹

While Western powers and the United Nations were unable to contact the military leadership in Myanmar, ASEAN ministers still enjoyed high-level discussions with the junta (Renshaw 2014, 185).¹²² On 10 May, in light of the deadlock, the UN therefore directly approached Indonesia to take the lead in the region to help the reclusive country cope with the disaster.¹²³ Highlighting Indonesia's credentials, Noeleen Heyzer, secretary-general of the UN Economic and Social Commission for Asia and the Pacific (ESCAP), referred to Indonesia's own exemplary response when in 2004 it was hit by a

¹¹⁶ Steven Erlanger, "UN is urged to force Myanmar to take aid; French official says civilians are priority," *The New York Times*, 8 May 2008.

¹¹⁷ "Burma: China should push to get aid in," HRW, 10 May 2008, accessed 6 April 2014, <http://www.hrw.org/news/2008/05/09/burma-china-should-push-get-aid>.

¹¹⁸ "Update Report No. 4: Myanmar," Security Council Report, 14 May 2008, accessed 6 April 2014, <http://www.securitycouncilreport.org/update-report/lookup-c-glKWLeMTIsG-b-4130257.php>.

¹¹⁹ "Myanmar opens its door – a bit," *The Straits Times*, 18 May 2008.

¹²⁰ Seth Mydans, "Myanmar to let ASEAN coordinate foreign aid," *The New York Times*, 20 May 2008.

¹²¹ "US official condemns Myanmar over relief; But defense secretary opposes the use of force to provide aid," *The New York Times*, 2 June 2008.

¹²² Nirmal Ghosh, "Junta still ignoring visa and flight requests," *The Straits Times*, 9 May 2008.

¹²³ Abdul Khalik/Lilian Budianto, "UN wants RI to lead Myanmar relief efforts," *The Jakarta Post*, 10 May 2008.

tsunami: “Indonesia did amazing work in responding to the tsunami in Aceh and has become a leader in effective natural disaster response. Therefore, I would like ESCAP to facilitate a strong Indonesian role in Myanmar.”¹²⁴ The hope was that the Indonesian government could convince the generals to open up, by sharing best practice as a country that had experienced an international humanitarian relief mission following the deadly tsunami in 2004.¹²⁵ Readily accepting the internationally assigned role, the presidential foreign policy advisor Ali Alatas remarked that Indonesia had already started to take action in addressing the junta’s concerns over foreign interference. Alatas referred to a letter to the Myanmar prime minister Thein Sein in which Indonesian president Yudhoyono had discussed Indonesia’s experience in managing foreign aid.¹²⁶ The Indonesian government thereby addressed both domestic and international expectations in favor of human rights prioritization, and avoided legitimacy as well as reputation costs resulting from non-compliance.

While willing to take responsibility and fulfill a leadership role, the Indonesian authorities criticized the threats put forward by the West of using force to intervene in the reclusive country based on the international community’s ‘responsibility to protect.’¹²⁷ Indonesian ambassador to the UN Marty Natalegawa argued that RtoP was not meant to apply to natural disaster situations and that delivering international aid to Myanmar without governmental consent would further politicize the situation.¹²⁸ Indonesia’s refusal to support the framing of the crisis as a case of RtoP caused irritation among Indonesian parliamentarians, some of whom had embraced the international call for an intervention in Myanmar. Djoko Susilo, member of the parliament’s Myanmar Caucus, argued that “this is a now-or-never chance to prove that ASEAN matters,”¹²⁹ and criticized Marty’s refusal to support an RtoP-based Security Council mission in Myanmar, stating that he believed this stance was “not one that is shared by most Indonesians.”¹³⁰ In view of the domestic resistance, the government further justified its decision not to

¹²⁴ Ibid.

¹²⁵ Author’s interview with Indonesian representative to the AICHR (2016-2018) Dinna Wisnu, 15 March 2016, Jakarta, Indonesia.

¹²⁶ Abdul Khalik and Lilian Budianto, “UN wants RI to lead Myanmar relief efforts,” *The Jakarta Post*, 10 May 2008.

¹²⁷ Tom Hotland, “It’s time for ASEAN to act on Myanmar, says analyst,” *The Jakarta Post*, 13 May 2008.

¹²⁸ “Supporting heartless generals,” *The Jakarta Post*, 13 May 2008.

¹²⁹ Tom Hotland, “It’s time for ASEAN to act on Myanmar, says analysts,” *The Jakarta Post*, 13 May 2008.

¹³⁰ Tom Hotland, “Indonesia defends stance on UN role in Myanmar,” *The Jakarta Post*, 15 May 2008

bring the issue of relief to the UN Security Council by stating that involving the body in the crisis would shut down the whole country and would thereby threaten more lives.¹³¹

Indonesia's rejection of an RtoP-based intervention in Myanmar highlights that even though the country was among those in Southeast Asia accepting and promoting international concern for human rights, it was far from welcoming Western intervention, especially by military means, within the region. "Indonesia was willing to interfere and if necessary also do so-called naming and shaming," the secretary-general of the Foreign Ministry Imron Cotan said.¹³² "We let Myanmar know that what they did was unacceptable, but there are limits. We do not accept interference in the sense that the West had in mind, by military means."¹³³ Looking back at centuries of Western domination in Southeast Asia, Indonesia's rejection of the RtoP framing of the crisis reflects the shared aversion to Western intervention in the region. It also mirrors a repeatedly articulated Southeast Asian concern in regard to the concept of RtoP, which in the eyes of many decision makers within the region is liable to be abused by the powerful. In forcefully rejecting a framing of the crisis in terms of RtoP, the Indonesian government tried to maintain the prerogative of interpretation within its own region and avoid the creation of precedents for Western military intervention in a region ripe with crises and natural disasters.

Instead of supporting a Security Council-based mission, the Indonesian government opted for action within the ASEAN framework, after Singapore as the ASEAN chair at the time called for a special ministerial meeting on 19 May 2008. "When the cyclone happened in Myanmar, ASEAN was sandwiched between Myanmar, whose government rejected any international offer to assist, and the international community," Indonesian foreign minister Wirajuda explained. "Millions of Burmese were suffering and once again ASEAN was blamed by the international community, arguing that a crisis happened in one of our member countries and we did nothing," he added. "So I could not remain silent."¹³⁴ The regional dimension of the norm conflict meant that for those ASEAN member states committed to both norms, the costs of non-compliance with human rights protection increased, as they could suffer reputation costs individually as well as collectively through a shaming of ASEAN as an organization.

¹³¹ Ibid.

¹³² Author's interview with former ambassador and secretary-general of the Department of Foreign Affairs Imron Cotan, 7 April 2016, Jakarta, Indonesia.

¹³³ Ibid.

¹³⁴ Author's interview with former foreign minister Hassan Wirajuda, 15 August 2013, Jakarta, Indonesia.

Former ASEAN secretary-general Surin Pitsuwan, who was present at the emergency meeting, remembered the international pressure on the regional heads prior to the meeting: “The British diplomat Malloch Brown made phone calls to everyone in advance of the ASEAN meeting, saying that ASEAN cannot miss this opportunity to show that it cares.”¹³⁵ According to Australian foreign minister Stephen Smith, his Prime Minister Kevin Rudd made similar calls prior to the gathering. As Smith stressed, the purpose was to “speak to those nations whom we thought might have a better chance of persuading the regime than Australia.”¹³⁶ As Pitsuwan recalled, it was “because of the phone calls, because of the widespread expression of concern and because of the conscience-shocking dimension of what happened” that ASEAN, led by Indonesia, pressured the junta to agree to an ASEAN-led relief mechanism of unprecedented dimensions.¹³⁷ Pitsuwan added:

The world was once again held in suspense as to what we would do; if ASEAN could not handle this, it would have been a stigma on ASEAN. That was what drove us. By the time I reached Singapore and rushed into the meeting, the foreign ministers were pretty much convinced that this was an existentialist test for ASEAN. Facing the crisis we were paralyzed, but the world was ready to come in as Kouchner had argued that this was a case for RtoP and we had three Western war ships in the region ready for intervention no matter whether there was a yes or no from Yangon.¹³⁸

According to Umar Hadi, Director of Public Diplomacy at the Indonesian Foreign Ministry, the analogies used by Foreign Minister Wirajuda throughout the crisis managed to keep the generals engaged and listening:

Their first reaction was to shut down. So Hassan told them to look at what we did in Aceh a few years before, following the tsunami. We chose to have ASEAN come in, which meant that there was precedent for what we then did with Nargis. What Hassan did was leading by example, showing the generals that no harm was done by letting ASEAN in.¹³⁹

¹³⁵ Author’s interview with former foreign minister of Thailand and ASEAN secretary-general Surin Pitsuwan, 22 June 2016, Bangkok, Thailand.

¹³⁶ Maynard, “Australia praises Asean for unblocking aid flow,” *The Straits Times*, 22 May 2008.

¹³⁷ Author’s interview with former foreign minister of Thailand and ASEAN secretary-general Surin Pitsuwan, 22 June 2016, Bangkok, Thailand.

¹³⁸ *Ibid.*

¹³⁹ Author’s interview with former director of public diplomacy at the Foreign Ministry Umar Hadi, 9 March 2016, Jakarta, Indonesia.

But in making the case for an ASEAN-led mission, the Indonesian foreign minister did not shy away from also backing his arguments with the potential use of more coercive means. In the meeting, he emphasized how the regional organization had time and again shouldered blame in order to protect Myanmar. A point had been reached, he contended, at which the remaining ASEAN members had to reflect upon the purpose of having Myanmar as a member, particularly if by rejecting the offer of an ASEAN-led relief mechanism, Myanmar was again creating nothing but trouble for the organization. While the regional dimension of the crisis increased the costs of non-compliance by creating an additional level of international pressure, the anticipated collective reputation costs for ASEAN also served as a powerful and more acceptable justification for interference in discussions with member states of the organization that were less committed to human rights. Following Wirajuda's interference, Myanmar finally agreed to an ASEAN-led relief effort to channel international aid into the country.¹⁴⁰

Given the strong international expectations for Indonesia's compliance with the norm of human rights protection, expressed by the United Nations and representatives of several Western states, coupled with its own positive experiences with international relief missions in Aceh following the tsunami in 2004, Indonesia felt particularly comfortable with taking the lead in the negotiations with Myanmar. Action on behalf of human rights protection therefore supported its claim for leadership in the region and boosted the country's international reputation. It minimized domestic legitimacy and international reputation costs. With regards to Myanmar and those ASEAN members in support of non-interference in the crisis, the Indonesian government justified its interference with reference to the collective reputational damage for ASEAN as an organization in case of a continued deadlock.

2.4. Secessionism and Ethnic Conflict: Non-Interference during the Rakhine Riots

Similar to the later stages of the Saffron Revolution, the Indonesian government abstained from interfering during the Rakhine Riots in 2012, which underlines the continued importance of non-interference for Indonesia in cases with a secessionist dimension. Indonesia's prioritization of the non-interference norm was also facilitated by the relative lack of Western pressure for human rights protection during the crisis. While Western

¹⁴⁰ Khalik, "ASEAN's task force to channel foreign aid to Myanmar," *The Jakarta Post*, 21 May 2008.

governments voiced some initial concern, they quickly expressed contempt for the measures taken by the new reform-minded Myanmar government.¹⁴¹

Following the reinforcement of military divisions in Rakhine, the imposition of a curfew, and the sentencing of two Muslim men for the rape and murder of a Buddhist woman, the United States praised Myanmar's response to the sectarian fighting.¹⁴² Despite harsh criticism by rights groups such as Amnesty International, according to which Muslim Rohingyas were still fleeing arbitrary arrest and persecution by border forces, Michael Thurston, the US embassy chargé d'affaires in Myanmar, stated on 19 June that the government was "trying to help everybody who needs it."¹⁴³ Similarly, the European Union had announced even earlier on 11 June that it was satisfied with Myanmar's handling of the conflict. Maja Kocijanic, spokeswoman for EU foreign policy chief Catherine Ashton, said that the EU believed that the security forces were dealing with the violence "in an appropriate way."¹⁴⁴

The relative lack of Western international expectations regarding action on behalf of the Rohingya was contrasted with an unprecedented domestic outcry in Indonesia following the human rights violations against the Rohingya Muslims in Myanmar. Indonesian civil society, the media, academia and parliamentarians all argued strongly in favor of interference to protect the Rohingya, as human rights concerns and religious solidarity amongst the majority Muslim population in Indonesia merged to create a strong call for action. In Jakarta, regular demonstrations were held against the treatment of the Rohingya in Myanmar.¹⁴⁵ Following the declaration of the state of emergency on 10 June 2012, Indonesia's leading daily English-language newspaper, *The Jakarta Post*, called upon ASEAN to act:

Although the ASEAN Charter states that no neighbor has the right to meddle in another's domestic affairs, ASEAN should nevertheless press the regime in the same way it has these past few years, to live up to the humanitarian values and principles enshrined in the Charter.¹⁴⁶

In line with this, Indonesian human rights activists forcefully stated as early as 13 June 2012 that they were "deeply alarmed by the continued sectarian violence in Rakhine

¹⁴¹ "US 'deeply concerned' on Myanmar religious violence," *AFP*, 9 June 2012.

¹⁴² "U.S. praises Myanmar's response to sectarian clashes," *Reuters*, 19 June 2012.

¹⁴³ *Ibid.*

¹⁴⁴ "EU welcomes 'measured' Myanmar response to rioting," *Reuters*, 11 June 2012.

¹⁴⁵ Kavi Chongkittavorn, "Rohingya Plight further divides ASEAN," *The Nation*, 5 September 2012.

¹⁴⁶ "Editorial: Remember the Rohingya," *The Jakarta Post*, 19 June 2012.

state.”¹⁴⁷ The human rights violations against Rohingya Muslims led to particularly extreme reactions among Indonesia’s more radical elements of civil society. Instead of justifying their call for interference on the basis of general human rights protection, they primarily framed the crisis as a case of Muslim solidarity. Following riots against the Rohingya, on 13 July two Indonesian hard-line Islamic organizations, the *Islamic Defenders Front* (FPI) and *Jemaah Anshorut Tauhis* protested in front of Myanmar’s embassy in Jakarta, threatening to storm the building.¹⁴⁸ Shortly afterwards, the hardline organization *Hizbut Tahrir Indonesia* called for Indonesian Muslims to help the Rohingya. “What are the Muslim armies in Bangladesh, Indonesia and Malaysia waiting for?” they asked. “Can’t they see the massacre and expulsion of their brothers?”¹⁴⁹ Speaking for Indonesia’s moderate Muslim community, on 18 July Slamet Effendy Yusuf, chairman of *Nahdlatul Ulama*, Indonesia’s largest Muslim Organization, urged the president to take the initiative. He stated that “it would be great if the Indonesian government was not just a spectator in this issue” as it was not only an ASEAN member and a democracy, but also the largest Muslim country in the world.¹⁵⁰

Given the strong popular support for the Rohingya, Indonesian legislators soon joined the public in addressing the crisis and calling for interference. The parliamentarians thereby used both human rights-centered arguments and arguments grounded in Muslim solidarity to justify interference. Among the first to publicly raise the issue was Nurhayati Ali Assegaf, president of the Parliamentary Women’s World, who on 24 July urged the Inter-Parliamentary Union to take a firm stance on the “massacre of Rohingya Muslims” in Myanmar.¹⁵¹ She was followed by Eva Sundari, at the time president of AIPMC and legislator for the Indonesian Democratic Party of Struggle (PDI-P), who called for political pressure from the international community, including ASEAN and the UN:

Indonesia should not stand still. A country that ratified the UN Convention on Human Rights and the initiator of the ASEAN Charter, the government should

¹⁴⁷ “International Monitoring and Protection of all Civilians from Religious and Ethnic Violence Needed in Western Burma,” Burma Partnership, 13 June 2012, accessed 5 April 2014, <http://www.burmapartnership.org/2012/06/international-monitoring-and-protection-of-all-civilians-from-religious-and-ethnic-violence-needed-in-western-burma/>.

¹⁴⁸ “Indonesian Islamic Hard-Liners vow Jihad for Myanmar’s Rohingyas,” *The Jakarta Globe*, 13 July 2012.

¹⁴⁹ Ulma Haryanto, Ezra Sihitea and Ismira Lutfia, “Growing Unease in Indonesia over Plight of Rohingya,” *The Jakarta Globe*, 25 July 2012.

¹⁵⁰ Fertile Tjahjono, “PBNU Desak Presiden Selesaikan Masalah Rohingya,” *Kompas*, 28 July 2012.

¹⁵¹ Hartawan, “Nurhayati Ali Assegaf desak IPU ambil sikap tegas,” *Kompas*, 24 July 2012.

condemn this as a crime against humanity and push for a human rights-oriented solution.¹⁵²

Echoing Sundari's statement, representatives of the Prosperous Justice Party (PKS) demanded that "the suffering from Myanmar's Rohingya Muslims should immediately receive serious attention from the president."¹⁵³ The same day, a particularly strong critique was issued by DPR chairman Marzuki Ali. Considering the violence against Muslims in Myanmar as a gross violation of human rights and a crime against humanity, he stated that "Indonesia, which upholds human rights and is also the leader of ASEAN, must be proactive to rebuke Myanmar and urge the country to respect human rights."¹⁵⁴

In an attempt to reduce domestic legitimacy costs as a result of Indonesia's muted response to the crisis, Foreign Minister Marty Natelegawa challenged the claim that Indonesia was not concerned about the situation in Rakhine state. He argued that while the issue had not been raised publicly, it had been brought up behind closed doors in multilateral and bilateral discussions with Myanmar in the past: "Our silence doesn't mean we don't care."¹⁵⁵ But when asked what the government would do about the situation, spokesperson Julian Aldrin Pasha responded that "the administration had taken all possible measures, but for the time being, Indonesia could only use diplomacy."¹⁵⁶ Referring to this statement, *The Jakarta Post* wrote that this effectively meant that "the government of Indonesia, the world's largest predominantly Muslim country, has not appeared to be actively engaged in resolving the problem."¹⁵⁷ The author described the Rohingya massacre as a "dilemma" for Indonesia. Interfering on behalf of the Rohingya "could backfire since Indonesia has many ongoing perceived human rights violations in relation to minorities."¹⁵⁸ In other words, supporting the Rohingya could create a precedent for interference in Indonesia's own internal conflicts with religious and ethnic minorities and related separatist movements. Accordingly, the former politician Rizal Ramli argued that in order to fully represent its democratic credentials internationally, Indonesia first and foremost had to tackle its own shortcomings on the domestic front.

¹⁵² Eva Sundari cited in Haryanto et al., "Growing Unease in Indonesia over Plight of Rohingya," *The Jakarta Globe*, 25 July 2012.

¹⁵³ Herlini Amran cited in Diyoko, "PKS minta presiden beri suaka pengungsi Rohingya," *Kompas*, 25 July 2012.

¹⁵⁴ Kiki Budi Hartawan, "Ketua DPR: Indonesia harus tegur Myanmar," *Kompas*, 25 July 2012.

¹⁵⁵ Margareth Aritonang and Bagus Saragih, "RI ready to fight for Rohingya," *The Jakarta Post*, 31 July 2012.

¹⁵⁶ Ibid.

¹⁵⁷ Mochammad Faisal Karim, "ASEAN responsibility to protect," *The Jakarta Post*, 3 August 2012.

¹⁵⁸ Ibid.

Only then could it realistically draw on its experience in handling ethnic conflicts to assist Myanmar in resolving the riots.¹⁵⁹ *The Jakarta Post* senior editor Endy Bayuni agreed that it was against the backdrop of Indonesia's own domestic situation that the government's response had to be measured:

If it pushed further Indonesia would risk other countries pointing fingers at Papua, Ahmadiyah, Shia, saying that Indonesia is treating all these people just as bad as they were [...]. In the Rohingya case they [the government] will be very careful because this has to do with ethnic issues, which almost every country in ASEAN has a problem with. And Indonesia shares this problem.¹⁶⁰

But despite Foreign Minister Natalegawa's statement, Indonesian legislators continued to complain that 'diplomacy' was not enough. Pramono Anung, vice chairman of the House of Representatives, mentioned to the Indonesian newspaper *Kompas* that "a firm stance is required, not because the majority of Indonesians are Muslims, but because discrimination must not occur."¹⁶¹ In addition, calls for an Indonesian initiative to end the violence against the Rohingya were voiced by lawmakers from both Islamic and Nationalist parties within the Parliament.¹⁶² In tandem with Indonesian human rights groups, they appealed for prompt international attention to the disaster and asked the Indonesian government to officially file a protest against the government of Myanmar after it was reported that security forces had committed killings, rapes and mass arrests of the Rohingya:¹⁶³

We sent a letter to the president regarding the Rohingya and all the other problems within Burma. We asked the Indonesian government to take a role. The government always says it wants to take the lead, since unlike other ASEAN countries it has experience in building democracy and promoting human rights. So we told the government, ok, if you want to take the lead – this is the chance.¹⁶⁴

Emphasizing that it was Indonesia's "duty as a democracy" to respect human rights, House of Representatives Speaker Marzuki Ali suggested that given the government's inaction the House could send a delegation to Myanmar to look into the alleged human rights violations against the Rohingya community in the country.¹⁶⁵

¹⁵⁹ Rizal Ramli, "Indonesia and the Rohingya," *The Jakarta Post*, 7 August 2012.

¹⁶⁰ Author's interview with *The Jakarta Post* senior editor Endy Bayuni, 5 August 2013, Jakarta, Indonesia.

¹⁶¹ Sandro Gatra, "Pramono: Perjelas pembelaan untuk Rohingya," *Kompas*, 1 August 2012.

¹⁶² Mochammad Faisal Karim, "ASEAN responsibility to protect," *The Jakarta Post*, 3 August 2012.

¹⁶³ Bagus Saragih, "Myanmar trying to reconcile groups: SBY," *The Jakarta Post*, 5 August 2012.

¹⁶⁴ Author's interview with the coordinator of KontraS Haris Azhar, 5 August 2013, Jakarta, Indonesia.

¹⁶⁵ Verdinand Robertua, "Intervention in the Rohingya issue," *The Jakarta Post*, 6 August 2012.

In the meantime, the problem of setting a precedent by interfering in Rakhine state became even more pronounced for the Indonesian government when on 13 August Rohingya representatives directly appealed to the Indonesian government and parliament for humanitarian assistance. They requested that the Indonesian government intervene in Myanmar in order to enable humanitarian aid to enter the region and to advocate for the Rohingya to be accepted as citizens.¹⁶⁶ By supporting the Rohingya, who in the past had asked for independence from Myanmar, Indonesia could have been accused of assisting a separatist group and thereby directly supporting secessionism in an ASEAN member state. Explaining the Indonesian decision not to interfere despite strong domestic expectations for compliance with human rights protection, former Indonesian ambassador Wiryono Sastrohandoyo said shortly after the outbreak of violence in Rakhine: “The people are eager, [...] there are lots of people collecting money and sending doctors. But the government is trying to be respectful, because if we had that kind of situation in Papua we wouldn’t want interference.”¹⁶⁷

Indonesia’s own stance, which prioritized non-interference, also reflected the collective ASEAN position in the crisis. Accordingly, on the regional level, compliance with non-interference did not create reputation costs for the Indonesian government. As the situation intensified in August 2012, ASEAN secretary-general Surin Pitsuwan sent a letter to all ASEAN foreign ministers urging them to meet and address the Rohingya issue. Pitsuwan said that the bloc should be “part of a solution to the problem.”¹⁶⁸ The government in Myanmar, however, rejected such a meeting and said the situation was under control.¹⁶⁹ The ASEAN foreign ministers eventually issued a four-point statement on 17 August saying that they were closely following the developments and were ready to lend humanitarian assistance “upon the request of the Government of Myanmar.”¹⁷⁰ However, the Myanmar government rejected the offer, arguing that the conflict was an internal affair and ASEAN governments were not willing to push the government on the matter.¹⁷¹ In response to this claim, Pitsuwan cautioned that the atrocities being

¹⁶⁶ Sandro Gatra, “Etnis Rohingya minta intervensi pemerintah Indonesia,” *Kompas*, 13 August 2012.

¹⁶⁷ Author’s interview with former Indonesian ambassador Wiryono Sastrohandoyo, 23 August 2013, Jakarta, Indonesia.

¹⁶⁸ “ASEAN mulls aiding Rohingya,” *The Nation*, 10 August 2012.

¹⁶⁹ Pichai Chuensuksawadi, “Surin calls on ASEAN to act on Rohingya issue before minority becomes radicalized,” *Bangkok Post*, 28 October 2012.

¹⁷⁰ “Statement of ASEAN Foreign Ministers on the Recent Developments in the Rakhine State, Myanmar,” Burma Partnership, 17 August 2012, accessed 27 February 2018, <http://www.burmapartnership.org/2012/08/statement-of-asean-fms-on-the-recent-developments-in-the-rakhine-state/>.

¹⁷¹ “Myanmar declined talks offer on violence: ASEAN,” *AFP*, 30 October 2012.

committed, if not ended, could radicalize the Rohingya Muslims and destabilize the entire region. Reiterating his call for a more “proactive ASEAN,”¹⁷² he added that “ASEAN cannot be perceived to be standing by without taking any action on such a big scale of humanitarian difficulty” (Kassim 2012, 2). Pitsuwan called the ethnic violence a “disturbing trend” and reminded the ASEAN leaders that “if all of us fail, that will create an impression that we don’t care.”¹⁷³ But with a general lack of political will amongst Western governments and ASEAN states to pressure the Myanmar government, this danger did not arise.

More problematic for the Indonesian government were the continued domestic demands for compliance with human rights protection and action on behalf of the Rohingya. Throughout August more radical Indonesian Muslims demanded the expulsion of Myanmar’s ambassador for his country’s treatment of the Rohingya and called on the president to withdraw support for Myanmar chairing ASEAN in 2014.¹⁷⁴ Addressing the public support for the Rohingya, on 13 August members of *Komisi I* asked the government to bring the Rohingya issue to the international level at the next emergency session of the Organization of Islamic Cooperation (OIC).¹⁷⁵ In line with this, inter-religious intellectuals urged Indonesia and ASEAN to intensify their diplomacy “to have the Myanmar rulers end the ethnic cleansing and pay a higher price to pluralism.”¹⁷⁶

The domestic calls for action via the OIC were echoed in an unprecedented act of solidarity within the Muslim world. Muslim nations such as Iran, Turkey and Saudi Arabia spoke with one voice, which favored the protection of human rights.¹⁷⁷ The Iranian government had already started in July to urge the United Nations to take action in order to protect the Rohingya. In a letter to UN secretary-general Ban Ki-Moon, Iran’s UN ambassador, Mohammad Khazaei, wrote:

We believe that ethnic and religious cleansing against Muslims under whatever pretext is unjustifiable and inexcusable under international law, and the United

¹⁷² “Editorial, Wise words from Mr Surin,” *Bangkok Post*, 30 October 2012.

¹⁷³ Jeerawat Na Thalung, “ASEAN chief urges relief for Myanmar’s Rohingya,” *The Nation*, 18 November 2012.

¹⁷⁴ “Protestors in Jakarta Demand Indonesia Expel Myanmar Ambassador,” *The Jakarta Globe*, 9 August 2012.

¹⁷⁵ Sandro Gatra, “Etnis Rohingya minta intervensi pemerintah Indonesia,” *Kompas*, 13 August 2012.

¹⁷⁶ Ridwan Max Sijabat, “Stop humanitarian tragedy in Myanmar: Inter-religious intellectuals,” *The Jakarta Post*, 16 August 2012.

¹⁷⁷ Fuadi Pitsuwan, “West Islam can unite over Rohingya cause,” *Bangkok Post*, 20 November 2012.

Nations must take urgent measures to protect the Rohingya by calling on Myanmar's government to end its 'crackdown.'¹⁷⁸

Leading to widespread international media coverage, Turkey's first lady Emine Erdogan, together with the Turkish foreign minister Ahmet Davutoglu, visited Rakhine in August, calling upon the Islamic world to pay attention to the conflict.¹⁷⁹ Thereupon, the King of Saudi Arabia Abdullah decided to grant US\$50 million to the Rohingya, describing them as the victims of "several rights violations, including ethnic cleansing, murder, rape and forced displacement."¹⁸⁰

In an attempt to appease the growing domestic demand for action as well as the concerns of Indonesia's Muslim international audience, in mid-August the Indonesian government brought the case to the OIC.¹⁸¹ Working through the OIC ensured that the matter was addressed without Indonesia directly interfering on its own. Recalling the dilemma the Indonesian government faced, former foreign minister Hassan Wirajuda highlighted that his successor had little room to maneuver: "Without Myanmar's consent to assist there was not much else Indonesia could do to help," he said.

The problems in Rakhine are not just a case of human rights violations, but there is an ethnic and religious dimension involved, which must be handled with care and outsiders, particularly countries like Indonesia that have and still are experiencing similar problems, need to take an inclusive approach. By saying this I am not endorsing what is happening in Rakhine, but we need to understand that addressing a conflict like the one in Rakhine is a process and we in ASEAN should understand this. This means we have to address the problem in all its dimensions, not only as a case of human rights violations, but also as an ethnic conflict.¹⁸²

As a consequence, direct interference by the government could not occur. But working through the OIC as an alternative channel turned out to be difficult as well. "The problem with the OIC was that as a Muslim organization it was perceived as partial, which inhibited good communication between the organization and the Myanmar government," Wirajuda said.¹⁸³ "This is why we were delighted when former Indonesian vice president Jusuf Kalla stepped forward in his function as the chairman of the Indonesian Red Cross." Kalla offered to share with the Myanmar government lessons learned from handling

¹⁷⁸ "Myanmar unrest: Amnesty: Rohingyas being targeted," *The Nation*, 23 July 2012.

¹⁷⁹ Fuadi Pitsuwan, "West Islam can unite over Rohingya cause," *Bangkok Post*, 20 November 2012.

¹⁸⁰ "Myanmar gives green light for aid to Rohingya," *The Nation*, 13 August 2012.

¹⁸¹ Kiki Budi Hartawan, "Menlu: OKI harus ambil langkah konkret," *Kompas*, 14 August 2012.

¹⁸² Author's interview with former foreign minister Hassan Wirajuda, 15 August 2013, Jakarta, Indonesia.

¹⁸³ *Ibid.*

similar ethnic conflict in Indonesia in order to address the Rohingya crisis.¹⁸⁴ “In our country we had an ethnic conflict that left 5,000 people dead in Poso and we managed to stop this trouble before it reached other parts of the country,” Kalla stated, emphasizing that the same approach was necessary in Myanmar.¹⁸⁵ “Kalla’s approach was accepted by the generals,” Wirajuda explained, “because he offered to provide assistance not only for the Muslims but for all the locals in Rakhine.”¹⁸⁶ Travelling to Myanmar, Kalla emphasized that the Indonesian Red Cross would be non-partisan in its assistance and aid would be “purely from the PMI itself without government interference,” thereby trying to make sure that the initiative was not perceived as government interference by the Myanmar government and regional peers.¹⁸⁷

In sum, from the Indonesian government’s perspective, the prioritization of non-interference over human rights protection in a crisis that involved ethnic conflict and a group which had previously asked for independence was perceived as necessary in order to maintain the validity of the non-interference norm in cases of secessionism and territorial disintegration. The government thereby tried to minimize the potential for interference in Indonesia’s own internal affairs. Judging from past experiences of domestic outrage in cases of international involvement in Indonesia’s restive regions, or international scrutiny over its military approach to Papua, government decision-makers believed compliance with the non-interference norm would be less costly in the long term. While Indonesia’s non-interference stance caused little reputational cost in relation to its Western international audience, given the lack of expectations towards action, the government tried to appease strong conflicting domestic expectations regarding human rights protection by working through the OIC and supporting the Indonesian Red Cross mission in Rakhine. These initiatives also spoke to international expectations for action on behalf of the Muslim Rohingya, articulated by representatives of Islamic nations such as Iran, Turkey and Saudi Arabia.

3. Conclusion: The Strategy of Norm Reconciliation

The analysis of the Indonesian response to norm conflict in Myanmar has shown that even though Indonesia did not consistently prioritize one norm over the other, the response

¹⁸⁴ Hafid Abbas, “The Rohingya crisis: ASEAN vs Red Cross,” *The Jakarta Post*, 6 September 2012.

¹⁸⁵ Taufiqurrahman, “Kalla pledges aid to Myanmar Rohingya,” *The Jakarta Post*, 10 September 2012.

¹⁸⁶ Author’s interview with former foreign minister Hassan Wirajuda, 15 August 2013, Jakarta, Indonesia.

¹⁸⁷ Fabian Kuwado, “Bantuan dari PMI tanpa campur tangan pemerintah,” *Kompas*, 25 August 2012.

pattern nevertheless followed a clear logic: The Indonesian government generally complied with the human rights protection norm, unless the case in question involved a secessionist dimension or risk of territorial disintegration, as seen in the later stages of the Saffron Revolution and the Rakhine Riots. In such instances, the Indonesian government remained silent and prioritized the non-interference norm. In doing so, the government acted strategically to minimize the social costs of non-compliance with one of the two norms in relation to its relevant audiences at the domestic, regional and international levels. As a response strategy to norm conflict, Indonesia's behavior can be best described as an attempt to reconcile the two norms and thereby shape conflicting expectations and state behavior within the region to be more in line with Indonesia's normative preferences.

As a response strategy to norm conflict, norm reconciliation assumes that both norms remain within a state's normative framework, but in a slightly modified way. Akin to the legal maxim of *lex specialis*, one of the two conflicting norms is assigned to be the 'general' norm. Under the presidency of Susilo Bambang Yudhoyono, human rights protection became Indonesia's 'general' norm. This meant that in cases of choice between the conflicting norms, the government would generally comply with human rights protection. From a consequentialist perspective this made sense for the Indonesian government, as acting on behalf of human rights more often than not avoided domestic legitimacy and international reputation costs. Indonesia's domestic as well as international Western audiences both held strong preferences in favor of human rights protection.

In order for the two norms to be reconciled, *lex specialis* requires that 'a gap' be created within the general norm. Thereupon the second norm has to be reduced in its meaning to regulate only the subject matter falling within that gap. It thus becomes the 'specific' norm. In the case of Indonesia, non-interference was limited to instances of secessionism or territorial disintegration. In those cases that involved a risk of territorial disintegration, the specific norm of non-interference would apply and supersede the general norm of human rights protection. The derogation of non-interference and its simultaneous superiority over the general norm in the particular instances it regulates reflects the presence of a second strong domestic expectation for the maintenance of the territorial integrity of the Indonesian state. Among Indonesians the experience of disintegrative forces ever since their independence and the loss of East Timor has produced a fierce determination and expectation that their government will prohibit any

further territorial losses and external interference which could facilitate such an outcome. Neither the domestic support for human rights protection nor the desire to safeguard the country's territorial integrity were likely to be removed through arguments and persuasion. While the former expectation flowed directly from Indonesian self-identification as a democracy, the latter expectation, which made compliance with non-interference necessary in some cases, was a more existential concern about the survival of the state. Faced with two sets of conflicting domestic expectations that were both relevant for its response during the later stages of the Saffron Revolution and the Rakhine Riots, the government perceived the second expectations for compliance with non-interference, as stronger and ultimately more relevant for its domestic legitimacy.

In order to minimize the anticipated legitimacy and reputation costs in the cases in which it applied non-interference as the specific norm, the government tried to highlight to its audiences the link between non-interference as a standard of behavior in the region and secessionism. Where possible, the Indonesian government additionally tried to appease conflicting expectations, as seen during the Rakhine Riots. In order to limit the domestic legitimacy costs and address international expectations of the Muslim community to protect the Rohingya, the government worked through the OIC and supported a humanitarian mission by the Indonesian Red Cross to Myanmar. With respect to its regional audience, the Indonesian government tried to encourage action on behalf of human rights protection in cases without a secessionist dimension as a legitimate response that should not be seen as an act of interference. It thereby employed three main arguments: it referred to the wider international normative environment, provided precedents from Indonesia's own openness to external involvement in similar instances in the past, and highlighted the reputational damage to ASEAN as a consequence of Myanmar's behavior.

Overall, the case study provides evidence that Indonesia tried to reconcile the conflicting norms in a way that over time minimized its legitimacy and reputation costs. In the process, conflicting domestic expectations regarding legitimate action were decisive for the new framing of the two norms. Given Indonesia's vulnerability to domestic expectations due to its relatively weak coalition government, coupled with its international aspirations to be seen and judged as a 'good democracy' and promoter of human rights within the region, action in accordance with human rights protection was framed as the 'general' norm and non-interference as the 'specific' norm.

Chapter 5: Thailand's Response to Norm Conflict

Introduction

Following the analysis of Indonesia's response to norm conflict, the purpose of this chapter is to assess the response of successive Thai governments to situations of norm conflict in neighboring Myanmar. The country has a much longer history of engagement with democratic norms, including human rights protection and promotion, than most of its ASEAN peers. At the same time, Thailand, as a neighboring state, has been particularly vulnerable to events taking place inside Myanmar and still hosts large numbers of Myanmarese refugees. The chapter demonstrates that in the three cases of human rights violation in Myanmar, successive Thai governments consistently prioritized the non-interference norm over human rights protection. It shows that in view of strong conflicting expectations towards action articulated at the domestic and international levels, the government justified its response by framing non-interference as the only appropriate norm to regulate inter-state relations between Thailand and Malaysia. To do so, it highlighted the special geopolitical context, which is defined by the long and porous border between the two states. In what follows, the chapter first outlines the response pattern to the crises before explaining Thailand's response strategy as an effort to manage the articulated expectations regarding legitimate action set by the government's commitment to the two conflicting norms.

1. Analysis of the Response Pattern

The first part of the chapter systematically analyzes the responses of successive Thai governments to the human rights violations in neighboring Myanmar. It shows that despite repeated changes in the leadership, including both military-dominated and civilian governments, those in charge consistently complied with the non-interference norm in relation to Myanmar.

1.1. The Saffron Revolution

Following a month of large-scale pro-democracy demonstrations throughout Myanmar, in September 2007 the junta brutally suppressed the peaceful protests. The response of the Thai government following the Saffron Revolution was minimal, clearly prioritizing the non-interference norm over human rights protection. The country's interim

government under General Surayud Chulanont, which had come to power after a military coup in 2006, only condemned the violence following the collective ASEAN statement and swiftly returned to a policy of non-interference in the aftermath.

On 25 September, at the sidelines of the UN General Assembly debate in New York, Prime Minister Surayud told reporters that he was “not unaware of the situation in the neighboring country.”¹ A statement published later that day on the Foreign Ministry’s website said that “the government is monitoring the situation in Myanmar closely. As a fellow ASEAN member country and a close neighbor of Myanmar we sincerely hope that peace and national reconciliation will take place there.”² While acknowledging the conflict, the Thai government abstained from criticizing the junta or condemning the violence it used against the protesting civilians and monks.

It was not until the collective ASEAN statement had been issued on 27 September that Prime Minister Surayud joined the grouping in directly condemning the junta’s crackdown during his speech at the UN General Assembly: “We strongly urge Myanmar to exercise utmost restraint and seek a political solution and resume its efforts at national reconciliation with all parties concerned and work towards a peaceful transition to democracy.”³ He further stated that, as a country believing in non-violence and tolerance, “Thailand therefore finds as unacceptable the commission of violence and bodily harm to Buddhist monks and other demonstrators.”⁴ According to information available to the Thai newspaper *The Nation*, the prime minister’s speech was only at the last minute amended to include new paragraphs on Myanmar after a “long, drawn-out wrangling between Surayud’s advisors and top Foreign Ministry officials.”⁵ Three out of the four added paragraphs were taken directly from the ASEAN joint statement.⁶

Surayud’s speech at the UN was followed by a statement given by General Sonthi Boonyaratglin, which highlighted Thailand’s preferred non-interference stance towards the Myanmarese junta. The army chief, who led the Thai military coup in 2006, said that Thailand should stay engaged with Myanmar. “There are many friendly nations who help Myanmar like China and Korea, because Myanmar is a country with plenty of natural

¹ Supalak Ganjanakhundee, “Thailand expresses concern over Burma protest,” *The Nation*, 27 September 2007.

² Achara Ashayagachat, “Govt neglects crisis in Burma,” *Bangkok Post*, 27 September 2007.

³ Speech by the prime minister of Thailand Surayud Chulanont at the 62nd session of the General Assembly, New York, 27 September 2007, accessed 27 February 2018, <http://www.un.org/webcast/ga/62/2007/pdfs/thailand-en.pdf>.

⁴ Ibid.

⁵ Kavi Chongkittavorn, “Thailand’s policy of cowardice on Burma,” *The Nation*, 1 October 2007.

⁶ Ibid.

resources that the powerful nations want to obtain," he said.⁷ Opposing the junta would imply losing out on natural resources like gas. Defending the Myanmar authorities, he went on to state that the demonstrators had tried to incite the military junta.⁸

Only as international pressure mounted did Thai foreign minister Nitya Pibulsonggram announce that the prime minister would soon write a letter to Myanmar's leader, General Than Shwe, to express Thailand's concerns.⁹ However, *The Nation* subsequently described the letter as a "shameful gesture from a leader who claims to be democratic."¹⁰ According to the newspaper's information, Prime Minister Surayud used the letter to General Than Shwe to express "solidarity with him" and stressed "that he was speaking as one soldier to another."¹¹ Similarly, a high ranking military general, Charan Kullavanijaya, expressed understanding for the junta in an interview and condemned the protesting monks for their interference in politics:

We are neighbours. We know the difficulty in Myanmar. Are we able to help with solving their internal affairs? No. We can only give advice. As I mentioned earlier, when monks come on the street, there will be difficulties. It is wrong because monks should stay away from politics.¹²

In the meantime, the Thai foreign minister, who was still in the US, on 6 October met with UN Special Envoy Ibrahim Gambari, who had just returned to the UN headquarters from a four-day visit to Myanmar.¹³ The Envoy delivered a message from UN secretary-general Ban Ki-Moon to Prime Minister Surayud urging Thailand to help facilitate Gambari's stay in Myanmar by engaging all concerned parties. Surayud responded to the UN request by stating that he would address the matter in another letter, asking the Myanmar leaders to extend Gambari's stay to facilitate a political dialogue between the generals and opposition leader Aung San Suu Kyi. However, "there should not be any preconditions or any conditions before that. Just try to start the dialogue," Surayud added.¹⁴

The Thai government continued its stance of interfering as little as possible during the ASEAN summit in November 2007. Thai foreign minister Nitya Pibulsonggram

⁷ Thomas Fuller, "Myanmar's neighbors, mutual needs trump qualms," *The New York Times*, 2 October 2007.

⁸ Kavi Chongkittavorn, "Thailand's policy of cowardice on Burma," *The Nation*, 1 October 2007.

⁹ Supalak Khundee, "US leaders put Burma woes ahead of Thailand," *The Nation*, 5 October 2007.

¹⁰ Kavi Chongkittavorn, "Time for Thailand to revisit its policy on Burma," *The Nation*, 29 October 2007.

¹¹ Ibid.

¹² Maximilian Wechsler, "Election as scheduled," *Bangkok Post*, 14 October 2007.

¹³ Supalak Khundee, "Gambari briefs Nitya on Burma visit in New York," *The Nation*, 6 October 2007.

¹⁴ Ibid.

responded defensively to questions asking about a possible suspension of Myanmar's ASEAN membership. "ASEAN is the master of its own house. ASEAN comprises 10 members. No one is leaving. There is no reason why anyone is going to be discussing the question of anybody exiting ASEAN," Nitja told the reporters. He added that punishment or suspension of Myanmar for human rights violations was not an option.¹⁵ Similarly, Prime Minister Surayud stated that ASEAN respected Myanmar's wish to deal directly with the UN. "If Burma needs help, ASEAN is available but at this stage we respect their decision," he said.¹⁶ In a show of support for the generals, the Thai government invited Myanmar's prime minister Thein Sein on a state visit to Bangkok, to take place after the Thai general elections in December 2007.¹⁷

In sum, Thailand prioritized the non-interference norm in response to the Saffron Revolution. The government tried to interfere as little as possible and any negative statement was quickly followed by apologetic remarks that expressed understanding for the actions of the junta and blamed the protestors for interfering in politics.

1.2. Cyclone Nargis

The situation on the ground in Myanmar following Cyclone Nargis started as a humanitarian crisis, but in the view of international observers quickly evolved into a case of large-scale human rights violation as the junta denied international aid workers access to the affected areas. In responding to the crisis, the Thai government again prioritized non-interference. While taking on the role of a logistic hub for the international relief effort, the government ensured that it did not directly pressure or criticize the junta for its handling of the humanitarian fallout of Cyclone Nargis.

Following the cyclone, on 6 May 2008 Prime Minister Samak Sundaravej sent a letter to Yangon expressing his condolences for the tragic losses and offered assistance to help Myanmar recover.¹⁸ He stated that "if Myanmar gives the green light allowing us to help, our Air Force will provide C-130 aircraft to carry our teams there" (Honda 2009, 3). He emphasized that "this should not be precipitately carried out" but needed to "have the permission of their government" (ibid). In waiting for an invitation, Samak complied with the non-interference norm and treated the aftermath of Cyclone Nargis as a humanitarian

¹⁵ Supalak Khundee, "Burma to sign Asean charter," *The Nation*, 20 November 2007.

¹⁶ Supalak Khundee, "Burma PM opposes Asean on UN envoy," *The Nation*, 21 November 2007.

¹⁷ Kavi Chongkittavorn, "Thai diplomacy an utter failure over past year," *The Nation*, 26 November 2007.

¹⁸ "Bt 3.2 million in initial relief," *The Nation*, 7 May 2008.

disaster only. Samak's offer was welcomed on the same day by Myanmar's foreign minister Nyan Win, who stated that his country appreciated the humanitarian aid. Following an invitation from Myanmar, Thai foreign minister Noppadon Pattama announced that Thailand would send US\$100,000 in aid together with medicine and food to Myanmar.¹⁹ However, strictly adhering to the Myanmar protocol, nineteen Thai medical teams were left on standby in Bangkok to be dispatched only upon the junta's request, as the junta insisted on distributing the aid on its own.²⁰ The junta later asked its four neighbors, China, Bangladesh, Thailand and India, to send humanitarian relief teams to join the distribution effort.²¹

At the same time, international criticism of the junta's handling of the crisis magnified, prominently expressed, for example, by US First Lady Laura Bush, who blamed the generals for having failed to warn their citizens of the impending storm.²² Asked about the junta's prior knowledge of the cyclone, Thai authorities confirmed that an alert had come from the US Navy's Joint Typhoon Warning Centre as early as 27 April, but refused to comment specifically on Myanmar's knowledge.²³ Even on the third day after the disaster, international relief agencies – especially those from Western nations – were still waiting for permission to enter Myanmar, as the junta had not responded to a request to waive visa requirements for relief agencies.²⁴

In view of the restrictions, the United States desperately sought Thailand's help to gain access to cyclone-ravaged Myanmar and deliver humanitarian assistance to the millions of storm victims. On 8 May, US ambassador Eric John met with Prime Minister Samak, asking him to facilitate the granting of permission from the Myanmar leaders for the US emergency relief team to enter the country. According to Ambassador John, the prime minister gave "some assurance" that his government would work closely with the US.²⁵ The following day the *Bangkok Post* reported that Prime Minister Samak had agreed to negotiate on Washington's behalf to persuade the junta to accept aid from the West. He also promised to go to Myanmar, if need be, to coordinate response with the junta leaders.²⁶ However, the plan to go to Myanmar was abruptly cancelled. Samak had failed

¹⁹ "Thailand sends aid to Rangoon; Cyclone Nargis death toll soars past 22,000," *Bangkok Post*, 7 May 2008.

²⁰ "Bt 3.2 million in initial relief," *The Nation*, 7 May 2008.

²¹ "Race against time to help Nargis victims," *Bangkok Post*, 16 May 2008.

²² "Mixed signals from Burma over disaster," *The Nation*, 8 May 2008.

²³ "Burma warned a week ago," *The Nation*, 7 May 2008.

²⁴ "Relief groups left waiting; UN asks Burma to waive visas for aid workers," *Bangkok Post*, 8 May 2008.

²⁵ "US begs Thais to influence junta," *The Nation*, 9 May 2008.

²⁶ "Burma denies US access; relief supplies from UN starting to get through," *Bangkok Post*, 9 May 2008.

to get through to junta leader Than Shwe and his Deputy Muang Aye, due to “poor communication,” according to Thai spokesperson Wichianchot Sukchotrat. The generals had subsequently informed the Thai side that they would be “too busy” with the people affected by the deadly cyclone to welcome Samak.²⁷ Honoring the junta’s wishes, the prime minister instead dispatched his Special Envoy Lieutenant General Niphat Thonglek to Myanmar to deliver a letter to Prime Minister Thein Sein.²⁸ Special envoy Niphat declined to reveal details of the letter to the press, such as whether it asked for permission from the junta for Western relief teams to enter the country.²⁹

In response to mounting international pressure, on 10 May Myanmar’s government issued a statement saying that Myanmar was not in a position to receive rescue and information teams from foreign countries. Instead, priority was given to receiving relief aid and distributing it to the storm-hit regions with its own resources. The junta also announced that some aid workers had been deported.³⁰ Following the statement, Prime Minister Samak said: “With such a statement, there is no need for me to travel to Burma.”³¹ Despite his earlier promise to the US, on 11 May he called off his plan to travel to the country in order to negotiate access to the affected areas. In defense of the junta, Samak went on arguing that “he fully supported Burma as Thailand was a neighbor and he would not mind if his stance causes the West to isolate Thailand.”³² He further expressed his admiration for the junta, given that Supreme Commander Boonsang Niampradit had arranged for “swift assistance to Burma.”³³

Given Samak’s change of plans, the UN secretary-general Ban Ki-Moon himself called the Thai prime minister on 12 May, asking Thailand again to convince the junta to allow international relief agencies to enter the country. The UN message was passed on to the Myanmar authorities by Thailand’s Special Envoy Niphat.³⁴ The following day Foreign Minister Noppadon announced that upon the direct request of UN secretary-general Ban Ki-Moon, Prime Minister Samak was going to travel to Myanmar after all on 14 May.³⁵ Noppadon told reporters that it was unclear whether Samak would be able to

²⁷ “Thai PM to go to Rangoon on Sunday,” *The Nation*, 9 May 2008.

²⁸ “Burmese junta seizes UN food aid; agencies plead with generals to get access,” *Bangkok Post*, 10 May 2008.

²⁹ “Thai envoy to seek access for Western aid groups,” *The Nation*, 10 May 2008.

³⁰ “Tragedy compounded,” *The Nation*, 10 May 2008.

³¹ “Burmese junta seizes UN food aid; agencies plead with generals to get access,” *Bangkok Post*, 10 May 2008.

³² “UN says 102,000 dead in Burma,” *Bangkok Post*, 12 May 2008.

³³ *Ibid.*

³⁴ “UN calls on junta to open its door to aid,” *Bangkok Post*, 13 May 2008.

³⁵ “HM urges Thais to help victims,” *Bangkok Post*, 14 May 2008.

meet the top leadership on his visit,³⁶ but suggested that countries wanting to assist the cyclone victims should adopt a “sympathetic and friendly approach” towards the junta.³⁷

On 14 May Samak finally left for the capital Naypyidaw to talk to his Myanmarese counterpart Thein Sein.³⁸ The prime minister, however, failed to persuade the junta to allow foreign aid workers into the country. The government in Myanmar only agreed to the dispatch of a thirty-member Thai medical team to help the victims of Cyclone Nargis.³⁹ Upon his return from Myanmar Samak forcefully defended the generals. Amid reports of theft of aid supplies, restrictions on movement and general official neglect, Samak praised the junta’s relief efforts. “From what I have seen, I am impressed with their management,” he said. Samak, who had met with Prime Minister Thein Sein for two and a half hours, said he had been taken to shelter centers and had seen donations, especially those items donated by the Thai royal family. Moreover, the generals had given him a “guarantee” that there had been no outbreaks of disease or starvation among cyclone survivors.⁴⁰ Samak went on, emphasizing that the prime minister had expressed gratitude to Thailand for its assistance and had asked him to relay to the international community what he had seen. “They told me they are confident that they can deal with the problems. There is no outbreak of diseases and no shortage of food. They do not want anyone to intervene or teach them [what to do],” Samak said.⁴¹

At the ASEAN emergency meeting on 19 May 2008 in Singapore, it was determined that as part of the ASEAN-led mechanism, both the UN secretary-general Ban Ki Moon and ASEAN secretary-general Surin Pitsuwan would travel to Myanmar to assess the damage caused by the cyclone. But when asked for a concrete schedule, Foreign Minister Noppadon only told the reporters that “we [ASEAN] have to listen to Burma’s opinion first.”⁴² Following a meeting with UN Under-Secretary for Humanitarian Affairs, John Holmes, the Thai foreign minister agreed that in light of the huge destruction Thailand wanted Myanmar’s officials to see the necessity of having more foreign aid workers in their country, but reiterated that his government would not “force Myanmar, because we are Myanmar’s friend.”⁴³ Despite the junta’s agreement to the ASEAN-led mechanism, the

³⁶ Sai Silp, “Thai PM to travel to Burma at UN Chief’s request,” *The Irrawaddy*, 13 May 2008.

³⁷ “Thai PM to visit Myanmar on May 14,” *OneIndia*, 13 May 2008.

³⁸ “HM urges Thais to help victims,” *Bangkok Post*, 14 May 2008.

³⁹ “Burma to allow in Thai medical team,” *Bangkok Post*, 15 May 2008.

⁴⁰ Brian Cartan, “Thai ties bind Myanmar Cyclone relief,” *Asia Times*, 24 May 2008.

⁴¹ “Burma to allow in Thai medical team,” *Bangkok Post*, 15 May 2008.

⁴² “UN chief to fly to Burma for talks with the generals,” *Bangkok Post*, 20 May 2008.

⁴³ “UN ups pressure on Burma’s aid-shy junta,” *The Nation*, 21 May 2008.

Myanmarese administration kept delaying access for international aid workers. While UN agencies continued to press the junta to allow in more foreign workers, Foreign Minister Noppadon only observed “they have opened more, at least granting permission for foreign media and some international aid workers to see the devastated areas, but it is not unhindered access.”⁴⁴

To sum up, the Thai government would have been in a position to exercise much more pressure on the junta, given the level of communication it enjoyed with the generals. But at no point did the Thai government choose to openly criticize the Myanmarese government for its failure to provide adequate help to its people. Prime Minister Samak instead repeatedly publicly defended the junta leaders, thereby prioritizing a policy of non-interference over human rights protection.

1.3. The Rakhine Riots

The Thai response to the riots in Rakhine state in Western Myanmar and the subsequent violence against the Muslim Rohingya in 2012 was one of absolute silence. The government under Prime Minister Yingluck Shinawatra, which had come to power after the general elections in August 2011, chose to prioritize the non-interference norm over human rights protection. During the entire period of the crisis not a single official government statement was issued by the Thai administration, which instead strengthened its bilateral relations with the government in Myanmar during an official state visit.

The signals Thailand sent by welcoming President Thein Sein for his first official state visit to Thailand on 22 July 2012 were far from indicating disapproval of his government’s handling of the crisis in Rakhine.⁴⁵ Although the two governments discussed the possibility of elections in Myanmar, “the Rohingya were not a topic of the meeting,” as the foreign minister of Thailand at the time, Surapong Tovitackchaikul, admitted. This statement shows that despite Thailand’s direct access to the junta leaders, Prime Minister Yingluck Shinawatra chose not to touch upon the topic. On the contrary, she instead agreed with her Myanmarese counterpart to “strengthen cooperation.”⁴⁶ After a 90-minute discussion, several Memoranda of Understanding on technical cooperation,

⁴⁴ “Junta still delaying aid work,” *The Nation*, 26 May 2008.

⁴⁵ “Editorial – ‘Only solution’ unacceptable,” *Bangkok Post*, 20 July 2012.

⁴⁶ Achara Ashayagachat, “Thailand, Myanmar agree to strengthen cooperation,” *Bangkok Post*, 23 July 2012.

economic development cooperation and energy security were signed by the respective Ministers.⁴⁷ Thailand further pledged to support Myanmar in areas of human resource development, capacity building for its upcoming ASEAN chairmanship and infrastructure development, according to a joint press statement issued by Prime Minister Yingluck.⁴⁸

The Thai government maintained its mute response to the crisis in October as fighting between the Muslim and Buddhist groups in Myanmar recommenced and violence against the Rohingya was reported to have become much more systematic. Instead of addressing the situation in Rakhine, the government used the ASEAN summit in Phnom Penh in November 2012 to formally announce the two countries' cooperation on the Dawei deep-sea port development in the Thai-Myanmar border area.⁴⁹

Once again, therefore, the Thai government prioritized the norm of non-interference over human rights protection by choosing not to comment on the riots in Rakhine state. Indeed, it went even further, at least symbolically, in backing the Myanmar government by welcoming President Thein Sein in Bangkok and intensifying cooperation.

2. Explaining Thailand's Response to Norm Conflict

As the above analysis has shown, the respective Thai governments chose to prioritize the non-interference norm over human rights protection in all three situations of norm conflict. They tried to interfere as little as possible and only momentarily deviated from their chosen path of action in response to direct regional or international pressure. Thailand's behavior in these instances of norm conflict therefore manifested as a relatively uniform response pattern in favor of compliance with non-interference, despite various changes in government. The non-elected coup government under Prime Minister Surayud Chulanont avoided interference during the Saffron Revolution in 2007, as Myanmar had invoked the non-interference norm. After the general elections in December 2007, newly elected Prime Minister Samak Sundaravej had to deal with the junta's uncompromising stance during Cyclone Nargis. Samak again chose to interfere as little as possible and even defended the junta when the generals were internationally scrutinized for their failure to effectively address the humanitarian crisis unfolding in

⁴⁷ "Thein Sein, PM ink deal on sea port," *Bangkok Post*, 24 July 2012.

⁴⁸ Achara Ashayagachat, "Thailand, Myanmar agree to strengthen cooperation," *Bangkok Post*, 23 July 2012.

⁴⁹ "Achara Ashayagachat, "Dawei cooperation announced," *Bangkok Post*, 19 November 2012.

Myanmar. Finally, in 2012 Prime Minister Yingluck Shinawatra avoided any interference in Myanmar during the Rakhine riots, on which she did not comment at all. Instead of addressing the crisis, which resulted in another flow of Rohingya refugees to Thailand, she preferred to strengthen bilateral ties with the Myanmar government, especially in the economic sector.

The fact that the Thai government chose to generally comply with the norm of non-interference despite the presence of direct international pressure in favor of human rights protection suggests that the government must have been confronted with what it perceived to be a stronger expectation in favor of non-interference from its domestic audience. As suggested in the theory chapter, we would expect the government to adopt a response strategy that tries to manage conflicting expectations at the domestic and international levels. Context-specific norm replacement is such a response strategy. Unlike norm reconciliation, over time it manifests in a 'uniform' response pattern and in contrast to general norm replacement, it accounts for the discrepancy in Thailand's behavior vis-à-vis Myanmar and its generally supportive stance towards human rights protection at the regional level by factoring in a 'special relationship' between the countries as direct neighbors. In estimating the costs and benefits of norm compliance, Thailand believed that the costs of violating the non-interference norm would outweigh the benefits of complying with human rights protection in cases of rights violations in Myanmar. In what follows Thailand's response pattern and strategy to norm conflict will be explained in light of the articulated expectations at the domestic, regional and international levels.

2.1. The Need to Please: Non-Interference during the Saffron Revolution

Despite the mounting international pressure on the junta, applied by the UN secretary-general Ban Ki-Moon and Western powers at the annual UN General Assembly debate as early as 25 September 2007, the Thai interim government of General Surayud Chulanont refrained from criticizing Myanmar. Its reluctance to act on behalf of human rights protection in line with the expectations articulated by the international community reflected a strong domestic expectation that the Thai government would maintain friendly relations with the neighboring regime. This expectation was primarily articulated by the rural Thai population and the country's powerful business class. It was hoped that by applying a policy of non-interference Thailand's border trade with Myanmar and access to the country's natural resources would remain unaffected. In light of these

domestic preferences, the Thai government considered domestic expectations set by the shared commitment to non-interference to be stronger than international expectations for compliance with human rights protection. Violating the non-interference norm might have entailed not only reputation costs within the region, as the majority of the ASEAN member states individually prioritized non-interference during the crisis, but more importantly, it would also have risked legitimacy costs at home if trade were affected by a deterioration in relations with Thailand's neighbor.

Ever since the Asian financial crisis in 1997, the "uneasy alliance" between the liberal urban middle class and the rural population, which had facilitated democratic reform in Thailand since the 1980s, and a human rights-centered foreign policy in relation to Myanmar, had been broken (Stern 2007, 137). The rural population's tacit consent to the democratization process had been based on the premise of simultaneous economic growth, which had led to unequalled prosperity and an enhanced quality of life for all Thais (Bureekul and Albritton 2003, 2). While benefitting least from the democratic reforms, the rural population was hit hardest during the Asian financial crisis, causing a high unemployment rate and a widening income gap between the city and countryside (Bunbongkarn 1999, 1). But the effects of the crisis not only undermined and ultimately destroyed the coalition between urban and rural forces. It also caused a social rift within the middle class itself, which was split between an emerging class of entrepreneurs and the traditional bureaucracy. The latter believed that the financial crisis had been caused by cronyism, nepotism and corruption in the financial sector and wanted these deficiencies to be corrected by developing the country's democratic structures. Thai businesses, in contrast, were primarily interested in pursuing their economic interests at home and abroad, which importantly included access to Myanmar's vast natural resources. This endeavor had been hindered in the past by the Democrat-led government's human rights-centered stance towards Myanmar. Bilateral relations under Prime Minister Chuan Leekpai had thus been described as "somewhat strained over democracy and human rights."⁵⁰ The rural population in particular perceived the Democrat Party's foreign policy as a threat to flourishing border trade with the neighboring regime, upon which many of them depended to earn a living (Bunbongkarn 1999, 6). In response to acts of interference by Thailand on behalf of human rights protection, the Myanmar junta had repeatedly closed the border and in November

⁵⁰ "New govt to alter policy on Burma," *The Nation*, 16 February 2001.

1999 imposed economic sanctions on Thailand, which hit Thai businesses hard (Chachavalpongpun 2010, 121).

Voting the Democrat-led government out of office in the elections of 2001, the rural population instead entrusted business mogul Thaksin Shinawatra with governing the country (Neher 1995, 200; Stern 2007, 137; Wun'Gaeo and Cheangsan 2007, 161). Outnumbering the urban middle class at the polls, the rural population redefined the parameters of the government's legitimacy, which was no longer primarily gained by pursuing democratic goals domestically and abroad, but by speaking to the economic interests of the rural population and Thailand's rising business class. A commitment to development thus became the new domestic paradigm. Reflecting this change, Thaksin immediately announced a return to a non-interference policy in relation to Myanmar and other neighboring states after coming to power.⁵¹ His foreign minister Surakiart Sathirathai told *The Nation* that Thailand's policy vis-à-vis its neighbors would be one of 'forward engagement,' guided by a business-driven rather than ideological agenda. "We must identify key relationships and focus on dimensions where we can cooperate. Our foreign policy must correspond with the economic needs of Thailand," he said.⁵² While former prime minister Leekpai had not visited Myanmar once during his time in office, Thaksin promised to make Yangon one of his first official destinations.⁵³ Smooth relations with the junta facilitated access to Myanmar's market and in what followed Thai investment in Myanmar was enthusiastically encouraged (Chachavalpongpun 2010, 121). Not least due to Thaksin's "cosy relationship with the Myanmar generals," the economy recovered during his premiership (Chachavalpongpun 2010, 122). By 2005 Myanmar had become Thailand's largest trading partner and major energy supplier. Since Myanmar was remade into a "lucrative market for hungry Thai businesses," public concerns over democracy, human rights and justice diminished noticeably in designing and implementing Thai foreign policy in relation to the neighbor (Chachavalpongpun 2010, 125).

Even though Thaksin was ousted in the 2006 military coup d'état, the interim military government maintained his policy of non-interference in Myanmar due to Thailand's acute economic dependence on Myanmar and the rural population's strength

⁵¹ Vorapun Srivoranartand Marisa Chimprabha, "Human rights still a top priority," *The Nation*, 1 March 2001.

⁵² "New govt to alter policy on Burma," *The Nation*, 16 February 2001.

⁵³ Ibid; "Editorial, new government needs new policy on Burma," *Bangkok Post*, 10 July 2001.

in numbers at the polls. In speaking to the domestic development paradigm set during the Thaksin administration, the new government tried to appease Thaksin supporters after his forced removal as prime minister. In addition, the close relations between the Thai and Myanmarese military leadership further facilitated a choice in favor of non-interference during the Saffron Revolution. Vivid public displays of their close relations had been released earlier that year during General Sonthi Boonyaratglin's two-day visit to Myanmar. The general had been a leading figure behind the military coup d'état in 2006. A photograph published in the *Bangkok Post* on 29 August 2007 showed the general politely bowing his head while shaking hands with junta leader General Than Shwe.⁵⁴ Taken together, the dominant domestic expectation for non-interference and the close military ties between the two countries explain why General Surayud refused to join the rest of the world in condemning the junta's crackdown.

Demonstrating the split across Thai society, Surayud's half-hearted statement on 25 September 2007 in which he failed to condemn the violence almost instantly caused resistance within the Thai urban middle class. As a consequence, the domestic expectations for legitimate action by the Thai government during the Saffron Revolution were far from uniform. As the main mouthpieces of this constituency, the liberal English-language newspapers *Bangkok Post* and *The Nation* immediately criticized General Surayud's slow response. *Bangkok Post* editor Achara Ashayagachat argued that the government was neglecting the crisis, "despite the lead set by others in the international community."⁵⁵ Concerned about Thailand's international reputation, she commented: "Prime Minister Surayud Chulanont [...] is too preoccupied with prepared messages to the world about Thailand's efforts to return to democracy that he has had little time to address the Burma problem."⁵⁶ For the Thai middle class a tough stance towards the neighboring authoritarian regime had always served as an expression of Thailand's democratic credentials. Representing the most politicized sector of Thai society, it had grown increasingly committed to democratic values and procedures, which in the 1992 elections led to the victory of the Democratic Party with Chuan Leekpai as the new prime minister. Economic growth not only swelled the urban middle class, but also increased its influence on policymaking, until the 2001 general elections and Thaksin's political victory (Ockey 2004, 154–55).

⁵⁴ Richard Ehrlich, "At the top of tyranny," *Bangkok Post*, 30 September 2007.

⁵⁵ Achara Ashayagachat, "Govt neglects crisis in Burma," *Bangkok Post*, 27 September 2008.

⁵⁶ *Ibid.*

Politically, Surayud's lack of attention to the crisis caused relatively little opposition, reflecting a general awareness among politicians that good relations with Myanmar were essential for domestic support, especially in view of the scheduled general elections in December 2007. Accordingly, only a few outspoken Thai legislators addressed the topic.⁵⁷ On 26 September 2007, Jon Ungphakorn, a member of the Thai Senate, criticized the government for reacting too slowly to the crisis unfolding in the neighboring state.⁵⁸ He called upon the government to

relinquish its wimpish 'non-interference' position on the Burmese domestic situation and tell the Burmese regime in no uncertain terms that any use of violence to crackdown on the peaceful mass demonstrations for democracy and social justice [...] will be completely unacceptable to Thailand.⁵⁹

As a member of the ASEAN Inter-Parliamentary Myanmar Caucus, he further stated that the grouping believed that ASEAN countries could not realistically adhere to the current policy of "non-interference," as events in one country often affected its neighbors and sometimes the whole region. "No one can really argue with the fact that the domestic situation in Burma had immense impact on the ASEAN community as a whole, and particularly Thailand," he concluded. In view of an expected wave of Myanmarese refugees entering Thailand, which had long served as a safe haven for dissidents from the neighboring country, Ungphakorn appealed to the Thai government to directly speak out against the junta.⁶⁰ A similar call came a few days later on 19 September from Democrat Party member Kraisak Choonhavan, who openly lashed out at the Thai military for being too soft on the junta. He argued that "as a neighbour, the government's stance on the issue is shameful [...]. The government fails to show support for the Burmese public or call on the junta to show morality towards its people."⁶¹

While it is often argued that respect for human rights and their prioritization in Thailand's foreign policy is a reflection of whether the military or civilians are in power, the muted response of the Democrat Party in particular and legislators in general during

⁵⁷ Following the coup, the military dissolved the acting House of Representatives and Senate and replaced them with the Council for Democratic Reform on which 58 prominent civilians served as advisors to the military.

⁵⁸ Jon Ungphakorn, "Straight to the point, the time to speak out on Burma is now," *Bangkok Post*, 26 September 2007.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ "ASEAN slams Burmese junta, dissidents say over 200 killed in crackdown," *Bangkok Post*, 29 September 2007.

the Saffron Revolution suggests otherwise. The Democrat party's position did not differ widely from the official government stance, which tried to preserve the *status quo* in the country's relations with Myanmar by prioritizing non-interference over human rights protection. The liberal newspaper *Bangkok Post*, therefore, wrote indignantly during the Saffron Revolution, "what is also frustrating is the negligence of the Democrat party."⁶² According to surveys at the time of the Saffron Revolution, the Democrats could still hope to win the December 2007 general elections.⁶³ Their silence during the crisis thus reflects the general awareness that a prioritization of human rights protection in Thailand's relations with Myanmar involved the risk of severe legitimacy costs at home. In order to win the upcoming elections, the Democrats also needed to mop up votes from the rural population and the Thai business class. As a consequence, no political party represented the views of the urban middle class during the Saffron Revolution.

In assessing the expectations articulated by its relevant audiences, the Thai government only came around to condemning the junta's violent crackdown as Western pressure mounted during the annual UN General Assembly debate and a collective ASEAN statement was issued on 27 September. "It had to be clear that the incident affected the sentiments of the people in the world and the UN had taken the lead, before Thailand would follow," Achara Ashayagachat, editor at the *Bangkok Post*, wrote, explaining Thailand's momentary deviation from its policy of non-interference.⁶⁴ Recalling the episode, Surapong Jayanama, who served as the deputy secretary-general of the Foreign Ministry at the time, elaborated on the Foreign Ministry's motivation to change the prime minister's speech in a last minute act:

The Saffron Revolution was not the first time that they killed their own people. That has happened so many times before. We regard that as their own internal affair, as do other ASEAN states. But if it destabilizes the region or if it tarnishes the reputation of ASEAN, then we can no longer stay mute or pretend nothing has happened. ASEAN had taken the lead and we had to follow.⁶⁵

For the Thai government, the collective ASEAN position in favor of human rights protection intensified the costs of non-compliance with the human rights protection norm

⁶² Achara Ashayagachat, "Govt neglects crisis in Burma," *Bangkok Post*, 27 September 2008.

⁶³ Kavi Chongkittavorn, "Thai diplomacy an utter failure over past year," *The Nation*, 26 November 2007.

⁶⁴ Author's interview with *Bangkok Post* senior editor Achara Ashayagachat, 11 May 2016, Bangkok, Thailand.

⁶⁵ Author's interview former ambassador and deputy secretary-general of the Foreign Ministry under prime minister Surayud Surapong Jayanama, 15 June 2016, Bangkok, Thailand.

by adding additional reputation costs in relation to its democratic peers in the region, which had lobbied for the statement. But ASEAN pressure for a joint position on the crackdown was not the only reason why Prime Minister Surayud agreed to change his speech. "Another reason why he made this statement was to turn the tables on the Western countries," Surapong recalled.⁶⁶ The rationale was as follows: "We had to show the world that even though General Surayud was an unelected prime minister, who had come to power via a coup, he was of course a democrat (small d)."⁶⁷ The domestic liberal media, however, dismissed the statement issued by the prime minister. *The Nation* indignantly wrote: "It is sad but true that the Thai delegation did not have the courage to say something of its own. They did not even bother rewording or rephrasing those sentences" taken from the joint ASEAN statement.⁶⁸ In view of the continuing violence against the protestors, an editorial in *The Nation* called upon the international community to "cut all support for the evil regime." It demanded in particular that those countries with close military and economic ties to the junta – especially Thailand – tell the generals "in no uncertain terms" that they cannot "butcher pro-democracy protesters the way they did in the past and expect the world to sit idly by."⁶⁹

But apparently unmoved by domestic pressure from liberal Thai forces, the government in tandem with Thai businesses focused instead on addressing public fears of an economic downturn as a result of the crisis. The Thai government repeatedly assured its domestic audience that it was carefully monitoring the situation across Thailand's western border. Thai traders had warned that border trade with Myanmar, worth almost US\$800 million per year, could be significantly hit if the ongoing protests turned violent. Apriradi Tantraporn, director-general of the Foreign Trade Department, thereupon emphasized that the border checkpoints would remain open and trade was unlikely to be affected.⁷⁰ Vice president of the Charoen Pakphand Group (one of the world's largest conglomerates) Sarasin Viraphol similarly announced that the protests would not affect the group's investments. "We will perceive Burma as a country of investment potential. The unrest involves domestic problems that should not make a negative impact on the economy," he said.⁷¹ At the same time domestic expectations

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Kavi Chongkittavorn, "Thailand's policy of cowardice on Burma," *The Nation*, 1 October 2007.

⁶⁹ "Editorial: Cut all support for evil regime," *The Nation*, 27 September 2007.

⁷⁰ "Unrest in Burma to hit border trade, PTTEP reports business as usual," *Bangkok Post*, 27 September 2007; "Cross-border trade normal despite tension in Burma," *The Nation*, 27 September 2007.

⁷¹ "Anxious watch by Thai companies," *The Nation*, 26 September 2007.

articulated by Thai Buddhist and human rights agencies in Thailand, which had called on the Supreme Sangha Council of Thailand to take a stance against the killing of Burmese monks and civilians that were demonstrating peacefully, remained unaddressed. The joint statement of seventeen agencies argued that it would be an appropriate obligation for Thai Buddhists to help stop the violence in neighboring Myanmar. Although Thai Buddhism should not interfere in politics, non-violent solidarity should be encouraged.⁷² But in line with Prime Minister Surayud's stance, the Thai Sangha, which has long been under the tight supervision of the government, remained silent (Stern 2007, 135).

Domestically, the government's non-interference stance reflected the military's preferences and avoided legitimacy costs among its numerically strongest domestic audience, the rural population and Thai business class. Internationally, however, the government's non-interference policy proved problematic, as it threatened to incur reputation costs in light of the international community's emphasis on human rights protection during the crisis. Among Southeast Asian nations, Thailand – next to the Philippines – has the longest-standing ties to the Western world. Unlike most of its regional peers, it was not non-aligned during the Cold War, but formally cooperated with the West and the United States in particular. Therefore, in order to reduce the reputation fallout from its non-interference policy in relation to its Western international audience, Foreign Minister Nitya Pibulsonggram argued that as an immediate neighbor with 2401 kilometers of shared border, Thailand could not push too hard without jeopardizing relations. "If they had not been bothered about their international image, they would not have defended themselves. But they did, so of course they cared," wrote Achara Ashayagachat in explaining the government's justification.⁷³ Following a meeting with the British foreign secretary David Miliband, Foreign Minister Nitya added that "what Thailand can do best is to support ASEAN and United Nations special envoy Ibrahim Gambari."⁷⁴ Thereupon, Miliband expressed understanding for Thailand's "unique circumstances" in relation to Myanmar, as the Kingdom was the first place where displaced persons from Myanmar arrived.⁷⁵ "As always, the government used its long border with Myanmar as the big excuse for doing nothing, arguing that if they say things,

⁷² "Effigy of Than Shwe set on fire," *The Nation*, 29 September 2007.

⁷³ Author's interview with *Bangkok Post* senior editor Achara Ashayagachat, 11 May 2016, Bangkok, Thailand

⁷⁴ Supalak Khundee, "Thai role gets UK backing Britain tells Nitya, it understands Kingdom's unique circumstances," *The Nation*, 30 September 2007.

⁷⁵ *Ibid.*

they would get in trouble with Myanmar,” reflected Phil Robertson of HRW, who at the time worked as an independent consultant in Bangkok.⁷⁶ “And people accepted it.”⁷⁷ Domestically, however, Foreign Minister Nitya’s argument was judged more critically, as commentators turned the foreign minister’s argument on its head:

As a Buddhist, frontline state, the government should come out with statements that are more fruitful and stronger, not wishy-washy [...]. As a frontline state to Burma, Thailand has utterly failed to show leadership for the grouping [...]. Since it shares a 2401-kilometer border with Burma, Thailand should have more say in ASEAN policies toward the country. The Foreign Ministry has instead preferred a passive approach. Just look at the problems caused by the Burmese junta’s intransigence against its people that Thailand has to deal with [...]. Through inept attitudes and policies, the Thais have failed to respond to Burmese people’s request for basic rights and freedoms.⁷⁸

Finally, joining in on the domestic criticism, on 2 October US chargé d’affaires in Yangon, Shari Villarosa stressed that more international help was needed, especially from neighboring Thailand: “I think the Thai government should speak out critically about what’s happening. I think they should reconsider business arrangements that they have with the Burmese generals.”⁷⁹ She thereby hinted at the fact that while China and India had large-scale energy projects planned or under construction in Myanmar, the revenue from these investments had not yet materialized. Until the respective oil and gas taps were turned on, ASEAN countries remained the top source of Myanmar’s foreign exchange revenue. Between 2005 and 2007, Thailand and Singapore had provided over 98 percent of new foreign direct investment in Myanmar. At the time, revenue from natural gas supplies to Thailand earned the Myanmar junta approximately US\$160 million per month in sales, equal to 43 percent of Myanmar’s overseas revenue.⁸⁰ By stopping their investments, Thailand and Singapore could have starved the regime.⁸¹

The expectations towards Thailand articulated by the United States were particularly important as at that time a Thai government delegation had stopped in the United States on its tour to seek international recognition from world leaders after the

⁷⁶ Interview with the deputy director of the Human Rights Watch Asia Division Phil Robertson, 8 June 2016, Bangkok, Thailand.

⁷⁷ Ibid.

⁷⁸ Kavi Chongkittavorn, “Thailand’s policy of cowardice on Burma,” *The Nation*, 1 October 2007.

⁷⁹ “Burmese junta said to have jailed 1000 demonstrators,” *The Nation*, 2 October 2007.

⁸⁰ Adam Cooper, “The Association of Southeast Asian Nations: The Burma Factor; What ASEAN should do about Burma,” *Bangkok Post*, 16 November 2007.

⁸¹ Ibid.

2006 military coup d'état.⁸² To explain the political developments in Thailand and assure their counterparts that the Kingdom was moving back to a democratic path, Foreign Minister Nitya met with several US senators and congressmen during his stay in the US.⁸³ For the Thai government, US recognition mattered in particular, as the country was its main Western ally. Since the Second World War, the United States has been the primary security and political guarantor for the Thai state (Farrelly 2013, 291). The US-Thai relationship, which has been based on robust military-to-military cooperation, solidified during the Cold War with Thailand serving as a reliable anti-Communist ally in the region (Chanlett-Avery, Dolven, and Mackey 2015, 6). In 2003, Thailand was accorded the status of a major non-NATO ally, following a brief but intense round of counterterrorism cooperation with the US during the first Thaksin administration.⁸⁴

Given the perceived importance of US support, it was with some indignation that Foreign Minister Nitya noted that US lawmakers were actually far more interested in discussing the situation in Myanmar than Thai affairs. Following pressure from the US, Nitya finally announced that Prime Minister Surayud would soon write a letter to Myanmar's leader, General Than Shwe, to express Thailand's concerns.⁸⁵ "The Thai military is receptive. They care about their image, so when the international community speaks they always listen," Laurent Meillan, Head of the regional UN Office for the High Commissioner for Human Rights, stated as an explanation for Surayud's consent to contact the junta on the matter.⁸⁶ But Surayud's willingness to cooperate internationally also reflected, and was meant to counteract, a growing domestic concern, summarized by the Thai Chamber of Commerce. It worried that if the international community continued to intensify pressure on trading partners to impose sanctions on Myanmar, Thai businesses could be severely affected.⁸⁷ While concern for the country's reputation in the Western world did not tip the balance in favor of a general prioritization of human rights protection during the crisis, Western expectations nevertheless forced the Thai government to make concessions in favor of the norm. As requested by US lawmakers, this involved writing a letter to the Myanmarese junta on the matter of the Saffron

⁸² Supalak Khundee, "US leaders put Burma woes ahead of Thailand," *The Nation*, 5 October 2007.

⁸³ Including Virginia senator Jim Webb, Indiana Senator Richard Lugar and California Representative Tom Lantos.

⁸⁴ "Obama visit to confirm on US policy on Asia," *The Nation*, 12 November 2012.

⁸⁵ "Thailand protest at Burmese crackdown," *The Nation*, 9 October 2007; Supalak Khundee, "US leaders put Burma woes ahead of Thailand," *The Nation*, 5 October 2007.

⁸⁶ Author's interview with the Officer in Charge of the Regional Office of the United Nations High Commissioner of Human Rights (OHCHR) Laurent Meillan, 3 May 2016, Bangkok, Thailand.

⁸⁷ "Thailand protest at Burmese crackdown," *The Nation*, 9 October 2007.

Revolution. Justifying the letter, Prime Minister Surayud apologetically stated that Thailand also had “to look at the international community, the UN and ASEAN.”⁸⁸

The Thai government’s sensitivity to international expectations was evidenced again upon Foreign Minister Nitya’s return to New York on 6 October, where UN secretary-general Ban Ki-Moon directly urged Thailand to help facilitate UN Special Envoy Ibrahim Gambari’s stay in Myanmar.⁸⁹ Ban Ki-Moon’s call was backed by several European governments. In an opinion piece published the following day in *The Nation*, French foreign minister Kouchner and British foreign secretary Miliband addressed ASEAN in general and Thailand in particular. They called upon Myanmar’s neighbors to “play a vital role in helping to build a better future for the people of Burma.”⁹⁰ Kouchner and Miliband went on, stating that for ASEAN, “turning a blind eye would jeopardize the whole process of democratization and development of this region and damages its credibility.”⁹¹ Confronted with direct international pressure articulated by the UN and Western governments, General Surayud again conceded and agreed to address the matter in another letter to Myanmar. At the same time, Surayud clarified that any dialogue with the junta had to come without preconditions, thereby trying to take the edge off his initiative, which could have been perceived as an act of interference by the Myanmar government.

Following the momentary concession to Western expectations, the Thai government swiftly returned to its position of non-interference in relation to Myanmar. At the ASEAN summit in November 2007, when the Myanmar junta forcefully reiterated its stance according to which the protests constituted an internal affair, the government backed the junta and ruled out any form of sanctions. *The Nation* described the government’s performance at the ASEAN summit in Singapore as “two digits below par” and concluded that Thai leaders were seen “failing to appreciate the democratic aspirations inside Burma.”⁹² The Thai government, however, underlined its position when “in the most obvious show of support for the generals,” it invited Prime Minister Thein Sein for a state visit to Bangkok.⁹³

⁸⁸ Ibid.

⁸⁹ Supalak Khundee, “Gambari briefs Nitya on Burma visit in New York,” *The Nation*, 6 October 2007.

⁹⁰ “Maintaining the Momentum on Burma, Kouchner, Miliband,” *The Nation*, 17 October 2007.

⁹¹ Ibid.

⁹² Kavi Chongkittavorn, “Thai diplomacy an utter failure over past year,” *The Nation*, 26 November 2007.

⁹³ Ibid.

Overall, it can be said that in view of conflicting expectations for compliance with the two norms during the Saffron Revolution, the government aligned its stance with the expectations of the numerically strongest domestic groups, the rural population and Thai business class. These constituencies expected the government to maintain friendly relations with Myanmar and thereby guarantee continued access to the market next door. In addressing this expectation, the government avoided legitimacy costs at home. In contrast, conflicting domestic expectations in favor of interference on the basis of human rights protection expressed by the liberal urban middle class did not weigh heavily in the government's considerations. It neither showed a willingness to make concessions with respect to the expectations of its human rights advocating domestic audience, nor did it justify its actions to them. Internationally, the government justified its policy of non-interference by highlighting Thailand's special geopolitical position as a direct neighbor of Myanmar. In doing so, it hoped to reduce conflicting international expectations for compliance with human rights protection and thus minimize the reputation costs of norm violation. Despite Thailand's excuses, direct expectations were articulated by its long-term international partners, the United States and the United Nations. The government was therefore willing to make some concessions and momentarily divert from its non-interference policy. However, in each case the government justified its position regarding the junta and swiftly returned to a stance of non-interference.

2.2. Cyclone Nargis: Non-Interference and Concessions

When, less than a year after the Saffron Revolution, Cyclone Nargis hit Myanmar in May 2008 with a destructive force and the junta shut the country to international aid workers, the Thai government now headed by Prime Minister Samak Sundaravej again opted for a non-interference policy in response to the crisis. A crony of ousted Prime Minister Thaksin Shinawatra, Samak had come to power following the general elections in December 2007.

On the domestic level the government's prioritization of non-interference over human rights protection once again reflected a domestic expectation for friendly relations between the two states. In safeguarding close relations with Myanmar, Prime Minister Samak tried to please his main voter base, the rural population and the business class, which were dependent on continued access to Myanmar and flourishing border trade. The government's prioritization of non-interference over human rights protection was further facilitated by the fact that even the urban middle class initially articulated few

expectations for an alternative approach. “Domestically the crisis was primarily seen as a humanitarian disaster,” Achara Ashayagachat from the *Bangkok Post* explained. Against that backdrop, Thailand was believed to have done its bit in delivering humanitarian aid to Myanmar.

However, justifying the government’s non-interference stance on the international level proved more difficult in light of direct international expectations for action on behalf of human rights protection. These expectations caused the Thai government to make repeated concessions to its international audience, though it rarely followed through with its promises in a constructive way. After the cyclone hit Myanmar, UN agencies and international aid organizations immediately gathered in Bangkok, where many had their regional headquarters, to make preparations for a major disaster relief effort. “The UN support system is not sufficient inside Myanmar,” said Terje Skavdal, regional director of the UN office for coordination of Humanitarian Affairs, hoping for fast access to the closed-off country.⁹⁴ The junta had previously appealed for international assistance.⁹⁵ But while asking international donors for material goods such as food, medicine and roofing material, plastic sheets, temporary tents, fresh water and mosquito nets, the generals refused to issue visas to international aid workers to coordinate the distribution of aid within the country, thereby risking the lives of more civilians.⁹⁶ As a consequence, the West and the United Nations shifted the frame of the crisis from a humanitarian disaster to a case of human rights violations. Highlighting the extent of human suffering, the US ambassador Eric John urged the junta to make a quick decision in order to let the US disaster team in as soon as possible.⁹⁷ Similarly, French foreign minister Bernard Kouchner and British foreign secretary of State David Miliband asked the generals to “lift all restrictions on the distribution of aid.”⁹⁸ The UN also reiterated its call on the government to let aid and aid workers in, arguing that it was “imperative at this point that they do open up and allow a major international relief effort to get under way.”⁹⁹

Increasingly desperate, it was the US government that first appealed directly to the Thai authorities, asking them to facilitate access to Myanmar by negotiating with the junta on behalf of the West and the UN. Samak’s response to Ambassador Eric John’s request on

⁹⁴ “Toll to rise by thousands,” *The Nation*, 6 May 2008.

⁹⁵ “Burma denies US access; relief supplies from UN starting to get through,” *Bangkok Post*, 9 May 2008.

⁹⁶ “Cyclone toll tops 10000; Burma appeals for international aid,” *Bangkok Post*, 6 May 2008.

⁹⁷ “US begs Thais to influence junta,” *The Nation*, 9 May 2008.

⁹⁸ “Burma denies US access; relief supplies from UN starting to get through,” *Bangkok Post*, 9 May 2008.

⁹⁹ *Ibid.*

8 May reflects the ambiguous relationship that had been cultivated between the People's Power Party (a successor organization to Thaksin's Thai Rak Thai Party) and the West (the United States in particular). As a longtime ally, Thailand would always listen to requests made by the United States, no matter who was in power, noted Sunai Phasuk of HRW. But substantive action would often be delayed, in particular when sentiment towards the United States or the West was not good among the leadership. "At the time of the cyclone Prime Minister Samak was in charge, who did not like the US at all. Samak is known as one of the most conservative politicians in Thailand," Phasuk elaborated.¹⁰⁰

Samak's stance towards the United States reflected a general deterioration in relations between Thaksin supporters, the so-called Red Shirts, and the United States following the ousting of the prime minister in the 2006 military coup. Thaksin's supporters saw the coup as an illegal and illegitimate act of forced regime change instigated by the military against the will of the majority of the Thai people (Kurlantzick 2013, 158). The overall Western response to the coup-makers, however, was muted and Thailand continued to be considered a key ally of the United States and Western democracies within the region (Farrelly 2013, 287). Thus while US expectations were noted during the crisis in Myanmar following the cyclone and were symbolically addressed, US pressure proved insufficient to get Prime Minister Samak to take actual substantive action. "Prime Minister Samak relied on the existence of large conservative forces in Thai society to back him up. It was not just him versus international requests, but him plus millions of Thais thinking the same," noted Sunai Phasuk of HRW.¹⁰¹ As a result, Samak only reluctantly acted on the US' behalf during Cyclone Nargis and immediately called off his visit to Yangon when the junta resisted. Having to choose between action in accordance with human rights protection and non-interference, Samak prioritized Myanmar's expectations over Western calls. "They did not want us to come in," said former ambassador and advisor to the Foreign Ministry Surapong Jayanama.¹⁰² "And frankly we thought the international community was already doing enough," he added.¹⁰³

It was only after Samak cancelled his visit to Myanmar that Thai media started to critically comment on the crisis, which had previously been framed as a humanitarian

¹⁰⁰ Author's interview with Human Rights Watch Thailand reporter Sunai Phasuk, 17 May 2016, Bangkok, Thailand.

¹⁰¹ Ibid.

¹⁰² Author's interview former ambassador and deputy secretary-general of the Foreign Ministry under Prime Minister Surayud, Surapong Jayanama, 15 June 2016, Bangkok, Thailand.

¹⁰³ Ibid.

disaster. The *Bangkok Post* now urged the junta to admit that it did not “have the capacity to tackle this gigantic task by itself.”¹⁰⁴ Myanmar could no longer solemnly rely on the assistance of a few “trusted neighbours” like Thailand, India and China, the paper wrote.¹⁰⁵ The situation worsened when on 10 May the Myanmarese government seized two planeloads of critical aid sent by the UN, forcing the body to suspend further help. Tony Banbury, WFP’s regional director, desperately appealed to the junta to release the aid. “Please, this food is going to people who need it very much [...] Those victims who need this assistance are not part of a political dialogue. They need this humanitarian assistance,” he pleaded.¹⁰⁶ Paul Risley, coordinating the relief effort of the World Food Programme, added: “the frustration caused by what appears to be a paperwork delay is unprecedented in modern humanitarian relief efforts.”¹⁰⁷ UN relief coordinator Richard Horsey reiterated the UN call to suspend visas when stating that it was urgent that the authorities in Myanmar open up. “There aren’t enough boats, trucks, helicopter in the country to run the relief effort of the scale we need,” he emphasized.¹⁰⁸ However, impervious to the pressure, Myanmar’s generals insisted that visas would be considered on a case-by-case basis.¹⁰⁹

In view of the deadlock, on 12 May UN secretary-general Ban Ki-Moon contacted Prime Minister Samak directly, asking him again to go to Myanmar and speak with the generals. Foreign Minister Noppadon Pattama said that Thailand had also been contacted by telephone by the foreign ministers of the United Kingdom, Canada, Norway and the EU, seeking their mediation with Myanmar’s rulers to facilitate the international access to the cyclone-hit areas.¹¹⁰ But despite the increasingly critical reception of the junta’s handling of the crisis, domestically the international pressure exerted on the Thai government was received negatively. Even the liberally minded journalists of the *Bangkok Post* defended the Thai authorities, arguing that so far Thailand had done its best by offering its condolences as well as delivering token but much-needed aid to Myanmar.¹¹¹ They ascribed the fact that Thai aid had entered the country to Samak’s “junta-appeasing policy and the junta’s recognition of an admirable reception during a visit to Thailand by

¹⁰⁴ “Editorial, junta must let in relief aid,” *Bangkok Post*, 9 May 2008.

¹⁰⁵ *Ibid.*

¹⁰⁶ “Burmese junta seizes UN food aid; agencies plead with generals to get access,” *Bangkok Post*, 10 May 2008.

¹⁰⁷ *Ibid.*

¹⁰⁸ “UN calls on junta to open its door to aid,” *Bangkok Post*, 13 May 2008.

¹⁰⁹ *Ibid.*

¹¹⁰ “Thai PM to visit Myanmar on May 14,” *OneIndia*, 13 May 2008.

¹¹¹ Achara Ashayagachat, “Doing too much, too soon may backfire,” *Bangkok Post*, 14 May 2008.

Burmese Prime Minister Thein Sein.”¹¹² The visit ended only two days prior to the natural disaster in the neighboring state. The paper further argued that “by doing too much too soon,” Thailand could create a bad impression and affect the warm relations between Thailand and its neighbor. Therefore, the Kingdom should not be pressured by the international community, or even UN secretary-general Ban Ki-Moon, to lobby the military government in Myanmar to open up its doors to foreign assistance.¹¹³ The paper pointed out that Thailand had to protect its own interests in responding to the crisis. In pushing the generals too hard, the Kingdom could be considered by Myanmar as a proxy of the Western world.¹¹⁴

Following a familiar pattern, Prime Minister Samak acknowledged the expectations articulated by UN secretary-general Ban Ki-Moon and renewed his promise to travel to Myanmar. However, once in the country he did little to convince the junta to open up. His mission did not lead to an improvement of access. “We did not want to pressure them,” said Surayud Jayanama:¹¹⁵

The Myanmar government was quite understandably very concerned about whether to accept humanitarian aid from outsiders and let them into the country. It would have been a difficult situation to control. For a military regime with more than 50 years in power that was a very natural reaction. They were very suspicious of destabilizing policies designed by western countries and disguised as humanitarian aid. This is why they kept their narrative alive, saying ‘we are in control of the situation, no worries, this is our internal matter and we take care of our own problems.’¹¹⁶

As head of the Thai Red Cross, which was part of the Thai relief effort, former Thai ambassador and foreign minister Tej Bunnag closely followed the events. “Prime Minister Samak was of the same mind as the generals, rather anti-Western, pro-Thai and very nationalistic. He agreed with the attitude of the Burmese government,” Bunnag said and added: “I doubt he had a serious conversation with the junta. When Samak came back he made some very embarrassing statements.”¹¹⁷ Upon his return, the prime minister praised the relief work of the junta, arguing that the situation was under control. The

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Author’s interview with former ambassador and deputy secretary-general of the Foreign Ministry under Prime Minister Surayud, Surapong Jayanama, 15 June 2016, Bangkok, Thailand.

¹¹⁶ Ibid.

¹¹⁷ Author’s interview with former foreign minister and head of the Red Cross Thailand Tej Bunnag 24 June 2016, Bangkok, Thailand.

episode once again highlighted that while receptive to international expectations, especially if articulated by long term partners such as the United States and the United Nations, the Thai government was not willing to sacrifice its good relations with the neighboring regime and thereby risk potential domestic legitimacy costs if trade with and access to Myanmar were affected. By praising the junta's response to the cyclone, the government tried to revoke any reputational damage its concession to the UN expectation of travelling to Myanmar could have caused.

The tone of the domestic liberal media drastically sharpened following Samak's statements. The *Bangkok Post* accused Samak of acting as if he were "a spokesman for the Burmese junta," telling the world that no foreigners including the UN should worry or interfere.¹¹⁸ Editor Sanitsuda Ekachai, moreover, expressed frustrations with Thailand's "half-baked democracy," accusing the government of having "blood on its hands for helping to maintain the bloody paths strewn with dead bodies of the Burmese."¹¹⁹ The government would allow the junta to continue killing its own people because top politicians and businesses in Thailand did not want to lose lucrative opportunities to exploit Myanmar's timber, natural gas, gems and hydro-electric dams, she argued.¹²⁰ In light of Samak's statements, *The Nation* branded Thailand as "the strongest supporter of the regime" and urged the international community to continue to press for admittance to the country.¹²¹ Juxtaposing Samak's stance with former Thai foreign minister and now ASEAN secretary-general Surin Pitsuwan's efforts during the crisis, the newspapers lauded Pitsuwan and urged the UN to work together with ASEAN instead of Thailand.

In response to the disaster, the ASEAN foreign ministers convened an emergency meeting for 19 May in Singapore.¹²² While some ASEAN foreign ministers, most notably Indonesian foreign minister Hassan Wirajuda, used the special meeting to pressure the junta, Samak's government, in contrast, used the special summit as an opportunity to finalize a memorandum of understanding (MoU) with the military regime for the construction of the Tavoy port and a separate road link project in Myanmar. The MoU was signed on 19 May by Thai foreign minister Noppadon and his counterpart from Myanmar, Nyan Win.¹²³ Bowing to pressure from its ASEAN neighbors, the Myanmarese generals

¹¹⁸ Achara Ashayagachat, "Samak – PM or spokesperson for regime in Burma," *Bangkok Post*, 16 May 2008.

¹¹⁹ Sanitsuda Ekachai, "Govt has blood on its hands, too," *Bangkok Post*, 15 May 2008.

¹²⁰ Ibid.

¹²¹ "Junta must protect the Burmese people," *The Nation*, 15 May 2008.

¹²² Kavi Chongkittavorn, "UN must support ASEAN on Burma," *The Nation*, 16 May 2008.

¹²³ Brian Cartan, "Thai ties bind Myanmar Cyclone relief," *Asia Times*, 24 May 2008.

ultimately agreed to an ASEAN-led mechanism to distribute aid in the country. “They thought since there is no other choice, instead of being submissive to the international pressure, why not have ASEAN come in, instead of the international community – that was a face saving formula for them,” former Thai ambassador Surapong Jayanama said.¹²⁴ In light of the junta’s consent to ASEAN involvement, Foreign Minister Noppadon announced that following a direct request from UN secretary-general Ban Ki-Moon, Thailand had agreed to offer Don Mueang airport as a logistical hub for the relief effort.¹²⁵ Ban Ki-Moon had approached the Thai government two days earlier on 17 May. Both calling and writing to the authorities, he had urged Thailand to act as the regional relief center for shipments of essential supplies to Myanmar. More directly, the UN secretary-general had asked whether the World Food Programme could use the empty cargo hangars of Don Mueang Airport as a base to distribute aid.¹²⁶

To summarize, by prioritizing non-interference and only delivering humanitarian aid upon Myanmar’s request, the Thai government avoided domestic legitimacy costs and reputation costs as a reliable neighbor of Myanmar. The two objectives were closely intertwined in that a positive reputation among the Myanmarese generals was perceived as a crucial precondition for the Thai government to address the domestic development paradigm and thereby avoid domestic legitimacy costs. It was only after mounting international pressure, most directly articulated by the United States and the UN, that Prime Minister Samak agreed to negotiate with the generals on behalf of the Western world. In responding to the strong international expectations for action, the government tried to avoid reputation costs as a ‘good democracy’ and ally. At the same time, substantive action in line with the expectations rarely followed. While making concessions to its international audience, the Thai government worked hard to ensure that Myanmar did not perceive these concessions as acts of interference.

2.3. A Lack of Expectations: Complete Silence during the Rakhine Riots

Thailand’s response to the Rakhine Riots and the subsequent violence against the Rohingya Muslims was one of complete silence. The prioritization of non-interference reflected the continuing expectations of the Thai rural population and businesses to

¹²⁴ Author’s interview with former ambassador and deputy secretary-general of the Foreign Ministry under Prime Minister Surayud, Surapong Jayanama, 15 June 2016, Bangkok, Thailand.

¹²⁵ “Airport may be relief hub; UN seeks use of Don Mueang for Burma aid,” *Bangkok Post*, 19 May 2008.

¹²⁶ *Ibid.*

maintain good relations with Myanmar and was further facilitated by a relative lack of both regional and international expectations to act in accordance with the country's commitment to human rights protection.

Domestically, the plight of the Rohingya initially garnered a fair bit of attention in the press, although expectations for action on behalf of the minority group were primarily expressed in relation to the international community and the United Nations and less so the Thai government. After the state of emergency was declared in Rakhine on 10 June, half a dozen international and local human rights organizations based in Bangkok issued an open letter to UN secretary-general Ban Ki-Moon. Concerned about the crisis in Rakhine state, they urged the UN to “intervene and protect a million Rohingya people of Arakan from a planned genocide.”¹²⁷ Rohingya organizations and Thai NGOs such as the People's Empowerment Foundation argued that paramilitary and racist Rakhine were burning houses and shooting people, with some being burned alive. They called on the UN for “immediate action to stop this serious genocide and ethnic cleansing by sending a UN peace-keeping force to Arakan to protect innocent people.”¹²⁸ The group added that international and ASEAN intervention was urgently needed to save people's lives in the state.¹²⁹

The *Bangkok Post* subsequently commented that “terrible events” were underway in western Myanmar, which would “bear careful watch from its neighbours, especially Thailand.”¹³⁰ The paper argued that the Myanmarese president Thein Sein and his supporters had given little sign they were able to handle the crisis.¹³¹ This was particularly troubling, the *Bangkok Post* added, as the world seemed concerned about the nascent democracy in Myanmar, but less so about the actual fate of the Rohingya. It concluded: “unless the world applies pressure on Myanmar to review its inhumane treatment of the Rohingya [...] the tragedies of the Rohingya boat people will never end.”¹³² At the same time human rights activists in Bangkok organized a seminar to address the crisis. The activists reiterated the call for the UN and ASEAN to “quickly intervene in the spiraling sectarian conflict” as the government in Myanmar was not doing enough to control the situation, costing lives.¹³³ Debbie Stothard, deputy secretary-

¹²⁷ “Call for UN to intervene in Rohingya ‘genocide’” *The Nation*, 12 June 2012.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ “Editorial, Rakhine strife tests reforms,” *Bangkok Post*, 12 June 2012.

¹³¹ *Ibid.*

¹³² Sanitsuda Ekachai, “Myanmar's chance to help Rohingya,” *Bangkok Post*, 14 June 2012.

¹³³ “Activists call for swift action on Myanmar violence,” *Bangkok Post*, 14 June 2012.

general of the International Federation for Human Rights (IFHR), urged the international community and UN representatives inside Myanmar to “no longer sit by and wait for the violence to subside.” Instead, they needed to intervene before the hatred could spread throughout the country.¹³⁴ The following day, at the Bangkok-based Foreign Correspondence Club, she accused ASEAN of simply ignoring the situation and having “closed their eyes and ears to the genocide.”¹³⁵

While human rights groups in Thailand and liberal forces within Thai civil society were concerned by the crisis unfolding in Myanmar, the majority of the Thai population appeared less sympathetic. Ever since 2009, when the Rohingya had first arrived in large refugee groups in Thailand, the government had counteracted the initial sympathy the wider public had shown towards the plight of the Rohingya with a comprehensive propaganda campaign. “There was a lot of propaganda by the military and the conservative politicians saying that the Rohingya would join the Muslim insurgents in the Deep South and therefore could not be trusted,” Sunai Phasuk from HRW recalled.¹³⁶ “Because of our own problems with Muslim Malays in the South, there is a misperception amongst Thai policymakers, most civilians and the military, who see Muslims as a threat,” Phasuk added:

They see the Rohingya as troublemakers in Myanmar, because they are in conflict with the Burmese and the Buddhist Rakhine, and for that reason they have been expelled from their land. [...] If they are not welcome back at home, then why should Thailand welcome them? That is the rationale of most people.¹³⁷

The government used the fear of the arrival of thousands of stateless Muslims, which had the potential to further destabilize the situation in Thailand’s Deep South, to diffuse domestic expectations for action on behalf of the Rohingya (Parnini 2013, 289).

In view of the relative lack of expectations among the wider public that the government comply with human rights protection during the Rakhine Riots, there was absolutely no response by the Thai government “at a time when you would have hoped to see a lot, given the situation in Rakhine,” according to Phil Robertson from HRW.¹³⁸

¹³⁴ Ibid.

¹³⁵ Achara Ashayagachat, “UN, Asean urged to send team to Rakhine,” *Bangkok Post*, 15 June 2012.

¹³⁶ Author’s interview with Human Rights Watch Thailand reporter Sunai Phasuk, 17 May 2016, Bangkok, Thailand.

¹³⁷ Ibid.

¹³⁸ Interview with the deputy director of the Human Rights Watch Asia Division Phil Robertson, 8 June 2016, Bangkok, Thailand.

Instead of addressing the crisis, Prime Minister Yingluck Shinawatra, who had become head of government in the 2011 general elections, was busy trying to assure her domestic audience that nothing was wrong in the countries' neighborly relations, after President Thein Sein had repeatedly delayed a long-planned first official visit to Bangkok. There had been intense speculation that the welcome given to opposition leader Aung San Suu Kyi in Thailand earlier that month was the reason.¹³⁹ The Nobel laureate had been released from house arrest in 2010 and in a historic by-election in 2012 won a seat in parliament. Evidently concerned about upsetting Myanmar, Sihasak Phungketkeow, Permanent Secretary of the Thai Foreign Ministry, recalled that instructions had been given to allow Suu Kyi to visit the places she wanted, but not at the cost of possibly hurting relations with Myanmar. "The Foreign Ministry asked us to keep it low-key. They didn't want it to become news," the Governor of Tak province, Suriya Prasatbuntitya, added. Thai officials imposed curbs on her inspection of a refugee camp by prohibiting her from giving a public address and declined her request to meet with exiled leaders of ethnic minority groups.¹⁴⁰ President Thein Sein's visit to Bangkok was finally confirmed to take place on 22 July 2012.

In advance of the leaders' meeting, the *Bangkok Post* urged the Thai government that "the existence and problem of Rohingya should be raised during Thein Sein's visit," as Thailand and other neighbors were all too aware of the plight of these people.¹⁴¹ Thein Sein had previously told the UN that the Rohingya people in Rakhine were simply not welcome in Myanmar and the "only solution" was to hand them over to the UN High Commissioner for Refugees to resettle them in third countries. "These are not only tough words but unacceptable ones," the *Bangkok Post* commented, stressing that the Rohingya had rights that needed to be respected.¹⁴² "Thein Sein must be disabused of the notion that he will find sympathy, let alone help as he seeks a solution to his problem with Myanmar people," the editorial went on.¹⁴³ Calling his Rohingya statement "racist, malicious and threatening," the *Bangkok Post* demanded that his words "must not stand unchallenged."¹⁴⁴ On the day prior to Thein Sein's visit, the plight of the Rohingya again came to the forefront when Amnesty International circulated information according to

¹³⁹ "Editorial - 'Only solution' unacceptable," *Bangkok Post*, 20 July 2012.

¹⁴⁰ Achara Ashayagachat, "Refugees boosted by Suu Kyi visit," *Bangkok Post*, 5 June 2012.

¹⁴¹ "Editorial - 'Only solution' unacceptable," *Bangkok Post*, 20 July 2012.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

which the Rohingya were increasingly suffering targeted attacks including killings, rape and physical abuse. The NGO also accused both security forces and ethnic Rakhine Buddhists living in the region of carrying out fresh attacks against Rohingyas. “Some of this is by the security forces’ own hands, some by Rakhine Buddhists with the security forces turning a blind eye in some cases,” Amnesty researcher Benjamin Zawacki said.¹⁴⁵

But despite some domestic pressure and new evidence of the severity of the situation in Rakhine, “the Rohingya were not a topic of the meeting,” as Surapong Tovichakchaikul, Thai foreign minister at the time, confirmed.¹⁴⁶ Instead the focus was on the countries’ respective economic interests:

We talked a lot about the Dawei deep-sea port. To convince President Thein Sein of the port project, we took him to our eastern seaport, to show him how we develop our industry. We also discussed how Thailand could support Myanmar in terms of education and access to medication along the border, as we want to develop that border area on both sides.¹⁴⁷

This shows that despite Thailand’s exceptional access to the junta leaders, Prime Minister Yingluck Shinawatra chose not to touch upon the topic. Putting the events into perspective, Sunai Phasuk of HRW recalled:

The Thai government thought that the Myanmarese military would continue to control the country and even the NLD was not very pro-Rohingya. So the Thai rationale was that if concerns for the Rohingya were voiced too actively, they would risk bilateral relations with Burma.¹⁴⁸

Looking back at the meeting, former foreign minister Surapong Tovichakchaikul added that from the government’s perspective the main concern was to facilitate Myanmar’s reintegration into the international community, as opposed to emphasizing human rights problems inside the country:

At the time some European countries and the US started to lift sanctions. We were all really happy about this and the developments in Myanmar. As foreign minister, when I had the chance to meet my counterparts from other countries, we would ask them to ease the sanctions on Myanmar. It seemed to me that at the time all

¹⁴⁵ “Myanmar killings alarm Amnesty,” *The Nation*, 21 July 2012.

¹⁴⁶ Author’s interview with former foreign minister of Thailand Surapong Tovichakchaikul, 7 June 2016, Bangkok, Thailand.

¹⁴⁷ Ibid.

¹⁴⁸ Author’s interview with Human Rights Watch Thailand reporter Sunai Phasuk, 17 May 2016, Bangkok, Thailand.

our friends in the world agreed and responded to this, thereby improving the situation in Myanmar considerably. Myanmar and Thailand are very close. The border between our countries is long and our own stability depends on what happens in Myanmar. As a friend we were happy to provide support if Myanmar requested help from Thailand. But we did not want to interfere.¹⁴⁹

Unsurprisingly, Bangkok-based human rights activists expressed their disappointment that Myanmar's human rights abuses were not addressed during the talks. As Khin Ohmar of the Burma Partnership argued, "the issue of human rights should have been a focal point since Thailand has long sheltered a large number of displaced persons."¹⁵⁰ Amnesty International researcher Benjamin Zawacki added that the internal problems in Myanmar constituted the root causes of displacement, which led to the 'boat-people' on Thai shores, and that Prime Minister Yingluck should have raised these issues in her discussion with Thein Sein.¹⁵¹ The meeting of the two leaders also provoked several small-scale protests in front of the Government House in Bangkok as well as the Embassy of Myanmar. A group of Muslim students from Thammasat University called on the Myanmar government to "stop the massacre of Rohingya."¹⁵² Muang Kyaw Nu, president of the Rohingya Society of Thailand, who was amongst the protestors, described the events: "During that time the Burmese government officials were always warmly welcome in Bangkok." He added that as far as government relations were concerned, Thai officials did not want to anger the Burmese generals for the sake of Thai business in Myanmar.¹⁵³

Following Thein Sein's state visit, the Rohingya crisis essentially disappeared from Thai news coverage until Aung San Suu Kyi left on 16 September for a landmark visit to the United States. Her visit overlapped with President Thein Sein's trip to the US, which was due later that month in order for him to attend the UN General Assembly debate.¹⁵⁴ According to the *Bangkok Post* their visits to the US had been marked by tough questions, albeit primarily regarding the future path of reform and less so the Rohingya.¹⁵⁵ In light of the overlap of the visits, US officials insisted that Thein Sein receive the same warm welcome as Suu Kyi, as he deserved to be recognized for pushing through such speedy

¹⁴⁹ Author's interview with former foreign minister of Thailand Surapong Tovichakchaikul, 7 June 2016, Bangkok, Thailand.

¹⁵⁰ "Thein Sein, PM ink deal on sea port," *Bangkok Post*, 24 July 2012.

¹⁵¹ Ibid.

¹⁵² "Students: Stop Rohingya massacre," *Bangkok Post*, 23 July 2012.

¹⁵³ Author's interview with the president of the Thailand Rohingya Society Muang Kyaw Nu, 24 May 2016, Bangkok, Thailand.

¹⁵⁴ "Suu Kyi departs on landmark US visit," *Bangkok Post*, 16 September 2012.

¹⁵⁵ "Editorial: Myanmar stalked by ethnic strife in NY," *Bangkok Post*, 30 September 2012.

reforms in the Southeast Asian nation.¹⁵⁶ Both President Thein Sein and opposition leader Aung San Suu Kyi were honored in the US for their roles in reforming the country. After the relative lack of Western condemnation of Myanmar's failure to address the crisis, the reception of Thein Sein in the US again signaled that engagement and cooperation with the regime were internationally acceptable. As a consequence, the risk of suffering international reputation costs by prioritizing non-interference was absent, further reducing the chance that Thailand's government would make concessions in favor of human rights protection during the Rakhine Riots.

As fighting recommenced in Rakhine on 23 October, human rights groups again raised concerns in Thailand. They stated that the Rohingya were becoming increasingly desperate as "a campaign to force them out of the country intensified, with Buddhist monks taking a lead role in whipping up sentiment against them." Chris Lewa from the Arakan Project said: "tensions are rising, the attacks have started again [...] they are losing all hope. They are now in an unacceptable position."¹⁵⁷ A few days later, on 27 October, HRW released satellite images showing "extensive destruction of homes and other property in a predominantly Rohingya Muslim area." The group thereupon urged the Myanmar government to protect the Rohingya, who it said were under "vicious attack."¹⁵⁸ Chris Lewa added that "Rakhine state has now spiraled into complete lawlessness" as violence was spreading to the south with the "clear purpose of expelling all Muslims, not just Rohingya."¹⁵⁹ The UN was equally alarmed and expressed grave concern over reports of deaths and thousands displaced following a fresh wave of communal violence.¹⁶⁰ The organization warned that Myanmar's reforms were under threat from the continued unrest between ethnic Rakhine and the Rohingya.¹⁶¹ "The vigilante attacks, targeted threats and extremist rhetoric must be stopped," a spokesperson for UN secretary-general Ban Ki-Moon stated.¹⁶² However, the UN concerns were directed at the junta and included no expectations for action from the Thai government to address the human rights violations.

In view of the silence on the side of the Thai government, the domestic liberal forces in the country, instead praised the initiative of former Thai foreign minister and

¹⁵⁶ "Suu Kyi: Thein Sein 'keen' on change," *Bangkok Post*, 19 September 2012.

¹⁵⁷ "3 dead in Myanmar communal clashes," *Bangkok Post*, 23 October 2012.

¹⁵⁸ "Thousands flee Myanmar strife," *Bangkok Post*, 27 October 2012.

¹⁵⁹ *Ibid.*

¹⁶⁰ "UN 'alarmed' by new Myanmar unrest," *Bangkok Post*, 25 October 2012.

¹⁶¹ "Communal violence rocks Myanmar, many dead," *Bangkok Post*, 26 October 2012.

¹⁶² *Ibid.*

outgoing ASEAN secretary-general Surin Pitsuwan. As “one of the first rational voices” he had called for a more proactive ASEAN, asking the group to intervene to help calm the violence in western Myanmar.¹⁶³ In an editorial, the *Bangkok Post* condemned the “heartless and wrong-headed thinking” of Myanmar’s government. “The idea that the Rohingya born in Myanmar are somehow inferior human beings is not just heartless but legally wrong,” it wrote.¹⁶⁴ However, despite Surin Pitsuwan’s personal activism, through which he had warned about a radicalization of the Rohingya and appealed to ASEAN’s image in the world, the organization collectively respected Myanmar’s call for non-interference. Together with a lack of international expectations for Thailand to comply with the norm of human rights protection, the regional consensus to respect Myanmar’s wishes meant that in prioritizing the non-interference norm over human rights protection, no reputation costs were involved for the Thai government. The positions taken by Thailand’s regional and international audiences were compatible with the domestic preference for non-interference, articulated by the numerically strongest groups, namely the rural population and Thai business class.

Overall, then, the Thai government again opted for a policy of non-interference during the Rakhine Riots, thereby avoiding legitimacy costs, as bilateral relations with the neighboring regime remained intact. Given the relative absence of international expectations, it neither had to justify itself internationally, nor fear reputation costs from prioritizing non-interference. In portraying the Rohingya as reinforcements for the Muslim insurgents in Thailand’s Deep South, the government had diffused domestic sympathy with the plight of the Rohingya that had arisen when groups of refugees first arrived on Thailand’s shores in 2009.

3. Conclusion: A Strategy of Context-Specific Norm Replacement

The analysis of Thailand’s response to norm conflict revealed a uniform response pattern. In all three situations of norm conflict, the government prioritized the non-interference norm over extraterritorial human rights protection and promotion. It did so despite conflicting expectations regarding norm compliance articulated by its relevant international and, at times, regional audiences. In choosing which norm to prioritize, the dominant domestic expectation in the crises and the related concern over legitimacy costs were decisive. Following the Asian financial crisis, the largest domestic groups, the rural

¹⁶³ “Editorial, Wise words from Mr Surin,” *Bangkok Post*, 30 October 2012.

¹⁶⁴ “Editorial, The two ills of Myanmar,” *Bangkok Post*, 6 November 2012.

population in tandem with the Thai business class, had redefined the basis for the government's legitimacy, which was no longer primarily earned and defended by promoting democratic values in Thailand and abroad, but rather through a prioritization of economic development. This new domestic paradigm fundamentally affected Thailand's relations with Myanmar as a major market for Thai businesses and a provider of income for the urban population through border trade. In order to avoid legitimacy costs in the three analyzed cases of human rights violations in Myanmar, the respective Thai governments therefore largely abstained from interference, which could have put the friendly relations between the neighboring countries at risk and thereby create legitimacy costs. As this approach was backed by a large conservative force within Thailand, conflicting domestic expectations articulated by a liberal urban middle class were mostly ignored. As a result, no major differences were visible between the interim military government of General Surayud and his elected civilian successors Samak Sundaravej and Yingluck Shinawatra. Similarly, with the exception of a few voices, the Democrat Party was largely mute during the crises, underlying the striking continuity of non-interference in Thailand's relations with Myanmar ever since the general elections of 2001.

The domestic expectation for compliance with non-interference in relation to Myanmar was first and foremost a reflection of the extreme economic interdependence of the two countries. In order to address the dominant domestic expectation, and thereby protect their domestic legitimacy, Thai policymakers in practice had to prioritize non-interference over human rights protection *in relation to Myanmar*. Its prioritization of non-interference was therefore context specific, rather than general. In order to pursue a policy of non-interference in relation to Myanmar, while minimizing international reputation costs, Thailand's close proximity to Myanmar was crucial. The government argued that because of its geostrategic position as a direct neighbor of Myanmar with an extremely long and porous shared border, Thailand would not be in a position to push the neighboring regime. In doing so, the government tried to invalidate current and future international expectations that Thailand would embrace a more human rights-centered approach in relation to Myanmar and achieve acceptance of its policy of non-interference. The strategy pursued by the Thai government differed from *general* norm replacement in that the country still valued extraterritorial human rights protection and promotion, and did not desire a general weakening of the norm within the region. In sum, while it was the extreme economic interdependence that led to a decrease in the strength of domestic

expectations for human rights protection in Myanmar, the close proximity facilitated compliance with non-interference by enabling a strategy of context-specific norm replacement.

Even though the evidence suggests that the government had some success with its argument, Thailand's international audience nevertheless articulated some direct expectations regarding action in accordance with human rights protection. It was primarily the United States and the United Nations that pressured the Thai government to take a more active role during the Saffron Revolution and Cyclone Nargis. In view of their expectations, Thai governments made some concessions, but substantive action was often delayed or its impact diffused by simultaneously defending the Myanmarese generals. This shows that while consecutive Thai governments evidently tried to avoid international reputation costs, at the same time they did their best to ensure that Myanmar did not perceive of their actions as a violation of the non-interference norm.

Chapter 6: Malaysia's Response to Norm Conflict

Introduction

Having analyzed the response to the norm conflict between human rights protection and non-interference by the Indonesian and Thai governments, this chapter assesses the Malaysian response pattern and its particular strategy for addressing norm conflict. Of the three Southeast Asian states, the dual processes of democratization and liberalization set in latest in Malaysia. Serious domestic engagement with human rights protection across party lines only came about following the commencement of Abdullah Badawi's premiership in 2003. Confronted with large-scale human rights violations in Myanmar, the respective Malaysian administrations had to choose between compliance with non-interference and a more nascent human rights protection and promotion norm. The chapter shows that in responding to the three crises in Myanmar, the government followed a mixed response pattern, as compliance with the two conflicting norms alternated between sometimes applying non-interference and at other times human rights protection. By analyzing the response in light of the articulated domestic, regional and international expectations for norm compliance, the chapter demonstrates that the government adopted a mixed response strategy. Given a shift in domestic expectations, Malaysia switched from an attempted strategy of norm reconciliation to a strategy of conflict denial.

1. Analysis of the Response Pattern

The first part of this chapter investigates which of the two conflicting norms the Malaysian government complied with in the three situations of norm conflict in Myanmar. It shows that the government at first prioritized human rights protection during the Saffron Revolution, but by the time of the ASEAN summit in November 2007, had altered its stance to a policy of non-interference in relation to Myanmar. It continued to prioritize non-interference during Cyclone Nargis in 2008 and the Rakhine Riots in 2012.

1.1 The Saffron Revolution

The Malaysian response to the gross human rights violations committed by the military regime during the Saffron Revolution was swift and forceful, clearly prioritizing human rights protection over the non-interference norm. The Malaysian government openly

requested that ASEAN rethink its policy of constructive engagement with Myanmar in favor of a more intrusive mechanism and, if necessary, to take action against the junta's will.

As the situation in Myanmar escalated, Malaysia was in fact among the first ASEAN countries to address the crisis. Even prior to the collective ASEAN statement at the sidelines of the UN General Assembly debate on 27 September, Malaysian foreign minister Syed Hamid Albar said on 25 September that the junta had to take "appropriate measures" to bring about change.¹ Addressing Myanmar's military rulers directly, he stated that they "should take steps towards reconciliation before pro-democracy protests potentially blow up into turmoil" and thereby affect the neighboring Southeast Asian nations.² Albar went on to state that in light of the protests, the military junta "must now take notice of the aspirations of the people."³ In doing so, the foreign minister not only clearly commented on Myanmar's internal affairs, but also made unrequested policy recommendations.⁴ In addition, Albar encouraged Myanmar to be open and called upon all parties to resolve the turbulence.⁵

When a day later the foreign minister was asked to comment on reports according to which the military rulers in Myanmar threatened to take stern measures against the protestors in Yangon, Albar urged the junta to avoid taking such action. To find a solution leading towards democracy, he instead called upon the junta to "get back to the negotiation table,"⁶ and fully engage with the UN secretary-general's Special Envoy to Myanmar, Ibrahim Gambari. "Now there is no going backward, there is a need for political process, they should not deal with the demonstrations by using force," Albar told reporters after the ASEAN meeting of 27 September in New York.⁷ In addition, he set tangible expectations for action by the generals: "We want to see the tangible side of political reconciliation, and that Aung San Suu Kyi is released."⁸

Malaysian pressure on the junta intensified when Malaysian Prime Minister Abdullah Amad Badawi addressed the situation in Myanmar in his speech at the UN General Assembly on 28 September:

¹ "Myanmar protests threaten turmoil: Malaysian minister," *Malaysiakini*, 25 September 2007.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Foo Yee Ping "Unrest in Myanmar affects ASEAN, says Foreign Minister," *The Star*, 26 September 2007.

⁶ Azhar Abu Samah, "KL mahu Yangon elak kekerasan," *Berita Harian*, 27 September 2007.

⁷ "Surayud lays into Burmese junta at UN," *The Nation*, 29 September 2007.

⁸ *Ibid.*

It would be remiss for Malaysia as a member of ASEAN to ignore the situation in Myanmar. ASEAN has done everything possible to encourage Myanmar towards reconciliation and democracy. Their failure to do so has brought upon them the current situation. Let me express my country's disapproval together with other ASEAN countries on the use of excessive force by the Myanmar government to put down justifiable civilian protest.⁹

Openly condemning the junta's use of force, Badawi went on to call on Myanmar's government to give its fullest cooperation to enable UN Special Envoy Gambari to fulfill his mission on behalf of the international community. He urged the junta to both engage in dialogue and to release Aung San Suu Kyi.¹⁰ In a meeting with journalists, the prime minister justified his decision to include remarks on Myanmar during his address at the United Nations General Assembly.¹¹ Badawi stated that in view of the latest developments in Yangon, where lives were lost when soldiers opened fire on demonstrators, it was necessary for the Malaysian government to make known its displeasure.¹² The deteriorating situation in Myanmar warranted a strong collective statement from ASEAN, the Prime Minister continued, and a collective stance by governments in the region to reflect their concern over the political turmoil in Myanmar. Badawi acknowledged that the ASEAN statement was "unprecedented" because of its bluntness, and "can be seen as a climax, a result of the sentiments of ASEAN foreign ministers."¹³ It thus demonstrated ASEAN's commitment to restoring democracy in the country, he said.¹⁴

In view of the violent crackdown, Badawi not only condemned the junta's actions, but also critically reflected on ASEAN's role. He admitted that the policy of constructive engagement adopted by ASEAN had failed, as Myanmar's progress to democracy had been too slow: "It has been the formula used when we deal with Myanmar, but up to this stage, it has not been successful although it has been many years already."¹⁵ As a result, he suggested, ASEAN had to change its approach vis-à-vis Myanmar and this time ASEAN

⁹ Speech by the prime minister of Malaysia Abdullah Ahmad Badawi at the 62nd session of the General Assembly, New York, 28 September 2007, accessed 28 February 2018, https://www.un.int/malaysia/sites/www.un.int/files/Malaysia/62nd_Session/62unga003.pdf.

¹⁰ Ibid.

¹¹ "Collective ASEAN stand warranted," *New Straits Times*, 30 September 2007.

¹² Ibid.

¹³ Foo Yee Ping, "PM: Asean's constructive engagement with junta has failed," *The Star*, 28 September 2007.

¹⁴ Azhar Abu Samah, "Asean desak Myanmar hentikan krisis secara aman," *Berita Harian*, 29 September 2007.

¹⁵ Foo Yee Ping, "PM: Asean's constructive engagement with junta has failed," *The Star*, 28 September 2007.

members would ensure that Myanmar adhered to and fulfilled the regional grouping's requests. Like his foreign minister, Badawi formulated a clear set of expectations for the generals by calling upon them to immediately stop the violence against protestors, get back to the negotiating table, restore democracy in the country, and release all detained political leaders including Aung San Suu Kyi.¹⁶ Even though Badawi did not elaborate on the means by which ASEAN would ensure that Myanmar fulfilled these requests, his statement raised the possibility of enforcement.¹⁷

To coordinate efforts in solving the crisis, on 16 October Foreign Minister Albar and Prime Minister Badawi both met with UN Special Envoy Ibrahim Gambari. In the course of these talks they reassured Gambari of Malaysia's support, but ruled out the suspension of Myanmar's ASEAN membership as a possible response to the violent crackdown. Yet Albar agreed that "more needed to be done."¹⁸ Instead of suspending Myanmar, the foreign minister said that ASEAN would "coax Myanmar to engage with the United Nations through the special envoy, Ibrahim Gambari."¹⁹ He went on to state that it was important for ASEAN to back the UN's efforts: "We can request Myanmar to work closely with the UN. It is the best way and best channel for Myanmar."²⁰ Albar further guaranteed that ASEAN would persuade the generals to allow Gambari to visit the country again soon and continue negotiations to achieve a lasting democratic process.²¹

As the talks with Myanmar continued, showing few results, the Malaysian government became increasingly impatient. Najib Razak, deputy prime minister at the time stated in late October that Malaysia and ASEAN had almost reached the point of exasperation in finding a solution to the Myanmar problem.²² "There is a need for an immediate end to the violence suffered by its citizens," he said. "ASEAN, in my view, has an obligation to do whatever it takes to facilitate peace and transition there."²³ In stating this, Najib essentially issued a Malaysian blank check to ASEAN in dealing with the recalcitrant regime.²⁴

¹⁶ Azhar Abu Samah, "Asean desak Myanmar hentikan krisis secara aman," *Berita Harian*, 29 September 2007.

¹⁷ "PM: Yangon should release detainees," *New Straits Times*, 29 September 2007.

¹⁸ "ASEAN to coax Yangon to co-operate with UN," *New Straits Times*, 17 October 2007.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ "Asean setuju PBB selesai krisis dalaman Myanmar," *Berita Harian*, 17 October 2007.

²² Syed Nazri, "Sanctions no solution to Myanmar problem," *New Straits Times*, 25 October 2007.

²³ *Ibid.*

²⁴ *Ibid.*

Interestingly, however, Malaysia's strong tone changed quite drastically at the ASEAN summit in November 2007. Prior to the meeting Malaysian policymakers had stated that while they hoped the situation in Myanmar would not be the focus of the meeting, they believed it inevitable that the problem would be discussed among the ASEAN heads of state. After all, the world's attention was on the summit, at which the new ASEAN Charter would be adopted.²⁵ The Charter was also supposed to include a clause committing the member states and ASEAN as an organization to democracy, good governance and human rights. But instead of further pressing the Myanmarese regime to respect the rights of its citizens, Badawi assured his Myanmarese counterpart that as long as Myanmar continued negotiations with the UN, Malaysia would not interfere independently.²⁶

To sum up, Malaysia's response to the Saffron Revolution was amongst the strongest within ASEAN. It displayed a resoluteness and rights-based argumentation that was unusual for most of the organization's member states. Malaysia thus clearly distinguished itself by expressing its disapproval and by urging Myanmar to adhere to international human rights standards. However, by the time of the ASEAN summit in Singapore, the Malaysian stance had shifted from a prioritization of human rights protection to a policy of non-interference.

1.2. Cyclone Nargis

The humanitarian crisis that unfolded in Myanmar following Cyclone Nargis in 2008 quickly evolved into a case of large-scale human rights violations as the junta denied international aid workers access to the affected areas. However, Malaysia's response to Cyclone Nargis exclusively focused on providing humanitarian relief and only with the explicit consent of Myanmar as the host state. Thereby, the Malaysian government framed the crisis as a humanitarian problem as opposed to a case of human rights violation. The government, which was still led by Prime Minister Abdullah Badawi, repeatedly stated that it would comply with the non-interference norm.

On 7 May, five days after Cyclone Nargis made landfall in Myanmar, the Malaysian government declared that it was prepared to send aid to Myanmar, but only if requested by the military junta.²⁷ On 8 May, the Malaysian Foreign Ministry issued a statement

²⁵ Mutazar Abd Ghani, "Asean bakal bentuk identiti sendiri," *Berita Harian*, 19 November 2007.

²⁶ Ahmad Pazil Md Isa, "Rundingan Myanmar, PBB disokong," *Berita Harian*, 22 November 2007.

²⁷ "Najib: Govt ready to send aid if asked," *New Straits Times*, 8 May 2008.

saying that the government was sad and surprised by the tragedy and reported that it was in the process of finalizing the details of delivering aid, based on Myanmar's appeal for help to the United Nations.²⁸ Deputy Prime Minister Najib Razak explained that at that moment the government was considering the best way of assisting the victims of the disaster and that, if requested by Myanmar, this could include dispatching the Malaysian Armed Forces Medical Team.²⁹

After the junta had given its consent, on 11 May the Malaysian government announced that Malaysia would send humanitarian relief aid totaling US\$1 million in cash and another RM 500,000 worth of basic necessities to help the victims of Cyclone Nargis.³⁰ Deputy Prime Minister Najib said that the aid would be brought to Myanmar on the following day, including 5000 blankets, clothing, biscuits, instant noodles, and 30 tents and medicine.³¹ Two days later Malaysia's National Security Council Secretary Muhammad Hatta Abd Aziz confirmed that an eighteen-member mission had handed over the aid to Myanmar's government through Malaysia's ambassador in Yangon. The mission comprised officers from Wisma Putra, the Health Ministry, the Malaysian Armed Forces and the Malaysian Red Crescent.³² According to information published by the Malay-language newspaper *Berita Harian*, the Malaysian delegation was "well received" by the junta leaders.³³ A senior military official from Myanmar expressed the country's appreciation and welcomed the humanitarian effort from Malaysia, which was always one of the first countries to provide assistance when disaster hit, according to the official.³⁴ In line with its exclusively humanitarian response to the crisis, the Malaysian government took a low profile during the Special ASEAN Ministerial Meeting in Singapore on 19 May 2008. Following the meeting, which had been scheduled to convince Myanmar to open up and welcome international assistance, Malaysian media merely reported that the new foreign minister of Malaysia, Rais Yatim, had used the gathering to hand over the allocated US\$1 million dollars of humanitarian aid to his Myanmar counterpart Nyan Win on behalf of the Malaysian government.³⁵

Despite Myanmar's consent to the ASEAN-led initiative, the continued slow pace of

²⁸ Johan Afandi and Amin Ridzuan Ishak, "Malaysia tawar bantuan (HL)," *Berita Harian*, 8 May 2008.

²⁹ *Ibid.*

³⁰ "Govt sends aid to Myanmar," *New Straits Times*, 11 May 2008.

³¹ "RM4 juta bantu rakyat Myanmar," *Berita Harian*, 11 May 2008.

³² "Malaysian aid on the way to Nargis victims," *New Straits Times*, 13 May 2008; Anwar Husin, "Bantuan kemanusiaan ke Myanmar," *Berita Harian*, 13 May 2008.

³³ "Yangon terharu sumbangan KL," *Berita Harian*, 14 May 2008.

³⁴ *Ibid.*

³⁵ "ASEAN to co-ordinate international relief effort," *New Straits Times*, 20 May 2008.

granting visas was widely criticized. Taking a critical stance vis-à-vis the junta for the first time, Deputy Prime Minister Najib Razak said in a panel discussion at a security conference on 1 June (which was also attended by Myanmar's deputy Defense Minister Aye Myint), that given ASEAN's willingness to provide more relief, Myanmar should facilitate the relief efforts from the regional organization. "At the risk of offending my colleague here, I would certainly speak on behalf of ASEAN countries, [when saying that] we would like to play a bigger role in the context of the tragedy of Myanmar," Najib said.³⁶ He went on by stating that "a human tragedy of the highest proportions might fall on the people of Myanmar, if the government of Myanmar does not allow greater participation of ASEAN countries and the world."³⁷ Najib thereby admitted that the human suffering was not only caused by the cyclone alone, but was also generated by the inaction of the junta. Nevertheless, instead of further pressing the junta for greater cooperation, Najib passed the responsibility to ASEAN: "We respect its sovereignty and resort to ASEAN-led initiatives to deliver humanitarian aid and assistance."³⁸ Referring to the ASEAN-led mission, the deputy prime minister stated that Malaysia welcomed "Myanmar's trust and confidence in ASEAN's role in coordinating the international response."³⁹ He encouraged the generals to cooperate with the organization in stressing ASEAN's track record, which according to Najib had "neither been a destabilizing force in the region nor interfered in the internal affairs of member states."⁴⁰

By relying primarily on ASEAN's responsibility to pressure Myanmar into opening up to international aid workers, Malaysia's own response to Cyclone Nargis prioritized non-interference and framed the crisis as a humanitarian disaster as opposed to a case of human rights violations. Upon receiving Yangon's consent, the government focused on providing humanitarian assistance and only once commented critically on the situation in Myanmar after the regime had already consented to an ASEAN relief effort. It otherwise focused on emphasizing its respect for Myanmar's sovereignty.

1.3. The Rakhine Riots

Although Malaysia was the first ASEAN country to comment on the violent riots between the Muslim and Buddhist communities in Rakhine state in Myanmar, the government at

³⁶ Jan Dahintenand Ovais Subhani, "Malaysia says ASEAN wants bigger role in Myanmar cyclone relief," *Reuters*, 1 June 2008.

³⁷ Vasudevan, "Let ASEAN give more aid, Najib urges Myanmar," *New Straits Times*, 2 June 2008.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

no point criticized the junta for standing by or for the involvement of its security forces in the atrocities. Moreover, when Malaysia did act by providing humanitarian aid, it always insisted on gaining official consent from the authorities in Myanmar and proactively reassured the generals of its commitment to non-interference.

As early as 12 June, two days after the state of emergency was declared in Rakhine, the Malaysian government – now headed by Prime Minister Najib Razak – stated its willingness to provide assistance to Myanmar in the country’s effort to settle the conflict between the Buddhist and Muslim communities in Rakhine state. In communicating this position, Foreign Minister Anifah Aman highlighted Malaysia’s concern that the conflict might spread to other areas in Myanmar.⁴¹ The Foreign Ministry and the Malaysian Embassy in Yangon stressed that they would continue to monitor the situation in Rakhine, but at the same time emphasized that “Malaysia is confident [that] Myanmar can find a settlement to the tension and bring those responsible to justice.”⁴² Malaysia went on to express its “deepest sympathy to the government and the people of Myanmar over the ethnic conflict in Rakhine.”⁴³ Following the Malaysian offer to assist Myanmar, Malaysian media reported that the offer to provide humanitarian aid had been turned down by the junta, arguing that “the situation in Rakhine has been brought under control and therefore the need for assistance from other ASEAN member states did not arise at the moment.”⁴⁴ In light of this rebuff, the Malaysian government apparently saw the need to justify itself for having offered assistance:⁴⁵

Malaysia always maintains a policy of non-interference in any country’s internal affairs. However, Malaysia believes that no country, especially ASEAN member states, should be left alone in difficult times without any offer of assistance [...]. In this connection, I have also conveyed the warm wishes and a message from the Honorable Dato’ Sri Najib Tun Hj Abdul Razak, the Prime Minister of Malaysia to President Thein Sein that Malaysia’s offer of assistance to Myanmar is borne out of a sense of responsibility and spirit of neighbourliness as a member of the ASEAN family.⁴⁶

⁴¹ “Malaysia Effort To Provide Assistance To Myanmar,” *South-South Information Gateway*, 12 June 2012, accessed 17 November 2017,

<http://www.ssig.gov.my/blog/2012/06/13/malaysia-effort-to-provide-assistance-to-myanmar/>.

⁴² “Malaysia concerned with ethnic violence in Rakhine,” *Bernama*, 17 June 2012.

⁴³ “Press Statement by the Minister of Foreign Affairs of Malaysia on the Development in Rakhine, Myanmar,” Foreign Ministry of Malaysia, 20 June 2012, accessed 28 February 2018, <https://www.kln.gov.my/archive/content.php?t=3&articleId=2169760>.

⁴⁴ “Burma turns down M’sian aid for strife-torn Rakhine state,” *Malaysiakini*, 21 June 2012.

⁴⁵ *Ibid.*

⁴⁶ “Press Statement by the Minister of Foreign Affairs of Malaysia on the Development in Rakhine, Myanmar,” Foreign Ministry of Malaysia, 20 June 2012, accessed 28 February 2018, <https://www.kln.gov.my/archive/content.php?t=3&articleId=2169760>.

Malaysian foreign minister Anifah Aman, moreover, emphasized that his Myanmarese counterpart, Wunna Maung Lawin, had expressed appreciation of the Malaysian offer apparently determined to establish that Malaysia's offer had not been perceived by Myanmar as interference. He further highlighted Myanmar's confirmation that should assistance be needed, they would approach Malaysia.⁴⁷

It was not until the end of August that Myanmar requested Malaysian help. During a meeting on 31 August between the two foreign ministers at the 16th Summit of the Non-Aligned Movement in Teheran, the decision was made that a Malaysian humanitarian mission would leave for Rakhine on 9 September to deliver essential items and logistics support.⁴⁸ In line with the Malaysian non-interference stance in the crisis, the mission was to be implemented purely by non-governmental bodies most importantly the Putra 1Malaysia Club. A team of 45 volunteers was to go to the Bangladeshi border, where more than 100,000 Rohingya had sought refuge.⁴⁹ Putra president Abdul Azeez emphasized again: "This mission is a 100 percent humanitarian project and we do not interfere in the country's internal affairs and political problems involved."⁵⁰ The Foreign Ministry of Malaysia welcomed the Government of Myanmar's decision to accept the assistance provided by Putra 1Malaysia to the residents of Rakhine state. According to a statement issued by the Malaysian Foreign Ministry, the Government of Myanmar had expressed its appreciation for the friendship and constant support shown by the Malaysian government and its concern for the people of Myanmar.⁵¹

But despite the agreement, Myanmar's junta did not provide official permission until 17 September. "I received a letter of authorization signed by Myanmar's foreign minister, yesterday," Foreign Minister Aman finally announced.⁵² In the letter the junta made the mission conditional on aid being delivered by ordinary vessels instead of military ones.⁵³ According to the Malaysian newspaper *Berita Harian*, the delay to the mission was prompted by the junta's concern that if assistance were delivered by a Malaysian organization, it would be perceived as exclusively benefitting the Muslim population of Rakhine. It was only following a guarantee by the Putra 1Malaysia Club that

⁴⁷ "Burma turns down M'sian aid for strife-torn Rakhine state," *Malaysiakini*, 21 June 2012.

⁴⁸ "Sukar bantu, etnik Rohingya tidak diiktiraf," *Berita Harian*, 11 September 2012.

⁴⁹ "Putra 1 Malaysia to aid Rohingya," *New Straits Times*, 12 August 2012.

⁵⁰ Moer Hisham Zulkifli, "Rakyat Malaysia pemurah," *Berita Harian*, 1 September 2012.

⁵¹ "Sukar bantu, etnik Rohingya tidak diiktiraf," *Berita Harian*, 11 September 2012.

⁵² "Myanmar benar Malaysia beri bantuan," *Berita Harian*, 17 September 2012.

⁵³ *Ibid.*

help would be delivered regardless of race and religion that Myanmar accepted a Malaysian presence in Rakhine. The multi-racial and multi-religious composition of the relief team, which also included five Buddhist monks from Malaysia, supported the offer.⁵⁴ With permission granted, the Myanmar junta finally approved 57 visas for Malaysian volunteers to embark on the relief mission.⁵⁵

After weeks of delay, the first group of volunteers left for Myanmar on 19 September to prepare the arrival of the relief mission and aid.⁵⁶ A special trading vessel, carrying approximately 500 tons of relief items left on 25 September for Myanmar.⁵⁷ Following the departure of the relief mission, Deputy Prime Minister Muhyiddin Yassin reiterated that Putra 1Malaysia did not intend to interfere in the internal problems of Myanmar, but hoped to alleviate the suffering of the people in the neighboring country. "This assistance mission is meant to carry out our responsibility as a neighbour and is in the spirit of ASEAN," he said.⁵⁸ The Putra 1Malaysia mission was the first run by a major organization to be allowed to enter the Rakhine region.⁵⁹ "Given the good relationship between Prime Minister Datuk Seri Najib Razak and President Thein Sein, we are highly respected and were given the space to conduct the mission, despite the many obstacles we faced," Putra 1Malaysia president Abdul Azeez reported.⁶⁰

Following the well-received relief mission, the government of Myanmar also invited the organization Mercy Malaysia to repair and upgrade a hospital in Rakhine to increase access to healthcare for more than 60,000 people.⁶¹ After the renewed fighting in October 2012, Foreign Minister Aman expressed Malaysia's willingness to extend further humanitarian assistance while guaranteeing that there would be no action without Myanmar's consent.⁶² When Myanmar did not ask for further help, Malaysia kept its word and sent no further volunteers. At the annual ASEAN summit in November 2012 Malaysian representatives expressed some concern over the growing humanitarian crisis in the region. They argued that ASEAN member states needed to agree on a strategy to address conflicts in the Rakhine region involving the ethnic Rohingya and Buddhists of Myanmar. Foreign Minister Aman, however, quickly shut down the debate by simply

⁵⁴ Ahmad Zaini Kamaruzzaman, "Darah, air mata Sittwe," *Berita Harian*, 11 October 2012.

⁵⁵ "Myanmar benar Malaysia beri bantuan," *Berita Harian*, 17 September 2012.

⁵⁶ Mohd Nasaruddin Parzi, "14 sukarelawan ke Myanmar," *Berita Harian*, 20 September 2012.

⁵⁷ Lum Chee Hong, "Kapal sewa bawa bantuan Rohingya," 23 September 2012.

⁵⁸ "Misi Rakhine bukti Malaysia peka," *Berita Harian*, 26 September 2012.

⁵⁹ "KP1M sifatkan misi ke Myanmar paling sukar," *Berita Harian*, 13 October 2012.

⁶⁰ Ibid.

⁶¹ "Mercy Malaysia rancang baik pulih hospital di Myanmar," *Berita Harian*, 10 October 2012.

⁶² Chuman, "We're ready to help Myanmar," *New Straits Times*, 10 October 2012.

stating that Malaysia welcomed Myanmar's move to restore peace and order in the Rakhine region.⁶³

Overall it can be said that the Malaysian government complied with the non-interference norm in this third instance of norm conflict. In framing the crisis solely as a humanitarian disaster, it focused on providing humanitarian assistance with the official consent of Myanmar's authorities. Even then it felt the need to justify its offer of assistance by stressing its commitment to non-interference.

2. Explaining Malaysia's Response to Norm Conflict

The empirical analysis of the Malaysian response pattern in the three situations of norm conflict has shown that over time the respective governments did not consistently prioritize one norm over the other. Instead, compliance with the two norms alternated. During the Saffron Revolution, the Malaysian government under Prime Minister Abdullah Badawi openly criticized the junta for its violent crackdown, but softened its tone by the time of the ASEAN summit in November 2007. Less than a year later, the same government abstained from interference when the junta failed in its responsibility to assist its own citizens in the aftermath of Cyclone Nargis. Badawi's successor as head of government, Prime Minister Najib Razak, continued the policy of non-interference during the Rakhine Riots of 2012. In the latter two instances, the respective governments offered their support in terms of traditional humanitarian assistance, but stressed that no action would be taken without the consent of their counterparts in Myanmar.

In what follows, the chapter explains Malaysia's response to norm conflict in light of the structure of expectations set by its commitment to the norms of non-interference and human rights protection and promotion. As argued in Chapter One, we would expect to see a change in response as a result of a shift in the strength of expectations to act in accordance with the norms by at least one of the government's relevant audiences, combined with the government's related perception of the costs of non-compliance with the norms. In light of new expectations, a government that wishes its actions to be perceived as legitimate by its relevant audiences might find itself urged to re-evaluate its response. In analyzing the Malaysian government's decision making in the context of expectations for norm compliance, the remainder of this chapter also addresses its response as an attempt to manage (potentially conflicting) expectations for norm

⁶³ Fazli Abudllah, "ASEAN perlu sepakat tangani isu Rohingya," *Berita Harian*, 18 November 2012.

compliance. The chapter demonstrates that in view of changing domestic expectations regarding norm compliance, the Malaysian government adopted a 'mixed response strategy' to norm conflict. Over time it used norm reconciliation and conflict denial as strategies to minimize the anticipated social costs of non-compliance with one of the two conflicting norms.

2.2. Prioritizing Human Rights Protection during the Saffron Revolution

When the Saffron Revolution occurred in 2007, the Malaysian government, at the time headed by Prime Minister Abdullah Badawi, had to choose between compliance with the conflicting obligations stipulated by the norms of non-interference and human rights protection. Confronted with the situation, the perceived strength of the domestic and international expectations for compliance with human rights protection created an important motivational force for the government to interfere and respond in favor of human rights protection. Domestic and international expectations in favor of human rights protection were reinforced at the regional level by a collective ASEAN statement condemning the violence. In order to avoid domestic legitimacy and regional as well as international reputation costs, the Malaysian government had to align its stance during the crisis with the articulated expectations.

When the peaceful pro-democracy protests in Myanmar began, Malaysian parliamentarians across the ruling and opposition parties immediately voiced strong expectations that the government should interfere on behalf of human rights protection. The Malaysian members of the ASEAN Inter-Parliamentary Myanmar Caucus harshly condemned the violence. Caucus president and party member of the United Malays National Organisation (UMNO) Zaid Ibrahim stated that the reaction of Myanmar's authorities towards the peaceful protestors was totally unacceptable.⁶⁴ He called upon ASEAN leaders, singling out Malaysia, to immediately intervene:

Malaysia and ASEAN must come into the very forefront in regional and international efforts to support a peaceful resolution of the monk-led mass protest marches in Rangoon and Mandalay [...] especially as ASEAN had given the Myanmar military junta a new legitimacy and fresh lease of life by admitting Myanmar into ASEAN ten years ago.⁶⁵

⁶⁴ "Violence against Burmese monks lambasted," *Malaysiakini*, 26 September 2007.

⁶⁵ *Ibid.*

Malaysian parliamentarians emphasized the greater moral appropriateness of human rights protection in the particular situation by characterizing the junta's behavior as "unacceptable."⁶⁶ They also accused Malaysia and ASEAN of complicity in having brought about the current crisis, by accepting Myanmar as a member state of the regional organization. Malaysia in particular, under former prime minister Mohamad Mahathir, had been a proponent of Myanmar's accession to ASEAN.⁶⁷

In weighing the costs and benefits of compliance with either norm, addressing expectations at the domestic level was particularly important for Prime Minister Badawi. Coming to office after twenty-two years of semi-authoritarian rule under Mahathir, the legitimacy of his administration had become closely intertwined with allowing for greater political participation through consultation and accommodation (Yusoff, Awang, and Agustino 2015, 24; Khoo 2014, 330; Reen, Mokhtar, and Sing 2012, 179). Badawi's more inclusive approach to policymaking had especially empowered civil society and minority groups beyond the numerically dominant ethnic Malays (Musa 2012, 60). Moreover, he had encouraged participation of parliamentarians and civil society not only in domestic debates, but also at the regional level, and with the Press Act had given rights to the media (Saravanamuttu 2010, 234; Reen, Mokhtar, and Sing 2012).⁶⁸ In the specific case of Myanmar, this greater openness had led to a high level of legislative engagement in foreign policy, formerly unseen in Malaysia. In 2004, this resulted in the formation of ASEAN's first Parliamentary Caucus on democracy in Myanmar. Its purpose was to monitor the situation in the country and ensure genuine democratization in Myanmar.⁶⁹ In order to avoid domestic legitimacy costs in view of a widely shared expectation to act in accordance with the government's commitment to human rights protection, it was necessary for Prime Minister Badawi to at least condemn the violence against the protestors and express Malaysia's opposition. In speaking up and prioritizing human rights protection, Badawi also distanced himself from his predecessor Mahathir Mohamad's loathed domestic heritage. The long-term prime minister had been one of the staunchest supporters within the region of Myanmar's admission to ASEAN. Hence the

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ It was thus under Badawi's leadership and in his function as ASEAN chair, that the Malaysian government created some space for NGOs to take part at the sidelines of the 2005 ASEAN summit in Kuala Lumpur.

⁶⁹ Lim Kit Siang, "Malaysian Parliamentary caucus on democracy in Myanmar to be formed," *Limkitsiang.com*, 8 April 2004, accessed 11 October 2017, <https://limkitsiang.com/archive/2004/apr04/lks2963.htm>.

government's perception of the weight of domestic expectations tilted the balance in favor of interference.

In considering Malaysia's response to the Saffron Revolution, domestic expectations in favor of human rights protection were supported and reinforced by strong international pressure on ASEAN collectively to take a role in checking the regime in Myanmar (as discussed in Chapter Four). The international expectations placed upon the heads of state within ASEAN were particularly direct as the crisis in Myanmar peaked at the time of the annual meeting of the UN General Assembly in September 2007 and was condemned by almost all Western governments in their speeches and direct meetings with ASEAN representatives. Upon arriving at the UN headquarters in New York, US Assistant Secretary of State Kirsten Silverberg immediately announced that among other things, Secretary Condoleezza Rice would press for ASEAN leverage to end the crackdown in Myanmar and to initiate genuine democratic reforms. The ASEAN ministers were scheduled to meet US Secretary Rice on the sidelines of the UN General Assembly debate on 27 September.⁷⁰

In view of the international reaction to the Saffron Revolution, which clearly framed the events as a case of large-scale human rights violations and called for the expression of disapproval of any state committed to human rights protection, ASEAN's reputation and the reputations of its individual member states were put on the line. As one of the founding members of ASEAN, Malaysia had a particular motivation to maintain a strong reputation for the organization. But in addition, as a relatively small state in the region, Malaysia was also dependent on ASEAN's combined force to have a relevant voice not only in the wider Asia-Pacific area, but also globally in international forums (Saravanamuttu 1997; Mahathir and Irwan 2007). In committing the region to democratic values and human rights protection alongside non-interference as codified in the legally binding ASEAN Charter, the regional dimension of the norm conflict strengthened the costs of non-compliance with the human rights protection norm for individual ASEAN member states. It allowed international audiences to pressure member states not only directly, based on their individual commitment to the norm, but also via the organization's reputation.

Beyond a concern for ASEAN's reputation, Malaysia also had aspirations for its own international posture. After decades of Mahathir's confrontative and often-times openly

⁷⁰ "Myanmar protests threaten turmoil: Malaysian minister," *Malaysiakini*, 25 September 2007.

anti-Western stance internationally (Dosch 2014, 5; K. M. Khalid 2011, 430–31), Badawi moved away from projecting the country as a leader in the developing world, and instead tried to establish Malaysia internationally as a cooperative and moderate Islamic state that could interact more productively with the West (Noor and Qistina 2017, 204). In pursuing international recognition for Malaysia's moderate Islamic identity, Badawi emphasized that the country aimed to respect democracy, good governance and human rights, both at home and abroad, and was keen to participate actively in global politics and institutions (Dosch 2014, 7). He simultaneously sought closer relations between the Western and Islamic worlds (Harun 2009). "Before becoming Prime Minister, Badawi had served as a professional diplomat and foreign minister," Syed Hamid Albar, who had served as foreign minister under Badawi, said, continuing:⁷¹

He was sensitive to the international context and believed that as the world had changed, we as a nation also had to start acting differently. We tried to find our place in a world shaped by a majority of democracies. In such an environment we could no longer allow blatant abuses of human rights.⁷²

In promoting Malaysia's moderate Islamic identity in relation to the Western and Islamic worlds, Badawi stressed the concept of 'Islam Hadhari,' which described a moderate and progressive view of Islamic civilization (Reen, Mokhtar, and Sing 2012, 182). Although originally introduced by Mahathir, it was primarily during Badawi's administration that the concept of moderate Islam was stipulated and put into practice internationally (Pandian, Omar, and Sani 2010, 104). Consisting of nine core principles, 'Islam Hadhari' called for, inter alia: good governance, free and liberated people, protection of the rights of minorities, women and children as well as general human rights (Hamid and Ismail 2012, 394; Musa 2012, 47). Internationally, Badawi and his administration used the concept to emphasize that the ideas of good governance, democracy and accountability to God and the people were not antithetical to Islam, but instead were "clearly embodied in the Holy Qur'an and the traditions of Prophet Mohammad."⁷³ In line with the internationally stipulated identity and role conception of Malaysia as a moderate Islamic model state, Badawi repeatedly stated that it was Malaysia's duty "to demonstrate, by

⁷¹ Author's interview with former foreign minister of Malaysia Syed Hamid Albar, 2 September 2016, Kuala Lumpur, Malaysia.

⁷² Ibid.

⁷³ Speech by the foreign minister of Malaysia Syed Hamid Albar at the 60th session of the General Assembly New York, 19 September 2005, A/60/PV.13.

word and by action, that a Muslim country can be modern, democratic, tolerant and economically competitive” (Gatsiounis 2006, 79). In order to gain international recognition for the country’s stipulated identity, condemning human rights violations and promoting respect for human rights was viewed as more beneficial than remaining silent. Taken together, domestic and international expectations in favor of human rights protection during the Saffron Revolution made a strong case for compliance with the norm, which would avoid both domestic legitimacy and international reputation costs.

However, Malaysia’s response to the Saffron Revolution also warranted an assessment of the expectations articulated at the regional level. This was particularly difficult during the Saffron Revolution as a collective ASEAN statement co-existed next to individual member states’ responses to the crisis. While the former condemned the violent crackdown, individually the majority of ASEAN member states respected Myanmar’s call for non-interference and abstained from commenting on the events. Looking back at the period, former foreign minister Syed Hamid Albar explained Badawi’s motivation to align his policy with the collective ASEAN statement by pointing out the domestic and regional context at the time. “Malaysia was surrounded by very vocal newly democratized peers and in view of the domestic changes in Malaysia, Badawi wanted to come up with a foreign policy that was worthy of a democratic leader.”⁷⁴ In order to be seen as equally committed to human rights protection and promotion in the region by its democratic peers, support for the collective ASEAN stance was crucial and reinforced domestic and international expectations regarding human rights protection.

In justifying his motivation to condemn the junta’s violence during his address at the UN General Assembly debate on 28 September, Badawi therefore echoed the rights-based expectations articulated by his various audiences. He said that Malaysia, along with other ASEAN countries, disapproved of the excessive use of force by Myanmar’s government to quell a civilian protest.⁷⁵ In view of the latest developments in Yangon, where lives were lost when soldiers opened fire on demonstrators, Malaysia could not remain silent.⁷⁶ Looking back at Malaysia’s motivation to support the collective ASEAN statement and align its individual stance, Foreign Minister Albar emphasized that

⁷⁴ Author’s interview with former foreign Mminister of Malaysia Syed Hamid Albar, 2 September 2016, Kuala Lumpur, Malaysia.

⁷⁵ “Collective ASEAN stand warranted,” *New Straits Times*, 30 September 2007.

⁷⁶ *Ibid.*

consequentialist considerations based on the objective of reducing the social costs of compliance coincided with notions of appropriateness:

The statement was ASEAN diplomacy at its best; we came up with a statement, so there was less pressure on ASEAN as a whole and on the individual member states – from the world and our people. It might have come as a surprise to the world, but for us it was not surprising. We did not have another choice. It was necessary, but it was also very right.”⁷⁷

Malaysia’s own statement at the UN was subsequently lauded by the government’s domestic as well as international audiences. From the perspective of minimizing legitimacy costs at home and maximizing reputation internationally, Malaysia’s decision to interfere had thus been successful. The largest Malay language newspaper, *Berita Harian*, excitedly wrote that it was unprecedented that Malaysia, a country which in the past had been known for its staunch support of Myanmar, strongly urged the junta to free pro-democracy leader Aung San Suu Kyi and other prisoners, as well as accelerate the process of restoring democracy.⁷⁸ Malaysian parliamentarians also expressed approval. The president of the People’s Justice Party (PKR) and deputy chair of the Malaysian Parliamentary Caucus on Democracy in Myanmar, Azizah Wan Ismail, for example, welcomed Prime Minister Badawi’s condemnation of the Myanmar junta in New York. She recognized with satisfaction that the “Malaysian government had long last acknowledged PKR’s basic assertion that ASEAN’s policy of constructive engagement had failed to bring peace and freedom in Burma.”⁷⁹ As neighbors, Malaysians could empathize with the despair of the Myanmar people, she argued.⁸⁰

Malaysia’s swift and clear response in favor of human rights protection was also internationally recognized. The British foreign secretary, David Miliband, for example, applauded Malaysia for its clear stance, arguing that in a globalized, interdependent world, individual countries could not isolate themselves from the lives of others, as internal crises had potential effects on other countries:

I also welcome the very forthright statements by Prime Minister Datuk Seri Abdullah Badawi and Foreign Minister Datuk Seri Syed Hamid Albar since the

⁷⁷ Author’s interview with former foreign minister of Malaysia Syed Hamid Albar, 2 September 2016, Kuala Lumpur, Malaysia.

⁷⁸ Azhar Abu Smah, “Bush berhelah isu pelepasan gas rumah hijau,” *Berita Harian*, 2 October 2007.

⁷⁹ Wan Azizah Wan Ismail, “Time for ASEAN to kick Burma out,” *Malaysiakini*, 2 October 2007.

⁸⁰ *Ibid.*

ASEAN statement, as well as the leading role Malaysia is playing in the region in support of the people of Myanmar and Gambari's mission.⁸¹

At the same time, however, the Malaysian government recognized that despite the collective ASEAN statement, individually the majority of ASEAN member states did not share Malaysia's stance. The Badawi administration therefore made its strong statement very consciously. As Foreign Minister Albar explained, in interfering in the crisis on behalf of human rights protection, the prime minister had meant to send a clear message to the world and to ASEAN: "Badawi felt that ASEAN, almost five decades after its formation, needed to change," he said, adding:⁸²

Badawi and I believed that non-interference had to be tempered with justice and compassion. I do believe in sovereignty, non-interference and trust, but I felt and still feel that when there are external dynamics we should be willing to sit down to discuss and cooperate in order to find a solution instead of denying the presence of the problem.⁸³

Along with accommodating immediate domestic and international expectations, Badawi therefore also acted in the hope of changing the long-term trajectory of the non-interference norm in ASEAN. In short, he viewed himself as initiating a process of norm reconciliation. Instead of framing Malaysian interference in this case as a singular exception, Badawi's government attempted to establish certain forms of interference in general as justifiable exceptions to the norm. More specifically, the prime minister argued that interference should be considered legitimate when a situation inside a country has a tangible impact on other neighboring member states or the ASEAN region as a whole. With the help of a regionally more acceptable 'justificatory detour,' via spillover effects on neighbors or an impact on the region as a whole, the norms of non-interference and human rights protection would then be reconciled. By attempting to solve the norm conflict at the regional level and institutionalizing the modification of the norms, ASEAN's normative framework could once again serve as an action-guiding device for the organization's member states. In addressing the crisis, the Malaysian foreign minister therefore also emphasized the regional dimension of the Saffron Revolution. In his comments on 26 September, he stated that nothing less than ASEAN's credibility and

⁸¹ David Miliband, "ASEAN nations have vital role," *New Straits Times*, 4 October 2007.

⁸² Author's interview with former foreign minister of Malaysia Syed Hamid Albar, 2 September 2016, Kuala Lumpur, Malaysia.

⁸³ *Ibid.*

reputation were on the line. Foreign Minister Albar characterized the unrest in Myanmar as worrisome and an embarrassment for ASEAN. “Although it is an internal situation, you cannot isolate your internal crisis from affecting ASEAN,” he said, adding: “we do not want to interfere, yet, we want them to resolve the problem.”⁸⁴ The military junta had to show that it was heading towards democratization, otherwise ASEAN would be seen as a joke, not capable of resolving the issue.⁸⁵

In justifying its chosen stance during the Saffron Revolution to its regional peers, the majority of which individually still prioritized non-interference, the Malaysian government tried to minimize regional reputation costs. But it also attempted to change regional behavior in accordance with its own preferences by modifying the meaning of the non-interference norm. Regional acceptance of a relaxed version of the norm would have permitted the Malaysian government to respond in accordance with anticipated expectations for compliance with human rights protection in future situations of human rights violations without violating regional expectations for compliance with non-interference. Badawi’s initiative to reconcile the norms reflected a domestic consensus for extraterritorial human rights protection at the time and an international environment that more often than not condemned violations of human rights across the globe.

But Malaysia’s response to this crisis also demonstrated the limits of what its government considered legitimate means of interference, even where gross human rights violations were taking place. Despite expectations both at the domestic and international levels, which called on the Malaysian government to go beyond verbal interference, Badawi’s administration refused to do so. When Myanmar made no progress in meeting any of the demands made by ASEAN and the UN, namely releasing political prisoners and restoring democracy, domestic expectations in Malaysia moved away from just condemning the junta towards singling out political consequences for the regime. Malaysian opposition politician Soorian Arjuan from the Democratic Action Party (DAP) urged ASEAN to take “immediate and cogent steps [...] to isolate the regime.”⁸⁶ The regional organization could not and must not accommodate this embarrassment any longer and should move to expel Myanmar from its ranks.⁸⁷ Similarly, PKR member Azizah Wan Ismail said:

⁸⁴ Foo Yee Ping, “Unrest in Myanmar affects ASEAN, says Foreign Minister,” *The Star*, 26 September 2007.

⁸⁵ *Ibid.*

⁸⁶ Brian Yap, “It is hard to keep looking the other way,” *New Straits Times*, 3 October 2007.

⁸⁷ *Ibid.*

Should there be no improvement [...], we believe that Burma should not only be barred from attending the ASEAN summit in Singapore this November, but that the Malaysian government should lead the rest of the region by tabling a resolution to expel Burma from ASEAN immediately, and in addition to apply trade sanctions on the recalcitrant junta.⁸⁸

Malaysian lawyers from the Bar Council also urged ASEAN to expel Myanmar, arguing that evidently ASEAN's efforts of constructive engagement had failed and a clear message had to be sent to the regime.⁸⁹ The topic of sanctions also became a point of contention in discussions with the UN. Prior to a meeting between Foreign Minister Albar, Prime Minister Badawi and UN Special Envoy Ibrahim Gambari, it was leaked that Gambari expected commitment to 'real action' from ASEAN and its member states. He was quoted saying that it was not enough for ASEAN countries to make statements expressing concern.⁹⁰ Although Gambari publicly remained vague as to what 'real action' entailed, the Malaysian government interpreted this as a request for the suspension of Myanmar from ASEAN, which was then forcefully ruled out by the Malaysian foreign minister. Under pressure both at home and internationally, Albar justified this decision by arguing that not only did the body have no mechanism to suspend or impose sanctions but that such actions would simply force Naypyidaw to turn inward and look to China for support.⁹¹ Rastam Mohd Isa, secretary-general at the Foreign Ministry at the time, elaborated:

Our view was, yes, there was a severe problem in Myanmar, which we had to address. This required some form of interference. But did we want to deal with them by using the big stick, something the Europeans were very keen to do, or take a different approach? Malaysia felt that there needed to be a balance.⁹²

In order to understand what 'balance' means in this context, recall that traditionally ASEAN's interpretation of non-interference not only entailed a strict prohibition of the use and threat of force but also ruled out means such as 'naming and shaming.' Accordingly, a reconciliation of the norms of non-interference and human rights protection also meant finding ways of interference that did not endanger the sensitive

⁸⁸ Wan Azizah Wan Ismail, "Time for ASEAN to kick Burma out," *Malaysiakini*, 2 October 2007.

⁸⁹ "Thousands protest again against Burmese junta," *Malaysiakini*, 2 October 2007.

⁹⁰ "Gambari tells ASEAN: Turn rhetoric into real action," *Malaysiakini*, 17 October 2007.

⁹¹ "ASEAN will never suspend Burma, says M'sia," *Malaysiakini*, 16 October 2007.

⁹² Author's interview with former ambassador and secretary-general of the Foreign Ministry (2006-2010) Rastam Mohd Isa, 11 August 2016, Kuala Lumpur, Malaysia.

structure of trust among ASEAN member states which, with the help of the non-interference norm, had been painstakingly built in the formerly conflict-ridden region. Malaysia was therefore willing to openly comment, condemn and make unrequested recommendations, but ruled out political or economic sanctions. In shaping the type of actions considered legitimate to demonstrate commitment to human rights protection and implement the norm in practice, the regional context influenced the government's response to norm conflict. For governments willing to act upon human rights protection, this implied the use of light (verbal) as opposed to heavy (material) actions. At the same time, the region's embeddedness in the 'East Asian' cultural context, with its emphasis on publicly 'saving face,' meant that shaming was considered far more harmful by Southeast Asian policymakers than their Western counterparts.

To sum up, Malaysia's response to the Saffron Revolution in Myanmar prioritized human rights protection over non-interference. It did so based on a comparison of the costs and benefits of compliance with either norm for its domestic legitimacy as well as regional and international reputation. In order to address conflicting regional expectations for non-interference, Malaysia justified its actions by emphasizing the regional implications of the crisis and adopted a strategy of norm reconciliation. While non-interference continued to be the default norm, interference would be justified where domestic crises involving human rights violations had an impact on other member states or the region as a whole. Interestingly, by the time of the ASEAN summit in November 2007, the Malaysian government had moved away from its stance of human rights protection in Myanmar and accepted the junta's call for non-interference within the region. In the following section the change to non-interference will be explained by again drawing on the structure of normative expectations.

2.2. A Return to Non-Interference: Saffron and Cyclone Nargis

By the time of the ASEAN summit in November 2007, Badawi was no longer pressuring the Myanmar leaders to initiate reforms and reconciliation in Myanmar. Accepting the junta's call for non-interference from within the region, he now addressed their expectations and prioritized the non-interference norm over human rights protection and promotion. The government's change in response has to be seen in light of a shift in the perceived strength of domestic expectations in favor of human rights protection, especially among the government's dominant domestic audience, the Malays.

In the run-up to the ASEAN meeting, Badawi's administration was facing a major domestic legitimacy crisis. The prime minister had come under siege within his own party, UMNO, when previously embarking on a series of economic and administrative reforms. These measures were supposed to address corruption and diminish bureaucratic processes that slowed down foreign investment in Malaysia (Hays 2008). Yet even without touching upon Malaysia's affirmative action laws, which gave constitutional privileges to ethnic Malays and indigenous peoples (the so-called *Bumiputra*), resistance to Badawi's reform plans instantly formed within the party and the Malay community at large. They objected to his attack on "money politics," from which they had benefitted in the past (B. Welsh 2007, 29). Moreover, Malay elites saw in Badawi's leadership style of participation, accommodation and consensus an attempt to undermine their dominance in Malaysian society. The party insisted on embedding the Malay agenda in the Ninth Malaysia Plan, which extended the New Economic Policy and affirmative action for another 15 years to 2020, until the 30 percent goal of Malay equity ownership would have been met (L. H. Guan 2008, 188). In order to keep the party united and to reduce resistance within UMNO, Badawi gave in to the demands. As a consequence, public funds continued to be redistributed primarily to the Malay community, which led to tensions with the Indian and Chinese minorities (B. Welsh 2007, 29). When the Centre for Public Policy publicized a report in 2006 which claimed that Malay equity ownership was actually already close to 45 percent, and therefore the affirmative action goals had been achieved, an ethnically divisive dispute erupted (L. H. Guan 2008, 188).

Public resentment found expression in two large-scale anti-government rallies that took place in November 2007. They were precipitated by allegations of continued corruption and discrepancies in the electoral system that favored the ruling coalition and dominant political party, UMNO. In Kuala Lumpur, 40,000 people attended the *Bersih* rally, a movement initiated by the opposition parties to campaign for electoral reform (L. H. Guan 2008, 198). Another rally was held on 25 November 2007 in the Malaysian capital led by the Hindu Rights Action Force (Hindraf). The organizers had called the protest over discriminatory policies favoring ethnic Malays. In a country that had not seen large-scale demonstrations since the days of *Reformasi* following the Asian financial crisis of 1997 and where protest was generally not considered a part of public culture, this constituted a major domestic crisis for the government. Among the ruling elites and the Malay community at large, the protests were perceived as a threat to the *status quo* and system of Malay domination.

The two rallies occurred at the same time as the ASEAN summit following the Saffron Revolution in November 2007. Moving away from support for extraterritorial human rights protection in Myanmar, the main expectation of the Malay domestic audience towards the Malaysian government was now to contain the protests in Malaysia and maintain regime stability. This swift shift in the strength of domestic expectations reflects the fact that engagement with human rights was still a rather recent development within the Malaysian society. Compared to most of its democratic peers within ASEAN, internalization of the norm was still weaker, which made it easier for the pressure of the domestic audience to change. The shift in expectations disrupted the domestic consensus in favor of human rights protection that the Malaysian government had been faced with during the earlier stages of the Saffron Revolution. With its domestic legitimacy under attack primarily by the minority groups, the government tried to maintain support from its main electoral base, the Malays, by addressing their primary domestic concerns. To contain the protests and maintain regime stability, it also employed coercive means. The government called the protests illegal and attempted to suppress them by using excessive force. Hundreds of people were arrested and five Hindraf leaders were detained under the Internal Security Act (ISA) on the basis that they posed a threat to national security (L. H. Guan 2008, 190).⁹³

The domestic events in Malaysia, and the steps taken by the government to address them, had implications for Malaysia's stance in cases of human rights violations at the regional level. "After the rallies there was no more criticism," said Suaram activist Chew Cy. "If Malaysia had continued to criticize Myanmar over its crackdown on protesting people, Myanmar would just have turned around and said 'you are cracking down on your own protestors. What right do you have to judge or lecture us?'"⁹⁴ Accordingly, Malaysia rejected Singapore's invitation to UN Special Envoy Ibrahim Gambari to brief the nations on the situation in Myanmar, after the junta leaders had objected. Talking to the press, Foreign Minister Syed Hamid said pointedly: "The host country invited Gambari – it was not something that was done by ASEAN."⁹⁵ Moreover, Prime Minister Badawi accepted that Myanmar did not want interference from ASEAN, but preferred to deal with Gambari

⁹³ See also "Malaysia 2008, Freedom in the World," Freedom House, 2008, accessed 28 February 2018, <https://freedomhouse.org/report/freedom-world/2008/malaysia>.

⁹⁴ Author's interview with SUARAM activist Chew Cy, 22 July 2016, Kuala Lumpur, Malaysia.

⁹⁵ "Burma objects, UN briefing cancelled," *Malaysiakini*, 20 November 2007.

directly. To achieve the stated objectives, it would be better for ASEAN to support Gambari and work through the UN, Badawi said.⁹⁶

By moving away from interference and handing over responsibility to the UN, Badawi could concentrate on the domestic situation in Malaysia. But more importantly, with the domestic consensus in favor of regional human rights protection subsiding, the government no longer had an incentive to question the strict interpretation of the non-interference norm within the region. To the contrary, in continuing to violate the non-interference norm, the government would have contributed to a normative regional environment that could facilitate interference in its own now strained internal affairs. In addition, it would have exposed Badawi and his administration to charges of hypocrisy from its ASEAN peers. Accordingly, a prioritization of human rights protection over non-interference had become unsustainable for the Malaysian government following the November protests in Kuala Lumpur.

Badawi's policy change in response to the Saffron Revolution was facilitated by the regional and international context. Collectively, ASEAN moved away from its human rights-centered stance during the summit. Following the meeting, Singaporean prime minister and ASEAN chair Lee Hsien Loong announced that ASEAN accepted Myanmar's demand for regional non-interference in what the junta considered to be an internal crisis. Similarly, by the time of the summit, international pressure no longer targeted ASEAN directly. The change in Malaysia's stance towards non-interference was, therefore, possible without having to offer its democratic ASEAN peers or international audience a justification of its actions.

The weakened domestic expectations for compliance with human rights protection also explain the government's policy of non-interference in the aftermath of Cyclone Nargis in Myanmar. The legitimacy crisis of the ruling coalition *Barisan Nasional* (BN) in Malaysia had become even more pronounced after the general elections in March 2008, which were a political disaster for the prime minister and his party. UMNO and the ruling coalition BN had suffered one of the worst defeats in their history with a loss of their two-thirds majority of seats in Parliament (Saravanamuttu 2010, 239). BN only won 51.2 percent of the popular vote as opposed to 64 percent in the 2004 election, while the main opposition parties improved their performance from 9 percent to a shocking 37 percent. As a consequence, the ruling coalition lost its mandates to govern in four federal

⁹⁶ Mutazar Abdul Ghani and Johan Afandi, "Sidang berjaya capai matlamat: Abdullah," *Berita Harian*, 22 November 2007.

states, and henceforth controlled only eight of the thirteen federal states (Yusoff, Awang, and Agustino 2015, 21–22). While the ethnic minorities, primarily represented by the opposition, greeted the establishment of opposition-led state governments and the formation of a significantly different Malaysian central government with enthusiasm, the political uncertainty of the election results further exacerbated Malay fears that their societal privileges might be forfeited. With BN's political hegemony eroded, the government continued to rely on coercive means to maintain control and was focused on meeting the expectations of its dominant domestic audience. This included further restrictions of press freedoms and the freedom of expression, as Malaysia dropped to an all-time low in international rankings for press freedom (132 of 195 ranked countries). While tolerating some public assemblies, the government oppressed those held to oppose its claim to power (Suaram 2009, 10).

In such a domestic environment, expectations for action in accordance with Malaysia's commitment to human rights protection were almost exclusively articulated by the Malaysian parliamentary opposition and human rights activists in the aftermath of Cyclone Nargis. As visas continued to be delayed in Myanmar, the activist and Peace Malaysia co-ordinator Makhriz Mahathir criticized the junta and said it "should do the right thing and let in international aid teams."⁹⁷ The Malaysian Parliamentary Myanmar Caucus reiterated his call on the following day, which urged Myanmar's government to postpone its planned constitutional referendum in view of the crisis caused by Cyclone Nargis.⁹⁸ AIPMC vice president and Malaysian opposition leader, Azizah Wan Ismail, sent a letter to Myanmar's ambassador in Malaysia stating that the junta's decision to continue with the referendum seemed to show that it was not giving due concern to its citizens' plight.⁹⁹ Further emphasizing the Myanmar junta's neglect of its humanitarian responsibilities, she submitted a motion to the Malaysian Parliamentary Speaker's office, which requested that Myanmar postpone the planned constitutional referendum following the devastating cyclone and instead focus on the relief effort. The motion also called upon the regime to provide the necessary space for aid workers that were still on standby waiting for visas to get into the country to assist the cyclone victims.¹⁰⁰ She urged the Malaysian government to use its political and diplomatic influence in the region to

⁹⁷ "Yangon urged to let in experts," *New Straits Times*, 11 May 2008.

⁹⁸ "Call to delay referendum," *New Straits Times*, 13 May 2008.

⁹⁹ *Ibid.*

¹⁰⁰ "Postpone referendum," *New Straits Times*, 8 May 2008.

have the vote postponed and get the generals to focus on the people that had suffered from the impact of the cyclone.¹⁰¹ For its part, the Malaysian government decided not to comment on the motion, which was later rejected by the Speaker of the House, Amin Mulia. The speaker argued that passing the motion in parliament would violate Malaysia's practice of neutrality and non-interference in the internal affairs of other states.¹⁰²

But Malaysian opposition parliamentarians kept inquiring. A member of the DAP asked Foreign Minister Abdul Rahmin Bakri whether, in light of the contemporary crisis, the Malaysian government regretted having supported Myanmar's accession to ASEAN in 1997. Negating the question, the foreign minister said that Myanmar was a country "close to us" and without ASEAN "it would have to depend on the big powers which would eventually have usurped its sovereignty."¹⁰³ He went on to stress that although the referendum on a new constitution was not well received by the international community, "as a sovereign state, Malaysia respects the decision and hopes that democracy will quickly return to Myanmar."¹⁰⁴ It would not be for Malaysia to determine whether "the move" (referring to the referendum) was sincere or not.¹⁰⁵ Opposition politician Lim Lit Siang, who was also part of the ASEAN Inter-Parliamentary Myanmar Caucus, commented that such an attitude reflected "dismally" on all ASEAN leaders and governments, who could "definitely do more."¹⁰⁶

While the opposition referred to the junta's role in aggravating the human suffering by concentrating on the constitutional referendum and banning international aid workers from the country, the government framed the crisis as a humanitarian disaster. In line with its stance taken at the ASEAN summit in November 2007, the Malaysian government emphasized its commitment to non-interference. It thereby respected Myanmar's demand for compliance with the non-interference norm and, by focusing on the humanitarian response to the disaster, mirrored the framing of the majority of ASEAN member states during the crisis. By addressing the regional expectation for non-interference and upholding the validity of the non-interference norm, the Malaysian government tried to protect itself from regional pressure in response to its own handling of its domestic crisis and its use of coercive means to maintain its own

¹⁰¹ "Usul Wan Azizah ditolak," *Berita Harian*, 13 May 2008.

¹⁰² Ibid.

¹⁰³ "No regrets in supporting Burma to join ASEAN," *Malaysiakini*, 22 May 2008.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

regime stability. “Among ASEAN states it is quite common that issues are thrown back at you,” argued former foreign minister Syed Hamid Albar when explaining Malaysia’s policy of non-interference in response to Cyclone Nargis. “At that time we went through a difficult domestic period and we were worried about regional ‘throwback,’ so we remained silent.”¹⁰⁷ In maintaining a policy of non-interference during Cyclone Nargis, the government thus attempted to shield itself from ‘rhetorical entrapment’ at home (Schimmelfennig 2001), and allegations of hypocrisy in light of its demand for respect for human rights regionally but simultaneous failure to uphold them domestically. In line with the policy change on the regional level ever since the protests in November 2007, Malaysia’s rhetoric also changed. Internationally, the Malaysian government no longer emphasized Malaysia’s model character in successfully managing peaceful relations across ethnically and religiously distinct domestic groups, but stressed a shared commitment to Westphalian values and the need for compliance with non-intervention. At the 2008 General Assembly address, the Malaysian foreign minister Rais Yatim stated:

Malaysia is concerned over recent attempts by certain powerful member states to question the national laws of countries and the administration of justice under those laws. It needs to be restated – we have no right to meddle, in any form of manifestation or under any pretext or circumstances, in the conduct of the internal affairs of other countries.¹⁰⁸

The Malaysian policy of non-interference during Cyclone Nargis avoided domestic legitimacy costs among its main audience, the Malay community. Given that the majority of non-democratic ASEAN members individually abstained from interference during the crisis, it also addressed regional expectations. However, Malaysia’s policy of non-interference was in conflict with international expectations articulated in the aftermath of the cyclone. While no explicit expectations were addressed to the Malaysian government, ASEAN as an organization was called to act on behalf of human rights protection. International pressure on ASEAN peaked during Cyclone Nargis, as some Western governments circulated the idea of humanitarian intervention in Myanmar on the basis of RtoP. Malaysian media instantly dismissed the notion, arguing that, as a natural disaster, Cyclone Nargis was not a case for RtoP and the United Nations could not

¹⁰⁷ Author’s interview with former foreign minister of Malaysia Syed Hamid Albar, 2 September 2016, Kuala Lumpur, Malaysia.

¹⁰⁸ Speech by Minister of Foreign Affairs of Malaysia Rais Yatim Minister at the 63rd session of the General Assembly, New York, 27 September 2008, accessed 28 February 2018, http://www.un.org/ga/63/generaldebate/pdf/malaysia_en.pdf.

legitimately intervene by force without Myanmar's permission.¹⁰⁹ The Malaysian government did not officially comment on French foreign minister Kouchner's call for intervention on the basis of RtoP, but in framing the crisis as a humanitarian disaster it refrained from recognizing Cyclone Nargis as a case of human rights violation. Explaining Malaysia's rationale, former foreign minister Syed Hamid Albar said:

We did not see it as a human rights issue. Treating it as such would have further politicized the situation. For us it was a humanitarian problem and the question was how do we get aid into Myanmar? The initial response of the international community was trying to drive their agenda of RtoP, but that was a complete taboo for Myanmar and most other ASEAN states. It was just not acceptable. In framing the case as a humanitarian disaster it was much easier for ASEAN to come in. We have precedents for response under those circumstances, such as the tsunami in 2004. So there was much less suspicion and Myanmar's initial distrust could be overcome. It felt much more comfortable with an ASEAN mechanism and ultimately allowed access including international participation. It was clear that there would be no messing with Myanmar's sovereignty in the handling of the crisis.¹¹⁰

While supporting the ASEAN-led relief mechanism and thereby reducing reputation costs for the organization, the Malaysian government, in line with its own non-interference stance, took a low profile during the ASEAN emergency meeting in Singapore on 19 May. It did not pressure the junta into opening up and primarily used the meeting to deliver Malaysia's promised US\$1 million aid to Myanmar.¹¹¹ Acting more assertively during the meeting in order to diminish reputation costs for ASEAN was unnecessary for the Malaysian government as Indonesia, upon direct appeal from the UN, took the lead in persuading the generals in Myanmar to cooperate with ASEAN and the international community.

In conclusion, it can be said that Malaysian compliance with the two norms changed from human rights protection to non-interference as a consequence of a shift in domestic expectations following the protests in November 2007 and the general elections in March 2008. In prioritizing non-interference during the later stages of the Saffron Revolution and Cyclone Nargis, the government not only avoided further domestic legitimacy costs, but also addressed regional expectations in favor of non-interference. In order to invalidate international expectations during Cyclone Nargis, the Malaysian

¹⁰⁹ Khaidir Majid, "Ribut Nargis dedah krisis kemanusiaan," *Berita Harian*, 9 May 2008.

¹¹⁰ Author's interview with former foreign minister of Malaysia Syed Hamid Albar, 2 September 2016, Kuala Lumpur, Malaysia.

¹¹¹ "ASEAN to co-ordinate international relief effort," *New Straits Times*, 20 May 2008.

government rejected the framing of the crisis as a case of human rights violation and treated it instead as a humanitarian disaster. Concerned about reputation costs for ASEAN as an organization, which was the primary target of international expectations, Malaysia supported the ASEAN-led mechanism, but abstained from pressuring the junta on its own.

2.3. Maintaining Non-Interference during the Rakhine Riots

After the disastrous elections of 2008, Badawi tried to stay in office but ultimately ceded to mounting party pressure and resigned. In April 2009, he handed party leadership over to his deputy, Najib Razak, who then became head of government. During the Rakhine Riots of 2012 Najib continued to comply with the non-interference norm, despite the presence of influential Muslim voices in the country that called on the government to take a more prominent role in defending the Rohingya. Similar requests were also made internationally by other Islamic states, who lobbied for an intervention by the OIC and support for the Rohingya by the Muslim community.

Early on in the crisis, the violence against the Rohingya Muslims in Myanmar became a matter of domestic concern in Malaysia. In this context, calls for interference based on a commitment to general human rights protection were combined with arguments about the need for solidarity with fellow Muslims. The Muslim Lawyers Association of Malaysia stated that given Malaysia's "vociferous" support for Myanmar's admission to ASEAN in 1997, it was now up to Malaysia to "boldly remind the Myanmar ambassador of the very ideals of ASEAN mutual respect and humanitarian solidarity which were offered to Myanmar along with its invitation into ASEAN several years ago."¹¹² Expressing a clear expectation for compliance with human rights protection from the Malaysian government, he went on to argue that the "Malaysian government must offer every human resource at its command to organize and defend the Rohingya people."¹¹³

The case of the Rakhine riots was also addressed in parliament. Similar to Malaysian lawyers, politicians across party lines primarily relied on arguments based on general human rights protection to frame their call for interference. The Muslim PAS opposition party called upon the Malaysian government to intervene in Myanmar to stop the violence against the Rohingya community. "We want the government to play an active role against this, as what is happening in Burma is unacceptable to the international

¹¹² Azril Mohd Amin, "A plea for the Rohingyas," *Malaysiakini*, 13 June 2012.

¹¹³ *Ibid.*

community, especially the ASEAN countries,” he said.¹¹⁴ Mujahid Yusuk Rawa, also from the PAS Party, warned that inaction could turn the Southeast Asian region into “killing fields” based on religious hatred, conflict and ethnic cleansing. He argued that the “slaughter” of thousands of Rohingya had “shattered” the hope of peaceful coexistence among the different faiths in the Southeast Asian region. The PAS legislator not only framed the crisis as a case of human rights protection, but also highlighted the regional dimension of the violence in Rakhine, thereby providing an additional justification for interference within ASEAN. When reminded of the ASEAN practice of non-interference, he replied that they were facing a case of severe human rights violations and as a universal principle, “leaders cannot keep silent about it.”¹¹⁵

Support for a more active stance in the Rohingya crisis also came from former Prime Minister Mahathir Mohamad and his political rival Anwar Ibrahim. As *de facto* opposition leader, Anwar said that the *Pakatan Rakyat* (People’s Pact)¹¹⁶ wanted the Malaysian government to file an official protest against the violence in Rakhine.¹¹⁷ Similarly, Mahathir vocally condemned the violence against the Rohingya.¹¹⁸ During his time as head of government, Mahathir had been one of the staunchest supporters of non-interference, but now called upon Prime Minister Najib to highlight the plight of the Rohingya community on the international stage.¹¹⁹ He argued that Myanmar’s laws and actions had created problems for other countries, such as Thailand, Bangladesh and Malaysia, where many Rohingya had been forced to take refuge.¹²⁰ In highlighting the regional consequences of the crisis, Mahathir provided a justification for interference based on the spillover effects of the violence. By grounding his argument in the impact on others instead of the human suffering in Rakhine, he tried to increase the likelihood of acceptance within the region. Prime Minister Badawi had used similar reasoning during the Saffron Revolution in order to justify his interference in Myanmar’s domestic affairs.

Framing the Rohingya crisis more in terms of Muslim solidarity, the Malaysian Consultative Council for the Islamic Organization (MAPIM) urged Prime Minister Najib Razak to defend the Rohingya Muslims, who had increasingly become victims of

¹¹⁴ “PAS leaders distance selves from Nasha’s statement,” *Malaysiakini*, 10 October 2012.

¹¹⁵ Susan Loone, “SEA may turn into killing field over Rohingya deaths,” *Malaysiakini*, 12 August 2012.

¹¹⁶ *Pakatan Rakyat* is an informal Malaysian political coalition of opposition parties.

¹¹⁷ Aidila Razak, “Pressure your gov’t to halt violence against Rohingyas,” *Malaysiakini*, 10 August 2012.

¹¹⁸ “Dr. M: Rohingya issues can be handled diplomatically,” *New Straits Times*, 16 August 2012.

¹¹⁹ Nigel Aw, “PM should speak out for Rohingyas, says Dr M,” *Malaysiakini*, 17 September 2012.

¹²⁰ “Recognise Rohingya as citizens, Dr M tells Myanmar,” *New Straits Times*, 18 September 2012.

persecution.¹²¹ MAPIM secretary-general, Mohd Azmi Abdul Hamid, said that his office had sent a letter to the Malaysian prime minister to inform him about the situation in Rakhine. According to Hamid, Najib had strong influence within ASEAN, which he hoped could be used for an intervention to solve the crisis. In specifically calling upon the Muslim world to act, he argued that the situation in Rakhine transcended political boundaries and needed attention from all stakeholders within the Muslim community.¹²² He added: "I hope the next parliamentary session will take the initiative to voice this view at the ASEAN level, for it to be discussed regionally and globally."¹²³ Similarly, treating the fate of the Rohingya as a problem of the Muslim world, the Secretariat of the Regional Asia Ulama Association sent a resolution to the president of the World Ulama Association, Yusuf Al-Qaradawi, asking him to hold an emergency conference on how to defend the Muslim Rohingya.¹²⁴ The Malaysian Institute of International Islamic Cooperation (IKIAM) equally highlighted the special responsibility of the Islamic world in the crisis. "It is time for the world to intervene, especially the Islamic states, to find a solution to the upheavals involving Muslim Rohingya and Buddhist Rakhines in Rakhine State," IKIAM chairman Zahidi Zainul Abidin said.¹²⁵

The above discussion shows that the framing of the call for interference in the Rakhine Riots differed among various actors in the government's domestic audience. Those more readily socialized to universal human rights due to their professions, for example lawyers and politicians, primarily provided rights-based justifications for interference. In addition, they often emphasized the spillover effects of the crisis on the region, thereby trying to circumvent regional expectations for non-interference. In contrast, representatives of Malaysian Muslim organizations more often than not emphasized the religious dimension of the conflict in Rakhine. In responding to the crisis, they ascribed a special responsibility to Muslim bodies and Islamic states. Irrespective of the framing of the crisis, what is striking is that almost all support for interference within the country came from Muslim-Malay voices. Amongst those, many – most prominently Mahathir Mohamad – had in the past not been at the forefront of human rights protection within the region. This suggests that religion had a catalytic effect on their willingness to assist others. At least amongst parts of Muslim-Malay society, the internalization of

¹²¹ MAPIM is an association of several NGOs that fight for the aspirations of Muslims in Malaysia.

¹²² "MAPIM minta PM bela nasib umat Islam di Myanmar," *Berita Harian*, 17 June 2012.

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ "Sedia bantu etnik Rohingya," *Berita Harian*, 24 August 2012.

human rights, therefore, seemed to be quite particular. Instead of displaying a universal understanding of human rights, internalization of the norm reflected a more particularist notion of Muslim solidarity during the Rakhine Riots. Assistance was offered not just to any stranger, but preferentially to non-nationals of a shared religious affiliation. This partial understanding of human rights once again mirrors the fact that engagement with human rights within the country only really became permissible during the premiership of Abdullah Badawi. The Malay community especially had little previous exposure to human rights discourse.

Domestic voices calling for interference on behalf of the Rohingya were reinforced at the global stage. While Western countries largely refrained from interfering in the crisis for fears of jeopardizing the reform process in Myanmar, several Islamic countries, including Iran, Turkey and Saudi Arabia, harshly condemned the violence against the Rohingya and called the UN, OIC and Islamic states to action. But despite the domestic and international pressure for interference, the Malaysian government remained silent. Independently and within the ASEAN framework it was unwilling to interfere. When Foreign Minister Anifah Aman was asked in parliament about the role played by the Malaysian government as a member of the OIC in addressing the “Rohingya Muslim Genocide,” he simply referred to the regional stance of non-interference.¹²⁶ “The non-interference practice is our way of recognizing a country’s sovereignty. It is consistent with our policy against ethnic conflict in the Rakhine state of Myanmar,” he said.¹²⁷ The government’s policy of non-interference reflected that at the time rebuilding its domestic legitimacy among the key ethnic minorities, just one year ahead of the 2013 general elections, was more important to the government than addressing Muslim-Malay expectations for action on behalf of the Rohingya. In contrast to their fellow Malay countrymen, the minority groups were far less enthusiastic about government involvement in the Rakhine Riots. Several factors contributed to the shift in their expectations after Cyclone Nargis and explain why there were fewer voices calling for Malaysian interference based on human rights concerns independent from religious affiliation.

The first factor was a noticeable decline in the protection and enforcement of their own rights within Malaysia. After the 2007 riots and 2008 general elections the country was more divided than ever. In order to restore UMNO’s power, Prime Minister Najib

¹²⁶ Chuman, “We’re ready to help Myanmar,” *New Straits Times*, 10 October 2012.

¹²⁷ Ibid.

embarked on a dual strategy that contained coercive as well as legitimacy-based elements. In order to portray the new government as inclusive and open, responding equally to the growing socioeconomic needs and demands of its people of *all* ethnic descents, he launched '1Malaysia' as the new domestic paradigm (K. Khalid 2009, 329). It aimed to forge a Malaysian identity, which transcended ethnic and religious divides. At the same time, Najib continued to curtail the freedom of the press, restricted the role of the legislature and straightjacketed the judiciary by filling 'bottleneck positions' such as the attorney general's office with party cronies. Power was increasingly transferred back to the executive. While the first element of Najib's domestic strategy aimed at winning legitimacy across the ethnic groups, the second more coercive element had the objective of avoiding another legitimacy crisis by increasing the executive's control over the party, policymaking and public opinion. It also led to a decline in respect for and protection of human rights in Malaysia. The deteriorating human rights situation at home affected domestic belief in the appropriateness of human rights protection as part of Malaysia's foreign policy. "People see human rights violations elsewhere and think discrimination exists here, too. Not as bad obviously, as nobody is shot and houses aren't burned. But if we cannot fix what happens here, why would we be concerned about something similar happening elsewhere?" human rights activist Chew Cy asked.¹²⁸ Political activists and opposition parliamentarians expressed similar views, stressing that it would be hypocritical to lobby their government to get involved in foreign cases if Malaysia could not solve its own democratic issues:

We think that our own government is not much better. In Indonesia the NGOs and civil society face a different domestic situation. They believe their government could do more, but is not doing enough, so they pressure it. Here we think that our government does not have the credibility anymore to knock at the door of Myanmar and say 'I think you are violating human rights.'¹²⁹

In short, the strength of domestic expectations for the government to conform with the norm of human rights protection and promotion internationally had declined by the time of the Rakhine Riots in 2012. The deteriorating human rights situation at home following Najib's accession to power again reflects that the internalization of human rights protection has been weaker in Malaysia than in ASEAN's 'liberal' democracies. Checks and balances within the political process were less well institutionalized, allowing the

¹²⁸ Author's interview with SUARAM activist Chew Cy, 22 July 2016, Kuala Lumpur, Malaysia.

¹²⁹ Author's interview with the political activist and opposition parliamentarian for Parti Keadilan Rakyat (PKR) Tian Chua, 15 August 2016, Kuala Lumpur, Malaysia.

government to use limitations within the constitutional guarantees of certain rights, such as freedom of expression and assembly, to oppress domestic protest and opposition.

While the increased restriction of rights at home led to a general decline in the expectations of minority groups regarding the potential for Malaysia to engage in extraterritorial human rights protection, a second element has to be considered, which actually led to pronounced resistance against interference in the crisis. The religious dimension of the Rakhine Riots and the fear of a Muslim Rohingya refugee wave hitting Malaysia meant that during the crisis large sections of the Indian and Chinese minorities openly opposed Malaysian involvement in the Rakhine Riots. Especially in the opposition-led state of Penang, with a large Chinese voter base, calls were loud to prevent further Rohingya migration to Malaysia. As a more economically affluent and Islamic nation, Malaysia already hosted a large community of Rohingya. Bordering Thailand and facing the Andaman Sea, Penang had in the past been the place of first arrival for many Rohingya refugees coming to Malaysia. “When the Rohingya were left out on the sea as a result of the border closure in Thailand, some people suggested that they should land in Penang,” opposition parliamentarian Kian Ming Ong recalled:

But Penang voters pressured the chief minister in Penang, who is the secretary-general of my party, not to allow the Rohingya to land there. They were afraid of being overrun by Muslims and feared that the presence of large numbers of Muslim migrants could further affect their space in Malaysian society. These are people that would otherwise be very progressive on a lot of human rights issues, but showed little compassion regarding Muslim foreign migrants coming to their country.¹³⁰

While the religious dimension of the Rakhine Riots had a reinforcing effect on expectations regarding human rights protection among the Malay community, it led to the opposite reaction among the ethnic minorities. Afraid of the spillover effects of Muslim migration to Malaysia, the strength of their expectations for government compliance with extraterritorial human rights protection diminished. In comparing the costs and benefits of compliance with the two norms, the Malaysian government had to choose between addressing the conflicting expectations of the Muslim-Malay community and the ethnic minorities. In order to enhance its legitimacy amongst the ethnic minorities prior to the upcoming 2013 general elections, the government opted to address the expectations of

¹³⁰ Author’s interview with the opposition parliamentarian for the Democratic Action Party (DAP) Kian Ming Ong, 18 August 2016, Kuala Lumpur, Malaysia.

the latter. “The Malaysian authorities feared that by getting involved in the crisis, they would become a magnet and more Rohingya refugees would come to Malaysia,” former Special Envoy to Myanmar Razali Ismail explained, adding:¹³¹

We already have tensions between the communities here. So if you add more people you intensify that conflict. The opposition would have accused the government of trying to buy Muslim votes. So in staying out of the conflict, the multi-ethnic composition of Malaysia really was the main problem. Even though we want the Rohingya to have justice in Myanmar, this does not mean that we can have them all here.¹³²

In short, the government worried that the arrival of more Muslim migrants could be perceived by the minorities as an attempt to further increase the influence of Islam in Malaysia. This would not only have risked undermining the ‘1Malaysia’ policy, but would also have alienated Indian and Chinese voters less than a year ahead of the general elections in May 2013.

On the regional level Malaysia’s non-interference policy did not risk reputation costs as the majority of member states, as well as ASEAN collectively, had maintained compliance with the non-interference norm during the Rakhine Riots. On the domestic and international level, however, a policy of non-interference threatened to cause legitimacy and reputation costs with the Muslim-Malays and Islamic nations. In order to manage the conflicting expectations, which had remained unaddressed by the government’s choice of non-interference in the crisis, Najib pursued two strategies. To begin with, his administration tried to undermine the foundation of domestic calls for human rights protection by framing the Rakhine Riots as a humanitarian disaster as opposed to a case of human rights violations. As the crisis progressed and calls for interference continued, the government made concessions to its Malay and international Islamic audiences by supporting the work of the OIC in Rakhine. While not taking a prominent role in the deliberations on the topic, Malaysia participated in the extraordinary OIC meeting in August 2012.¹³³ Following the meeting, Prime Minister Najib said that he considered it a positive signal that Myanmar was inviting the OIC secretary-general to find a good solution to the Rohingya problem. “Myanmar’s President

¹³¹ Author’s interview with former UN special envoy to Myanmar and current chairperson of SUHAKAM Razali Ismail, 12 August 2016, Kuala Lumpur, Malaysia.

¹³² Ibid.

¹³³ Zulkofli Jamaludin, “Konflik Syria, etnik Rohingya dibincang,” *Berita Harian*, 13 August 2012.

Thein Sein called me to explain what happened and expressed his willingness to cooperate with the OIC representatives,” he stated.¹³⁴

Overall, by complying with the non-interference norm the Malaysian government tried to enhance its domestic legitimacy among the ethnic minorities in line with its ‘1Malaysia’ paradigm prior to the 2013 general elections. In framing the crisis in Rakhine as a humanitarian disaster as opposed to a case of human rights violation, the government tried to invalidate domestic expectations in favor of human rights protection, which conflicted with the government’s non-interference stance. It later made concessions to appease domestic and international calls for interference on behalf of the Rohingya by supporting the work of the OIC.

3. Conclusion: A Mixed Response Strategy

The mixed response pattern displayed in Malaysia can be explained as the result of a shift in the government’s estimation of the strength of domestic expectations and its perception of the legitimacy costs of complying with human rights protection as opposed to non-interference. In order to best address changing domestic as well as conflicting international expectations for norm compliance, the government over time adopted a mixed response strategy. By combining different response strategies to optimally manage the various expectations, the government tried to minimize the social costs of norm compliance at the domestic, regional and international levels as those domestic expectations changed.

During the Saffron Revolution the Malaysian government initially acted upon the human rights norm in view of strong pressure at the domestic and international level, as well as pressure from its democratically advanced ASEAN peers. To justify its interference to the majority of ASEAN member states that had individually remained silent during the crisis, the government tried to reconcile non-interference with human rights protection. It argued that in cases that had a significant impact on neighboring states or the region as a whole, interference should not be considered illegitimate. In order to avoid future reputation costs at the regional level by prioritizing human rights protection, the Malaysian government suggested an official modification of the norm within ASEAN’s normative framework. A modified non-interference norm, would allow interference by

¹³⁴ “Malaysia sokong OIC gantung Syria,” *Berita Harian*, 16 August 2012.

neighbors and regional peers if a domestic crisis affected their jurisdictions or the region as a whole.

In line with a shift in the perceived strength of domestic expectations for compliance with human rights protection, the administration of Prime Minister Abdullah Badawi changed its policy towards non-interference at the ASEAN summit in 2007. The new expectations primarily articulated by the government's main domestic audience, the Malays, reflected the domestic situation in Malaysia. In the wake of the Bersih and Hindraf mass protests in November 2007, which questioned the domestic system of Malay domination, the dominant Malay expectations now revolved around containment of the protests and maintenance of regime stability. In addressing these expectations, Badawi also employed coercive means, which at the regional level required a return to non-interference in order to shield the regime from interference in its own now-strained domestic affairs. It maintained a prioritization of the non-interference norm during Cyclone Nargis. In order to invalidate pressure in favor of interference from its international audience during the cyclone, and thereby avoid reputation costs, the government rejected the framing of the crisis as a case of human rights protection. Instead, it portrayed the aftermath of the cyclone as a humanitarian disaster.

The new government headed by Prime Minister Najib Razak employed a similar strategy during the Rakhine Riots. Facing conflicting domestic expectations, he aligned his stance with the preferences of the ethnic minorities, which were against Malaysian involvement in the crisis based on a fear of attracting further Muslim migration to the country. In addressing their concerns instead of Muslim-Malay expectations for compliance with human rights protection, Najib hoped to enhance his legitimacy among the ethnic minorities prior to the upcoming general elections. In order to minimize legitimacy costs among the Malay majority, the government again framed the crisis as a case of humanitarian disaster, denying the presence of human rights violations in Rakhine. In addition, it worked through the OIC to address the crisis, without, however taking a major role.

The various shifts in the expectations of the domestic audience reflect the fact that compared to other ASEAN democracies, internalization of human rights protection was still relatively weak in Malaysia, as well as the presence of a major domestic crisis, which in addition affected the strength of expectations for human rights protection. The dominant societal group, the Malays, had only recently been exposed to universal human rights standards following Badawi's accession to power. The relatively fresh engagement

with human rights is also reflected in the framing of the Rakhine Riots, whereby justifications for interference on the basis of general human rights protection and Muslim solidarity merged.

Conclusion

Introduction

This research project began by asking the following two questions: How do states and their governments respond to norm conflict in practice? And why do they respond the way they do? In addressing these questions, the dissertation sought to fill a knowledge gap in the discipline of International Relations, which has so far given little theoretical or empirical attention to norm conflict as a challenge to foreign policy decision-making. With the help of three country case studies, the project explored the proposition that governments respond to norm conflict by prioritizing one norm over the other as well as by managing domestic and international expectations for norm compliance. In doing so, governments seek to minimize the anticipated legitimacy and reputation costs of non-compliance with either norm. By adopting a consequentialist but socially embedded approach to norm following, the dissertation outlined a dynamic theoretical framework for explaining state response in situations of norm conflict. Six different response strategies to norm conflict were developed in the theoretical part of the project to guide the case selection and serve as a reference point for the empirical analysis of the 'real world' cases of norm conflict in Southeast Asia.

In exploring norm conflicts empirically, the dissertation told the story of the governments of Indonesia, Thailand and Malaysia and how they have responded to the norm conflict between non-interference in the internal affairs of states and extra-territorial human rights protection in cases of human rights violations. It did so with reference to three instances of gross human rights violations in Myanmar, namely the Saffron Revolution in 2007, Cyclone Nargis in 2008 and the Rakhine Riots in 2012. While facing the same problem, the respective governments each experienced the norm conflict in a unique way, depending on the strength of the domestic expectations for norm compliance with either of the two norms and how they interacted with the regional and international expectations set by the governments' prior commitment to the conflicting norms. The case studies showed that in response to norm conflict, Indonesia tried to reconcile the two norms by re-shaping the meaning of the non-interference norm. In contrast, Thailand employed a strategy of what I referred to as 'context-specific norm replacement' by privileging non-interference over human rights protection in the country's relations with Myanmar. Last but not least, the Malaysian government adopted

a mixed response strategy to norm conflict, which initially focused on norm reconciliation and later switched to a strategy of conflict denial.

Confronted with conflicting expectations for norm compliance by their different audiences, the governments of all three states shared a greater concern for domestic legitimacy than reputation costs at the regional and international levels and thus acted in accordance with domestic expectations. In choosing which of the two norms to prioritize, response to norm conflict therefore always reflected the dominant domestic expectations in order to avoid or at least minimize domestic legitimacy costs. Only then did the governments try to manage conflicting expectations by providing justifications that legitimized their behavior vis-à-vis the dissenting audiences abroad, or, if necessary, made temporary concessions.

In what follows, this final chapter will review the findings from the case studies in light of the initial theoretical expectations. The chapter then moves on to address the 'lessons learned' and elaborates on the overall contributions of the research to the discipline of International Relations. It also discusses the findings' implications for future research on norm conflict.

1. Reviewing the Response Strategies

A consequentialist but socially embedded approach to norm following starts from the premise that the three logics of action normally used within the discipline of IR, on their own do not satisfactorily explain responses to norm conflict. In relation to the consequentialist but socially embedded approach each logic served as an alternative explanation for government decision-making in situations of norm conflict. As a consequence, I refrained from providing another "variable"-driven alternative, as such as a materialist-realist account of *how* and *why* governments respond to norm conflict the way they do. In focusing on *theory building*, the approach to explaining norm following adopted here instead emphasized ideational factors, namely the social costs of norm violation at the domestic and international levels as motivational forces.

The consequentialist but socially embedded logic of norm following, moreover, served to narrow down expectations for when governments are likely to adopt different response strategies to norm conflict in order to manage expectations for norm compliance. As a first determining factor, the approach relies on whether the expectations for norm compliance articulated by the relevant audiences converge, conflict or change over time. With the help of constructivist insights from work on norm replacement and

cycles of normative change at the international level, expectations regarding the likelihood of the adoption of a strategy were further refined (see Table 1). In the following section, the empirical findings from the three case studies will be reviewed against the backdrop of the initial theoretical expectations.

1.1. A Strategy of Norm Reconciliation in Indonesia

In choosing Indonesia as a case study, the expectation was that a strategy of norm reconciliation in response to the norm conflict between human rights protection and non-interference in Myanmar would be detected. Theoretically, the strategy has been described as most likely in cases in which a government faces strong conflicting expectations for norm compliance at the domestic and/or international levels, but has little confidence in its ability to convince the dissenting audience of general norm replacement, either because it lacks the Gramscian power to do so, or because the respective norm is believed too central for the dissenting audience as it importantly interacts with the way it sees itself. Reflecting the theory, Indonesia's credentials as one of Southeast Asia's most advanced democracies with (at the time), a strong commitment to human rights protection and promotion at home as well as at the regional level would translated into strong domestic and international expectations for human rights protection. At the same time, the presence of on-going secessionist conflicts in Indonesia, most importantly in Papua, generated domestic support for the continued validity of non-interference in the region. Both sets of domestic expectations seemed rather difficult to remove entirely through persuasion without prior identity and contextual change, as they fundamentally related to Indonesia's identity as a democracy as well as the very essence of the state, its territorial integrity.

In accordance with the theoretical framework, the empirical analysis showed that in view of strong conflicting domestic expectations for norm compliance that were both broadly shared across society, the Indonesian government adopted norm reconciliation as a response strategy to norm conflict. Confronted with strong domestic expectations in favor of a prioritization of human rights protection throughout all instances of rights violations in Myanmar, human rights promotion and protection in practice became Indonesia's 'general' norm. Recall that in order for both norms to remain part of the state's normative structure, as intended by norm reconciliation, a modification of the respective norms' meanings is required. To remove the overlap between the normative directives, both norms are the subject of change: After determining a 'general' norm, a gap needs to

be created within that norm which allows a 'special' norm to be legitimately applied in those instances that fall within the gap. Thereby, the 'special' norm becomes a legitimate exception to the general norm and supersedes it in cases that fall within its sphere of application. More often than not, complying with human rights protection as the 'general' norm not only avoided domestic legitimacy costs for the Indonesian government, but also international reputation costs. In two of three instances of norm conflict, both the West and the UN as relevant international audiences supported a rights-based approach to the crises.

However, Indonesia's support of human rights protection in its foreign policy was not absolute. The government only complied with human rights protection in those cases that did not involve a notion of secessionism or the risk of territorial disintegration. In these instances, it remained silent and prioritized the non-interference norm. This behavior reflected the presence of a second conflicting set of domestic expectations, which the government believed would be difficult, if not impossible, to remove without far-ranging contextual changes inside Indonesia. Maintaining non-interference as a regional standard in this 'special' case mattered to the Indonesian government because of strong domestic pressure to guarantee the territorial integrity of a unitary Indonesian state. The fear of external interference in the restive regions of Indonesia, such as Papua, has been omnipresent in Indonesian society and Indonesian governments have been very much aware of it. The fear of territorial disintegration has its origin in the very real and recurrent secessionist threats the country has had to survive ever since its independence and which reached a climax with the loss of East Timor in 2002. The pronounced Indonesian determination to prevent further secessionism thus explains the prioritization of non-interference in the later stages of the Saffron Revolution and the Rakhine Riots, which involved a risk of territorial disintegration and notions of secessionism.

Effectively, the Indonesian government defined the presence of disintegrative forces in an internal conflict as a legitimate exception to human rights protection. The Indonesian government thus created a 'gap' within its 'general' norm that not only allowed for but necessitated the application of non-interference as the 'special' norm. To fit within this 'gap,' the sphere of application of non-interference had to be reduced. In other words, the Indonesian government 'stripped off' the first two dimensions of the regional non-interference norm as defined by Acharya (see Table 2) (Acharya 2002, 225). These dimensions ruled out *any* criticism of governments in their handling of internal

affairs, most importantly state-society relations. In its practical application, the Indonesian government instead reduced the non-interference norm to its third and fourth dimensions, which explicitly refer to territorial matters: they proscribe support for rebel groups and prescribe regional support in counter-insurgencies. This derogation of the norm by the Indonesian government reflected a desire to loosen the strict interpretation of non-interference as stipulated within ASEAN, and to allow for verbal condemnations in cases of human rights protection, while at the same time upholding non-interference as a regional standard in internal cases in which the territorial integrity of a state is at risk.

In order to determine norm compliance in cases in which the domestic expectations conflicted, the Indonesian government made a judgment regarding which domestic expectation mattered more: the protection of the rights of non-nationals or the territorial integrity of the Indonesian state. The fact that few Indonesians prove willing to discuss the human rights violations that occur in the course of the secessionist conflict in Papua, where the rights of Indonesian *nationals* and not foreigners are concerned, helps to explain the government's response in favor of non-interference. The government anticipated that even though they were less tangible at the moment of choice, the potential legitimacy costs of creating a regional environment that allowed for interference in secessionist conflicts were more severe. By violating the norm of non-interference in cases with a secessionist dimension or the potential for territorial disintegration, the Indonesian government would have risked undermining the validity of non-interference as a behavioral standard for ASEAN member states in those instances. Moreover, it would have set a concrete precedent for interference in its own secessionist conflicts, most importantly in Papua. In complying with the non-interference norm, the Indonesian government thus protected itself from intrusive behavior and the anticipated domestic legitimacy costs that external interference in regions such as Papua would have entailed. As a motivational force, domestic and regional expectations therefore went hand in hand.

However, in order for norm reconciliation to succeed as a response strategy to norm conflict, the government had to generate acceptance for the application of the norms in their modified forms. The Indonesian government's justificatory effort therefore sought to minimize the immediate domestic legitimacy and international reputation costs whenever the government applied non-interference as its 'special' norm, despite the presence of domestic and international expectations in favor of human rights protection. But in repeatedly pointing out the link between non-interference and secessionism in the region, it also pursued the longer-term strategic objective of generating acceptance for

the norms' new meaning and spheres of application. In relation to its regional audience, the Indonesian government tried to establish action on behalf of human rights protection in cases without a secessionist dimension as a legitimate response that should not be seen as an act of interference. It thereby employed three main arguments: it referred to the wider international normative environment, provided precedents from Indonesia's own openness to external involvement in similar instances in the past and highlighted the reputational damage to ASEAN as a consequence of Myanmar's behavior.

In sum, the government's response to the norm conflict between human rights protection and non-interference demonstrates a clear attempt to reconcile the norms closely along the lines of a *lex specialis*-inspired pattern of norm reconciliation. The conflicting expectations for norm compliance at the domestic level were decisive. Only following a successful resolution of conflicts in its restive regions, most importantly in Papua, would the Indonesian government have been in a position to either attempt a general replacement of non-interference with human rights protection within the region or, in transcending ASEAN as a relevant audience, to consistently prioritize human rights protection in line with the anticipated domestic and international expectations.

1.2. A Strategy of Context-Specific Norm Replacement in Thailand

Thailand was chosen as a case study because of its special position as a direct neighbor of Myanmar. Close proximity could support an argument for exceptional circumstances in relation to the country and could justify a strategy of context-specific norm replacement. Depending on the strength of domestic expectation in favor of either of the two norms, the actual choice for norm compliance could then go either way, which had to be empirically determined.

The expected response to norm conflict by the Thai government was largely confirmed during the empirical analysis. In contrast to its Indonesian counterpart, the Thai government did not try to reconcile the non-interference and human rights protection norms in the face of conflicting domestic, regional and international expectations for norm compliance. Instead, it tried to frame its response as a legitimate exception to the general rule in order to fulfill domestic expectations for a policy of non-interference in relation to Myanmar, while at the same time minimizing the anticipated international and at times regional reputation costs of non-compliance with human rights protection. In short, the Thai government sought to replace human rights protection with non-interference as a standard of behavior for Thailand specifically in its relations with

Myanmar. In this specific context replacing human rights protection with non-interference would have solved the norm conflict for Thailand.

Unlike Indonesia, the Thai government across all three situations of norm conflict in Myanmar faced the expectations of two distinct domestic groups that disagreed over legitimate responses to the crises. While the urban middle class called upon the government to comply with human rights protection, the rural population and Thai business class expected the government not to compromise economic relations with neighboring Myanmar as a consequence of its foreign policy. They relied on continued access to Myanmar's natural resources and border trade to earn a living. Successive Thai governments of both dominated by the military and civilian forms aligned their responses with the preferences of the rural population and business class, as they constituted the numerically stronger domestic groups and their support was decisive for winning elections. In order to address their expectations, the government felt compelled to comply with non-interference in the crises as invoked by the Myanmar government.

In complying with the non-interference norm, the primary objective of the Thai government was thus not to satisfy regional expectations. Instead, the government's main concern was to avoid upsetting Myanmar, whose government had invoked non-interference as the only legitimate standard of behavior. During the premiership of Chuan Leekpai, who pursued a rights-based approach towards Myanmar, Thais had learned that ignoring Myanmar's expectations could quickly lead to sanctions, such as a closing of the border. To avoid such coercive measures, the government complied with non-interference. Indeed, even without the actual threat of material punishment, the precedent of such measures provided reason enough to comply with the non-interference norm. Therefore, more than neighborhood, the decisive factor in the strategy of context-specific norm replacement was actually the extreme economic interdependence between the two countries and Myanmar's special relevance for the accomplishment of development as Thailand's dominant domestic paradigm. The extreme economic interdependence with Myanmar increased the strength of the domestic expectations for compliance with the non-interference norm, which in this form might not be the case in relation to Thailand's remaining neighbors. It is therefore not clear whether Thailand would pursue the same strategy in cases of human rights violations in other neighboring states.

However, while close proximity was not a decisive factor in shaping the strength of the expectations for norm compliance, it was a central to the government's

argumentation legitimizing its actions. In pursuing a strategy of context-specific norm replacement, the challenge for the Thai government was not to redefine the meaning of either of the two norms, as seen in Indonesia's response, but to make a case for the inappropriateness of interference specifically in Thailand's relations with Myanmar. With regards to its Western audience, which directly called upon the Thai government to act in favor of human rights protection, the Thai authorities justified the need for non-interference with reference to its special geopolitical position as a direct neighbor and its extreme vulnerability to internal events in Myanmar given the extremely long and porous border between the countries. It argued that in order to protect that border from illegal migration, human trafficking and other cross-border crime, it was dependent on Myanmar's cooperation and stability within the neighboring country. The government thus presented its policy of non-interference as a geopolitical necessity instead of a strategic choice. By establishing non-interference as the *only* appropriate norm in Thailand's relations with Myanmar, the government hoped to reduce international expectations regarding interference in the future.

Ironically, previous Democrat-led Thai governments had used the same argument – Thailand's extreme vulnerability as a neighbor to internal events in Myanmar – as a justification to its regional peers to prioritize human rights protection over non-interference in relation to Myanmar. In 1998 Foreign Minister Surin Pitsuwan had suggested a review of the non-interference norm within ASEAN in favor of a practice that he described as 'flexible engagement.' Regionally, flexible engagement was presented as a way of reconciling non-interference with non-traditional, trans-border security concerns, including threats to human security. Pitsuwan argued that interference should be allowed in cases in which internal events had an effect on neighboring countries or the region as a whole. For Thailand this revised interpretation, given its position as a neighbor, would have enabled it to consistently prioritize human rights protection in its relations with Myanmar. In so doing, the strong domestic and international expectations towards human rights protection at the time would have been addressed without creating reputation costs at the regional level.

In short, there were two ways in which Thailand could have used the argument of its extreme vulnerability as a neighbor to justify its choice for norm compliance in relation to its relevant audiences. Firstly, it could be used as part of a context-specific norm reconciliation strategy, as seen in Thailand's response to the more recent cases of human rights violations in Myanmar. Secondly, Thailand could employ the argument as part of a

strategy of norm reconciliation. This latter option was pursued by former Thai foreign minister Surin Pitsuwan during a period in which domestic and international expectations for extraterritorial human rights protection in Myanmar converged, but conflicted with regional expectations for compliance with the non-interference norm. In both scenarios the argument incorporated in a response strategy had the potential to resolve the norm conflict for the government, as long as the dissenting audiences accepted the justification. While the Democrat-led government had to convince its regional peers of the legitimacy of prioritizing human rights protection, the governments in office during the later crises in Myanmar had to persuade their Western international audience of the legitimacy of prioritizing non-interference. The evidence presented in the case study chapter suggests that, at least in the latter case, Thai governments were reasonably successful in generating understanding for Thailand's 'special situation' among its Western audience.

Nevertheless, during the Saffron Revolution and Cyclone Nargis, some conflicting regional and international expectations towards human rights protection were articulated. Internationally, the US and the UN expressed direct expectations for action, which could have been interpreted as acts of interference by the Myanmar junta. By prioritizing the non-interference norm in line with the dominant domestic expectations, Thailand left these international expectations unaddressed. To appease these expectations and minimize the anticipated reputation costs, the Thai government incorporated an additional element in its larger response strategy of context-specific norm replacement. It tried to reduce the international reputation costs by making immediate concessions. Both Prime Minister Surayud and his successor Samak attempted to satisfy the direct expectations of the US and UN by responding to their calls for the Thai government to use its influence in Myanmar and urge the junta towards restraint and cooperation with the West. At the same time, however, Thai authorities tried to make sure that their concessions to the West were not perceived as interference by the generals in Naypyidaw. Therefore, Thailand refrained from criticizing the junta at any point during its missions to the country and strictly operated only with the junta's consent.

Regionally, Thailand's non-interference stance most of the time required little justification, given the majority of states' preferences for non-interference within the regional organization. The Saffron Revolution proved an exception when several ASEAN states, including Indonesia and Malaysia, forcefully interfered in favor of human rights protection. By highlighting the ramifications of non-interference on the organization's

reputation, in tandem with Singapore as the ASEAN chair, ASEAN's more democratically advanced member states managed to bring about a collective ASEAN statement prioritizing human rights protection. As a consequence, the Thai government found itself in a situation where it had to justify its non-interference stance not only to the world, but also to its key ASEAN peers that called for conformity with the collective ASEAN statement. Given its desire to be seen as one of the "good members" of ASEAN by the world and within the organization, the Thai government could not afford to ignore the regional expectation to support the statement. As a result, at the UN General Assembly meeting on 28 September 2007 the Thai government momentarily aligned its stance with the collective ASEAN position. Following the UN General Assembly meeting, the Thai government instantly returned to its stance of non-interference.

In sum, the analysis of Thailand's response to the three instances of norm conflict confirmed that the government adopted a strategy of context-specific norm replacement. This was necessary as the extreme economic interdependence between Myanmar and Thailand increased the strength of domestic expectations for a non-interference policy in relation to Myanmar, while the international and at times regional expectations were in favor of compliance with human rights protection. In addition, Thailand's general support for human rights protection at the regional level suggests that the government did not desire a *general* weakening of the norm. Context-specific norm replacement therefore always has to be seen as part of a larger mixed response strategy. It reflects that one government can adopt several response strategies to the same norm conflict depending on how the properties of the 'target country' (in this case Myanmar) affect the structure of expectations that this government faces.

1.3. A Mixed Response Strategy in Malaysia

In choosing Malaysia as a case study, the expectation was that due to its lesser degree of internalization of human rights protection and promotion, a mixed strategy would be most likely as expectations were more susceptible to change and situations of choice might not be interpreted consistently. The severe domestic crisis in Malaysia, which coincided with the end of the Saffron Revolution and Cyclone Nargis, in addition made a shift to non-interference likely. The empirical analysis confirmed that the Malaysian government over time applied a mixed response strategy to norm conflict. It showed that in line with changing domestic expectations, Malaysia first tried to reconcile the norms at the regional level, but later adopted a strategy of conflict denial in order to minimize the

domestic legitimacy and international reputation costs that flowed from conflicting expectations for norm compliance at the domestic, regional and international levels.

During the initial stages of the Saffron Revolution, the objective of avoiding domestic legitimacy and international reputation costs proved relatively easy for the Malaysian government to manage. Similar to Indonesia, it faced a strong domestic consensus calling for human rights protection in its foreign policy towards Myanmar. Accordingly, the Malaysian government forcefully condemned the junta's violence against civilian protestors. In prioritizing the human rights protection norm the government not only addressed domestic expectations, but also aligned its policy vis-à-vis Myanmar with Western international expectations that called upon ASEAN to condemn the violence. However, its compliance with the human rights protection norm raised issues with Malaysia's regional peers which despite the collective ASEAN statement, individually prioritized non-interference. In order to mitigate the regional reputation costs of its interference, the Malaysian government thus emphasized the crisis' impact on ASEAN's collective reputation. More generally, in order to justify its interference in a way that would be acceptable to the majority of authoritarian ASEAN member states, Malaysia tried to frame the crisis as a regional problem as opposed to an internal affair. Thus, strictly speaking, the non-interference norm would not apply.

But the Malaysian government went beyond simply justifying a one-time violation of the non-interference norm. Backed by a broad domestic coalition in favor of human rights protection, as well as Western expectations regarding interference, Malaysia suggested a regional review of the norm. A relaxation of the norm's terms, which allowed for human rights protection, would have helped to avoid regional reputation costs in the future. The Malaysian foreign minister Syed Hamid Albar essentially revived Surin Pitsuwan's proposal of 1998 to reinterpret the scope of non-interference and take into account the concerns of affected neighbors or the region as a whole. Albar argued that in cases which had an impact on neighboring states or the region as a whole, non-interference should no longer be considered illegitimate. Nonetheless, the proposed reform did not go so far as to fully reconcile non-interference and human rights protection. In order to legitimately engage in extraterritorial human rights protection, interfering states had to take a 'justificatory detour,' via spillover effects on their jurisdiction or by demonstrating an impact on ASEAN, such as its reputation. Yet at a time when the international community more often than not condemned human rights violations, Albar's reinterpretation of the non-interference norm would have made action

on behalf of human rights protection within the region considerably easier for ASEAN member states to justify.

In the end, however, Malaysia never tabled the proposal for discussion at the ASEAN summit in November 2007, as shortly before the meeting, the country experienced a major domestic crisis. As a consequence, the previous consensus in favor of human rights compliance eroded. The government now faced a new structure of expectations that no longer supported interference. Broadly, expectations regarding legitimate action within Malaysian society were divided along ethnic and religious lines and reflected the views of the Muslim-Malay majority on the one hand, and the Chinese and Indian minorities on the other. While pressure to interfere was upheld by the opposition, primarily representing the views of the minority groups, the Malay majority, in contrast, turned their focus inwards following the large-scale protests in Kuala Lumpur in November 2007 and the huge electoral losses of the governing coalition *Barisan Nasional* in the 2008 general elections. The Malay pressured the ruling coalition to do everything it could to preserve the *status quo* of Malay domination in politics and society at large. While the domestic crisis most likely constituted the necessary trigger for a shift in Malay expectations for norm compliance, the swift drop in support for human rights protection also reflects the fact that engagement with human rights protection was still relatively new in Malaysia, especially among the Malays, and therefore the norm might have been less internalized than, for example, in Indonesia or Thailand.

In trying to contain the protests, the government also employed coercive measures such as the detention of the protest leaders. The domestic turmoil in the wake of the November protests and the general elections led the Malaysian government to regionally return to strict adherence to the non-interference norm. This affected both the later stages of the Saffron Revolution and Malaysia's response to the junta's lockdown of the country following Cyclone Nargis. In complying with non-interference, the Malaysian government, like the government in Indonesia, tried to reduce the risk of domestic backlash in the form of external interference in its own strained internal affairs by maintaining the validity of the norm within the region. In order to do so, it had to respect the voices within the region that urged compliance with non-interference in the two crises. The objectives of pursuing a regional reputation for compliance with non-interference and avoiding domestic legitimacy costs were therefore tightly intertwined.

Returning to a non-interference policy without having to accept major international reputation costs was relatively easy for the Malaysian government. For most

of the Saffron Revolution, it was in tune with Western expectations as it forcefully condemned the junta's crackdown. By the time Malaysia had altered its stance to protect itself from charges of interference, international pressure on ASEAN had mostly subsided. During Cyclone Nargis Malaysia individually adopted a strategy of conflict denial to address conflicting expectations. The Malaysian government did not recognize the junta's responsibility for, or even involvement in, the human suffering. In framing the crisis as a humanitarian disaster, the Malaysian government presented a counter-narrative to the interpretation of the situation that contested the appropriateness of interference on behalf of human rights protection as mostly suggested by Western nations.

Unlike Thailand, it would have been much more difficult for Malaysia to establish exceptional circumstances in relation to Myanmar to justify a strategy of context-specific norm replacement. In addition, domestic turmoil and uncertainty meant that it was much harder for the government to predict how domestic expectations for compliance with the conflicting norms would develop in the future. This reflects the theoretical expectation that as a strategy to deal with norm conflict, conflict denial is particularly suitable for short-term response and in contexts defined by uncertainty about future expectations for norm compliance. In only questioning the interpretation of a specific situation and not the general validity of the conflicting norms, conflict denial as a response strategy least affects the relevant audiences' expectations regarding the government's future behavior in situations regulated by the two norms. The strategy of conflict denial was facilitated by the ambiguity of the situation in Myanmar, which started as a humanitarian crisis caused by a natural disaster and the support for a humanitarian as opposed to human rights-centered framing of the crisis by the majority of ASEAN member states. In order to reduce the international pressure on ASEAN to persuade the generals to open the country, the Malaysian government supported Indonesia's suggestion of an ASEAN-led mechanism to coordinate the relief work in Myanmar.

During the Rakhine riots, the Malaysian government, now headed by Prime Minister Najib Razak, maintained its non-interference stance, despite the fact that influential representatives of the Muslim-Malay population called for interference on behalf of the rights of the Muslim Rohingya community. In prioritizing non-interference, Najib, one year ahead of the general elections, complied with the norm that best addressed the expectations of the Chinese and Indian minorities during the crisis, thereby hoping to enhance his legitimacy among these ethnic groups. They feared that interference would trigger an influx of Muslim Rohingya refugees to Malaysia, which

would further marginalize their position in the Muslim-dominated Malaysian society. While the government again justified its lack of action with the non-interference norm, in this particular instance it did not try to affect the behavior of its peers by complying with the norm. Instead, the government hoped that by remaining silent it could dissuade Rohingya refugees from heading towards Malaysia as a safe heaven.

Malaysia's policy of non-interference tallied well with the regional expectations of what constituted a legitimate response to the crisis. Even states that were normally more willing to interfere, such as Indonesia, remained silent. Similarly, the West and the UN took a cautious approach to the Rakhine riots, articulating no concrete expectations vis-à-vis ASEAN or individual member states. What proved more problematic for the Malaysian government were the anticipated legitimacy costs of having to align its stance with the minorities' expectations regarding action, instead of those of the Muslim majority. Similar calls for interference on behalf of the Rohingya were articulated at the international level within the Muslim world. To invalidate these expectations, the Malaysian government again adopted a strategy of conflict denial, framing the crisis as a humanitarian disaster as opposed to a case of human rights protection. When the expectations for interference in favor of human rights protection persisted, the government conceded to working through the OIC in order to address the situation in Rakhine.

The expectations for human rights protection at the domestic and international levels during the Rakhine riots in themselves are interesting, as most of the arguments that were articulated in favor of interference did not center on human suffering, but rather the Rohingya's Muslim identity. Religious solidarity appeared to have a strengthening effect on their expectations regarding interference on behalf of the rights of non-nationals. In Malaysia, the plight of the Rohingya caused even former Prime Minister Mahathir Mohamad to openly call for interference on their behalf, after he had been one of the strongest defenders of an absolute non-interference policy during most of his time in office. The impact of religion on expectations regarding human rights protection among individuals and groups that otherwise did not support interference suggests that their commitment to assistance was still partial. The suffering of fellow religious believers triggered the greatest concern, rather than coming to the aid of a generic stranger. This advocacy for interference on the basis of religious affinity thus mirrors the practice of humanitarian intervention as seen in nineteenth-century Europe. At this time, European powers presented intervention as a legitimate response to the

failure of foreign authorities, such as the Ottoman Empire, to fulfill their obligations to protect Christians and European nationals within their territories (Glanville 2014, 108; Rodogno 2012, 12).

To conclude, the Malaysian government employed a mixed response strategy to norm conflict that reflected the changing domestic expectations and variation in the government's assessment of their relevance for its domestic legitimacy. The Malaysian government strategically addressed the expectations of the different ethnic groups depending on which best served its domestic legitimacy at a given moment in time. While it first complied with the human rights protection norm embedded in a strategy of norm reconciliation, it later prioritized non-interference and relied on a strategy of conflict denial to address conflicting expectations for norm compliance during Cyclone Nargis and the Rakhine Riots. Decisive for the strength of the domestic expectations for norm compliance was the relative 'newness' of the human rights protection norm, which led to an inconsistent interpretation of situations of choice, as well as the internal crisis in Malaysia, which at least temporarily strengthened expectations for compliance with non-interference.

2. Refining the Theoretical Framework

As the review of the case studies has shown, the governments' choices for norm compliance and their accompanying response strategies largely conformed with the theoretical expectations set out in Chapter One. At the same time, however, the findings suggest some specifications and refinements to the framework of response to norm conflict. In assessing response to norm conflict in Southeast Asia, it became obvious that in some contexts focusing on domestic as well as international expectations is not enough, as set out in the theoretical framework of the dissertation. Next to domestic and international expectations, in Southeast Asia voices from within the *region* had to be considered. While regional expectations might not be relevant everywhere and in every norm conflict, in Southeast Asia they importantly mattered in interacting with and reinforcing the anticipated legitimacy costs that governments might suffer in leaving domestic expectations unaddressed. In doing so, the impact of regional expectations went beyond an exclusive concern for reputation at the regional level. In leaving regional expectations unaddressed, governments additionally risked retaliation from their peers and an undermining of the validity of the regionally supported norm. Both aspects had the potential to negatively affect their legitimacy at home. In the cases of Indonesia and

Malaysia, an important dimension of domestic legitimacy referred to the maintenance of regime stability and territorial integrity. Both could be considerably weakened if the validity of the non-interference norm deteriorated and external interference within the region became more common. In Thailand, domestic legitimacy was strongly interlinked with a development paradigm, an important part of which was access to the Myanmar market, which Myanmar's government could restrict should its Thai counterpart not comply with its demand of non-interference in its internal affairs. Given these findings, future research should *a priori* factor in the possible relevance and impact of regional expectations for response to norm conflict.

One of the most central aspects in dealing with expectations for norm compliance relates to the question of which audience 'wins' when conflicting expectations are articulated across the domestic, regional and international levels. The proposition formulated in the theoretical chapter suggested that most governments would prioritize domestic over international expectations for norm compliance. This reflects the intuitive notion that even though reputation costs at the international level can be 'painful' and potentially complicate inter-state relations, leaving domestic expectations unaddressed entails the risk of increased domestic resistance, electoral setbacks and even loss of power. The analysis of responses to norm conflict in Southeast Asia confirmed this proposition. Moreover, it showed that domestic expectations are not only prioritized over international expectations, but also 'win' in cases in which they conflict with regional expectations for norm compliance. In confirming that domestic expectations are treated preferentially, the analysis served as an important first step in determining whether foreign policy decision-makers are guided more by the expectations of behavior addressed to them by their domestic or international (and regional) audiences. At least with respect to relatively weak governments in developing contexts, future research can now *a priori* expect that governments will comply with the norm favored by their dominant domestic audience.

While the theoretical framework acknowledged that audiences at any level (including 'the people') are unlikely to be 'uniform' and can articulate various expectations towards the government, the theory chapter did not further investigate this possibility. Instead, for reasons of parsimony, it spoke about domestic and international expectations as if there were just one expectation at each level. The analysis of expectations in the three case study countries highlighted that this is not the case, especially in relation to the domestic audience. In all three states more than one relevant

domestic expectation for legitimate action in response to the human rights violations in Myanmar was articulated – either because different domestic groups expressed conflicting expectations (Thailand and Malaysia), or because society at large held expectations connected to the norms that in particular situations could not both be fulfilled at the same time (Indonesia). As a consequence, an additional step in the theoretical framework is required in order to determine which of the conflicting expectations is perceived as more relevant by the government for its domestic legitimacy. Thereby several factors can be helpful as the empirical analysis showed: Where different domestic groups articulate conflicting expectations, their impact at the ballot box during elections can be decisive. In cases in which one domestic group holds conflicting expectations that cannot be simultaneously addressed, the government has to make an informed choice regarding which of the underlying reasons for supporting compliance with the norm the public ultimately considers more important.

The analysis of response to norm conflict in the case study countries also helped to further specify the enabling conditions for some of the response strategies. As indicated in the theoretical framework, enabling conditions can relate both to the expectations themselves and to the likelihood of success of a response strategy. In assessing domestic expectations for norm compliance in Thailand, it could be shown that extreme economic interdependence between two countries can lead to a shift in the domestic expectation for norm compliance. Extreme economic interdependence therefore serves as one factor that can determine variation in domestic expectations across different contexts. The articulated domestic expectation is specific to a particular context and is not meant to affect the general validity of the norm. In cases in which a context-specific shift in domestic expectations is accompanied by conflicting regional or international expectations for norm compliance, context-specific norm replacement therefore represents an attractive strategy.

But in order for context-specific norm replacement to have a chance of success, the responding country has to be in a position in which it can credibly establish ‘exceptional circumstances’ in relation to the host country. The analysis of response to norm conflict in Thailand has confirmed that close proximity can indeed be an enabling condition for establishing ‘exceptional circumstances’ vis-à-vis the dissenting audience. In a neighborhood scenario, the chances of making a successful argument for a legitimate exception to the general rule increase, as neighbors can always point to their special vulnerability to events in the country next door. In accordance with the theoretical

assumptions, this proved particularly effective in cases in which the responding government could refer to precedents in which past compliance with the conflicting norm had a direct negative impact on its own jurisdiction due to spillover effects. Thereby, reference to (non-traditional) security threats in particular seemed to be successful in generating international acceptance of the context-specific norm replacement.

The analysis of response to norm conflict in Indonesia and Malaysia helped to further narrow down the factors that affect the governments' confidence in their ability to generate acceptance for the replacement of a conflicting norm. Instead of adopting a strategy of general norm replacement, the Indonesian government opted for norm reconciliation in all three situations of norm conflict. The Malaysian government used a strategy of norm reconciliation for most of the Saffron Revolution, before it changed its stance in the later phase of the crisis. Both governments faced strong conflicting expectations that either related to the identity of the state (human rights protection) or regime stability and state survival (non-interference). As a result, it did not matter on which level these expectations were articulated in order to make a strategy of norm reconciliation attractive, as long as the government believed that generating acceptance of general norm replacement would be difficult to achieve. Norm reconciliation is thus not only likely where constitutive norms are involved, but also where norms shield states and societies from existential threats to the survival of the state.

Finally, in assessing response to norm conflict in Southeast Asia it also became apparent that we should distinguish between long-term and short-term approaches to norm conflict. The latter category includes not only conflict denial, but also even more immediate 'concessions' to conflicting expectations. As part of a mixed response strategy, conflict denial can cover periods of uncertainty about future expectations for norm compliance, for example during a domestic crisis, as seen in the case of Malaysia. Concessions to conflicting expectations for norm compliance, in contrast, can be expected where the arguments that are part of the longer-term strategy do not suffice in appeasing conflicting expectations. This is most likely where conflicting expectations towards a government are directly and persistently raised. In the case of Thailand, for example, the government adopted a long-term strategy of context-specific norm replacement in relation to situations of norm conflict in Myanmar. However, to appease immediate conflicting expectations, it made concessions to its Western audience (i.e. writing letters, travelling to Myanmar). Similarly, Indonesia and Malaysia tried to appease conflicting expectations for action level on behalf of the Rohingya Muslims during the Rakhine Riots

at the domestic and international levels by supporting the work of the OIC. The response strategies found in Southeast Asia are summarized in Table 4. In what follows, the final section of the chapter will address the overall contributions of the research to the discipline of International Relations and outline the challenges ahead in studying norm conflict in Southeast Asia, as well as other regions.

Table 4: Response Strategies to Norm Conflict in Southeast Asia

Type of Response Strategy	Visible Response Pattern	When adopted?	Enabling Conditions
Long-term response strategies in Southeast Asia			
Norm reconciliation (Indonesia)	Mixed	Domestic expectations were conflicting + gov. lacked confidence that domestic expectation for non-interference would be malleable as it related to the survival of the state	Gov. had legitimacy through leading by example (tsunami response) + could refer to international normative framework (Vienna Convention 1993) + could refer to ASEAN reputation

Context-specific norm replacement (Thailand)	Uniform	Domestic and international expectations were conflicting + context specific domestic expectation for non-interference because of extreme economic interdependence with Myanmar	Direct neighborhood + presence of multiple and recent precedents of negative spillover effects such as refugees, cross-border crime
Mixed response strategy (Malaysia)	Mixed	Domestic expectations changed across cases	Inconsistent interpretation of situation due to weaker internalization of human rights protection + internal crisis which led to emphasis of non-interference

Short-term strategies

Conflict denial	-	When expectations are conflicting + there is uncertainty about future expectations	Ambiguous situation + international support for counter-narrative
Concessions	-	When conflicting expectations are direct and persistent	Concessions are considered sufficient

Source: Author's own compilation

3. The Lessons Learned and Implications for Future Research

One of the most important contributions of this research is the fact that it acknowledges norm conflict as a serious problem for states – both in their decision-making and in their understanding and projection of their identity. New norms come and go, and as identities evolve and contextual changes take place, norm conflicts can arise. Especially in times of far-ranging normative change, we can expect norm conflicts to be frequent. With pressing global challenges ahead – such as combating climate change, which for many states creates a conflict between the right to development and a commitment to climate protection – an improved understanding of how governments respond to norm conflict is thus more important than ever.

But instead of recognizing that conflicting norms often continue to coexist with each other and thereby create situations of norm conflict, most research within the constructivist tradition of IRT conceptualizes norm change as an *ad hoc* process that automatically results in norm replacement (Finnemore and Sikkink 1998). This involves a superficial understanding of what constitutes commitment to a norm, as argued in Chapter Three. Traditionally, most constructivist scholars have equated norm commitment with formal norm adoption and subsequent treaty ratification. In line with Betts and Orchard, I argued that looking only at formal norm adoption is not enough to establish ‘real’ commitment to a norm, which is necessary for a government to perceive

real situations of norm conflict. Only where a government believes both norms to be appropriate, and feels bound by their directives, do the conflicting obligations inherent in the two norms create a norm conflict. To be confident of a state's level of commitment to a norm, it is necessary to go beyond the standard assessments often offered by current IR theory, which focus mainly on what I call 'norm adoption,' to emphasize *domestic* measures of commitment – namely, norm implementation through changes to national law and norm compliance in practice and discourse.

However, establishing a government's level of norm commitment that goes beyond formal norm adoption is important not only for demonstrating that a government is likely to experience a norm conflict. A government's credible commitment to a norm also provides the foundation for domestic, regional and international expectations for norm compliance. These expectations importantly impact the government's decision making in situations of norm conflict by indicating what kind of action is considered more appropriate in the eyes of its audiences. Given the special importance of domestic expectations, it is crucial to open the 'black box' of the state to include and emphasize agency at the domestic level – yet again, something that discipline of IR, with its radical demarcation between the international and domestic spheres, has traditionally been reluctant to do. Thereby, the deep empirical work undertaken in this dissertation helps to clarify the reasoning and rationality behind norm compliance. It shows how the same norms held by different actors play out in practice, how the interpretation of norms is susceptible to contextual factors, and how violations need to be justified to different legitimizing audiences. In the empirical analysis, the dissertation highlighted how the two norms of non-interference and human rights protection were interpreted differently depending on the domestic particularities of the three case study countries, which fed back into strength of domestic expectations. While non-interference continued to matter in Indonesia because of its separatist regions and the fear of territorial disintegration, Malaysia primarily saw the norm through the lens of its ethnic tensions and related regime stability. Thailand, in contrast, was less concerned about internal security, but complied with the norm to maintain friendly relations with Myanmar and thereby protect its economic interests.

Finally, the study of response to norm conflict in Southeast Asia helped to advance our understanding of how normative change takes place. The choice to comply with one norm rather than another in situations of norm conflict, coupled with the legitimation of a government's choice, constitute the micro-processes that over time can contribute to

larger normative change. For actual normative change to take place, it is crucial that others accept the state's behavior and justifications, as norms by definition are shared. The findings from Southeast Asia suggest that the aspired outcome of normative change in response to situations of norm conflict does not have to be full-fledged norm replacement. Instead, often subtler normative adjustments are made which allow for both norms to remain part of the shared normative system. In outlining a theoretical framework of response to norm conflict and exploring it empirically, the dissertation provided a valuable contribution towards understanding the judgments states make in situations of norm conflict. And yet much remains to be done in order to increase the generalizability and predictive power of the framework.

The empirical analysis of responses to norm conflict in Southeast Asia confirmed the assumption that where domestic and international or regional expectations are in conflict, governments will prioritize domestic expectations. While this is an important finding, Southeast Asia represents a relatively 'weak' case for generalization. Readers have to keep in mind that in Southeast Asia's complex and highly heterogeneous societies, democratic governments are comparatively weak, often having to rely on multi-party coalitions. Even Malaysia's long-ruling UMNO has, ever since the 2008 general elections, come under intense pressure at home. Since their claim to power is more fragile, weak governments might generally be more inclined to give greater significance to domestic legitimacy over international reputation in their trade-off of the social costs of non-compliance with a norm. In order to determine whether it is the strength of the government that determines the weighing of social costs of norm compliance, or whether governments generally prioritize domestic expectations when in conflict with international ones, the study of a 'hard' case would also be helpful. Such a 'hard' case could for example be the government of a more homogenous Western state that experiences a norm conflict. In comparison to its Southeast Asian counterparts, such a state is likely to be less vulnerable to domestic expectations and might therefore give greater weight to international expectations and the associated reputation costs.

Next, the factors leading to variation in the strength of expectations – especially at the domestic level – need to be further refined and tested in contexts other than Southeast Asia to increase their generalizability. The pattern of norm reconciliation found in Indonesia, for example, might very well be generalizable beyond Southeast Asia for countries with a democratic identity and ongoing secessionist conflicts. A cross-regional comparison would thus support the generalizability of the response strategy. An

interesting case study, for example, would be the case of post-Cold War German responses to peacekeeping and peacemaking missions, which pitted two constitutive norms against each other – namely those of absolute military restraint and global human rights protection. These two norms flow from Germany’s self-understanding as a civilian power and as a mature democracy.

The analysis of response to norm conflict in Thailand identified one possible reason for a shift in domestic expectations for norm compliance in relation to a specific context: extreme economic interdependence between two countries, which establishes a ‘special relationship’ between two states. Yet more research is necessary to determine other factors that can define a ‘special relationship’ and thereby lead to a context-specific shift in domestic expectations. These factors do not have to be materialist in nature, but could also be ideational, such as a special historical relationship between two states and their societies, as seen for example between Germany and Israel.

Finally, the degree of norm internalization was hypothesized in the theoretical framework as a factor facilitating a mixed response strategy, as the domestic audience might not yet interpret situations consistently in accordance with a norm. The expectations for norm compliance with human rights protection most easily changed in Malaysia, where engagement with the norm has been most recent. In addition, a partial understanding of human rights protection was demonstrated which reflected both the relatively new engagement with human rights protection as well as the Islamic identity of the state. The domestic audience was more concerned about the rights of fellow Muslims than just any generic stranger. As a factor impacting the strength of domestic expectations, religious affiliation might be particularly important in countries that are not secular or where the commitment to human rights protection is still relatively new. In such countries we might see a mixed response strategy to the norm conflict between extraterritorial human rights protection and non-intervention, depending on the presence or absence of a religious affiliation in situations of norm conflict.

As a final word on the lessons learned from analyzing norm conflict in the three Southeast Asian states, some normative conclusions can be drawn that could inform Western policymaking vis-à-vis their Southeast Asian counterparts. As much as the case studies show that the domestic implications of responses to the norm conflict were considered first, international expectations – especially those of Western peers and the United Nations – did matter for these governments. Facing direct international pressure in favor of human rights protection, even the Thai government made concessions, despite

strong domestic preferences for the conflicting norm. But the effect of international expectations was particularly noticeable where Western pressure in favor of human rights protection put the reputation of ASEAN as an organization on the line. The stated desire to protect ASEAN's collective reputation thus provided a crucial condition for Southeast Asian states to justify interference vis-à-vis their non-democratic peers, who did not consider extraterritorial human rights protection on its own a legitimate reason to violate the non-interference norm.

From a normative perspective that perceives action on behalf of extraterritorial human rights protection as desirable under certain conditions, this implies two things. First and foremost, Western governments should maintain, if not increase, their pressure on ASEAN as an organization in cases of human rights violation within the region (see also Katsumata 2009). Secondly, in order for Western expectations to continue to have such an impact on governments' decision-making in Southeast Asia, and potentially in other regions, the democratic West needs to maintain its position as a relevant international audience to these states. Two parallel developments have been undermining this relevance of the West in Southeast Asia. On the one hand, Western influence has been steadily replaced by a Chinese presence in the region. On the other hand, Western credibility as a global advocate of liberal norms has been questioned as Western societies have undergone change in favor of populist, xenophobic and isolationist policies. If left unchecked, these developments might further support a normative reorientation in Southeast Asia that, after a brief period of rapid democratization and improved human rights standards, is already backsliding. As a consequence, governments might no longer even perceive a norm conflict between human rights protection and non-interference.

Interviews

Indonesia

- Alex Douglas, former Myanmar researcher and current Indonesia researcher for the Centre for Humanitarian Dialogue, 16 March 2016, Jakarta, Indonesia.
- Andreas Harsono, Human Rights Watch Indonesia reporter, 7 March 2016, Jakarta, Indonesia.
- Anti Soleiman, Head of *Universitas Kristen Indonesia* Papua Center, 29 August 2013, Jakarta, Indonesia.
- Cornelius Luhulima, Senior staff at the *Lembaga Ilmu Pengetahuan Indonesia* (LIPI), Indonesian Institute of Sciences, 13 August 2013, Jakarta, Indonesia.
- Dewi Fortuna Anwar, Deputy Secretary for political affairs to the Vice President of the Republic of Indonesia, 21 August 2013 and 7 April 2016, Jakarta, Indonesia.
- Dianto Bachriadi, Commissioner for International Relations at Komnas HAM, 5 April 2016, Jakarta, Indonesia.
- Dinna Wisnu, Indonesian Representative to the AICHR (2016-2018), 15 March 2016, Jakarta, Indonesia.
- Endy Bayuni, The Jakarta Post senior editor, 5 August 2013, Jakarta, Indonesia.
- Eva Sundari, Member of Parliament for PDI-P and former President of the ASEAN Inter-Parliamentary Myanmar Caucus, 23 August 2013 and 5 April 2016, Jakarta, Indonesia.
- Haris Azhar, Coordinator of KontraS, 5 August 2013, Jakarta, Indonesia.
- Haryono Isman, Parliamentarian *Partai Demokrat* and Member of *Komisi I*, 23 August 2013, Jakarta, Indonesia.
- Hassan Wirajuda, former Foreign Minister (2001-2009), 15 August 2013, Jakarta, Indonesia.
- Helmy Fauzi, Parliamentarian for PDI-P and Member of the *Komisi I* (2009- 2014), current Indonesian Ambassador to Egypt, 5 April 2016, Jakarta, Indonesia.
- Heru Hendratmoko, *Editor in chief of KBR68H radio news*, 7 August 2013, Jakarta, Indonesia.
- Imron Cotan, Secretary-General of the Department of Foreign Affairs until 2010 and former Indonesian SOM leader, 7 April 2016, Jakarta, Indonesia.
- Jusuf Wanandi, Founder of the Center for Strategic and International Studies, CEO of The Jakarta Post, 27 April 2016, Jakarta, Indonesia.
- Lina Alexandra, Researcher at the Center for Strategic and International Studies (CSIS), 14 August 2013, Jakarta, Indonesia.
- Mohamad Doddy, Director at the Asia Foundation Indonesia, 10 March 2016, Bogor, Indonesia.
- Mohammad Iqbal, Lecturer at the Gadjah Mada University Yogyakarta, 10 March 2016, Bogor, Indonesia.
- Nur Kholis, Commissioner at Komnas HAM, 17 March 2016, Jakarta, Indonesia.
- Pierre Marthinus, Lecturer at the Indonesian University/Marthinus Academy, 7 August 2013, Jakarta, Indonesia.
- Poengky Indarti, Executive Director of Imparsial, 15 August 2013, Jakarta, Indonesia.
- Rafendi Djamin, Indonesian Representative to the AICHR (2009-2015) and former Executive Director of the Human Rights Working Group (HRWG), 6 August 2013 and 11 March 2016, Jakarta, Indonesia.
- Roichatul Aswidah, Commissioner at Komnas HAM, 14 August 2013, Jakarta, Indonesia.

Tubagus Hassanudin, Parliamentarian for PDI-P and Member of *Komisi I*, 15 March 2016, Jakarta, Indonesia.

Umar Hadi, former Director of Public Diplomacy at the Ministry of Foreign Affairs (2005-2009), 9 March 2016, Jakarta, Indonesia.

Wimar Witolari, journalist and former presidential spokesperson of Abdurrahman Wahid, 14 March 2016, Jakarta, Indonesia.

Wiryo Sastrohandoyo, former Indonesian Ambassador, 23 August 2013, Jakarta, Indonesia.

Yuyun Wahyuningrum, Senior staff at the Human Rights Working Group (HRWG), 12 August 2013, Jakarta, Indonesia.

Thailand

Achara Ashayagachat, Senior editor at the Bangkok Post, 11 May 2016, Bangkok, Thailand.

Amara Pongsapich, Commissioner at the National Human Rights Commission, 16 May 2016, Bangkok, Thailand.

Kasit Piromya, former Foreign Minister of Thailand (2008-2011), 20 May 2016, Bangkok, Thailand.

Kitti Prasirtsuk, Director at the Institute of East Asian Studies and Professor for International Relations at Thammasat University, 17 May 2016, Bangkok, Thailand.

Kraisak Choonhavan, Member of the Senate for the Democrat Party (2000-2006), since 2007 member of Parliament for the Democrat Party, 19 May 2016, Bangkok, Thailand.

Laurent Meillan, Officer in Charge at the regional Office of the United Nations High Commissioner for Human Rights, 3 May 2016, Bangkok, Thailand.

Muang Kyaw Nu, President of the Thailand Rohingya Society, 24 May 2016, Bangkok Thailand.

Niran Pitakwatchara, Commissioner at the National Human Rights Commission, 18 May 2016, Bangkok, Thailand.

Phil Robertson, Deputy Director Asia division at Human Rights Watch, 8 June 2016, Bangkok, Thailand.

Sriprapha Petchamesree, Thai representative to the AICHR (2009-2012), 16 June 2016, Bangkok, Thailand.

Sunai Phasuk, Human Rights Watch Thailand reporter, 17 May 2016, Bangkok, Thailand.

Surapong Jayanama, former Ambassador and deputy Secretary-General for Foreign Affairs to Thai Prime Minister Surayud Chulanont, 15 June 2016, Bangkok, Thailand.

Surapong Tovichakchaikul, former Foreign Minister of Thailand (2011-2014), 7 June 2016, Bangkok, Thailand.

Surin Pitsuwan, former Thai Foreign Minister (1997-2001) and former ASEAN Secretary-General (2008-2012), 22 June 2016, Bangkok, Thailand.

Tej Bunnag, former Ambassador and Foreign Minister of Thailand (2008), former head of the Thai Red Cross Society, 24 June 2016, Bangkok, Thailand.

Thitinan Pongsudhirak, Professor of Political Science at the Chulalongkorn University, 25 May 2016, Bangkok, Thailand.

Malaysia

- Adrian Pereira, Director of the North South Initiative, 26 July 2016, Kuala Lumpur, Malaysia.
- Ariana Khoo Ying Hooi, Lecturer at the Malaysian University, 28 July 2016, Kuala Lumpur, Malaysia.
- Charles Santiago, Parliamentarian for the Democratic Action Party (DAP) and Chairperson of ASEAN Parliamentarians for Human Rights, 22 August 2016, Kuala Lumpur, Malaysia.
- Chew CY, Documentation and Monitoring coordinator at SUARAM, 22 July 2016, Kuala Lumpur, Malaysia.
- Chua Tian Chiang, Member of Parliament for the People's Justice Party, 15 August 2016, Kuala Lumpur, Malaysia.
- Daniel Lo, Special Officer to Senator Paul Low at the Prime Minister's Department on Human Rights, 26 July 2016, Kuala Lumpur, Malaysia.
- Denison Jayasooria, former Commissioner at Suhakam (2006-2010) and Committee Member of Proham, Society for the Promotion of Human Rights, 1 September 2016, Kuala Lumpur, Malaysia.
- Eric Paulsen, Executive Director of Lawyers for Liberty, 29 July 2016, Kuala Lumpur, Malaysia.
- Hasmy Agam, former Ambassador and current Chairperson of Suhakam, 22 August 2016, Kuala Lumpur, Malaysia.
- James Chin, Director of the Asia Institute Tasmania, University of Tasmania, 10 August 2016, Kuala Lumpur, Malaysia.
- Jufitri Joha, President of ABIM (Muslim Youth Movement Malaysia), 18 August 2016, Kuala Lumpur, Malaysia.
- Kian Ming Ong, Parliamentarian for the Democratic Action Party (DAP), 18 August 2016, Kuala Lumpur, Malaysia.
- Kuthubul Zaman Bukhari, former President of the Malaysian Bar Council, 12 August 2016, Kuala Lumpur, Malaysia.
- Philip Golingai and PK Katharason, Journalists at The Star, 27 July 2016, Kuala Lumpur, Malaysia.
- Rash Behari Bhattacharjee, Editor at The Edge, 2 August 2016, Kuala Lumpur, Malaysia.
- Rastam Mohd Isa, former Ambassador and Secretary-General of the Ministry of Foreign Affairs (2006-2010), Chairman of the Institute of Strategic and International Studies (ISIS) Malaysia, 11 August 2016, Kuala Lumpur, Malaysia.
- Razali Ismail, former UN Special Envoy to Myanmar and current Chairperson of SUHAKAM, 12 August 2016, Kuala Lumpur, Malaysia.
- Syed Hamid Albar, former Foreign Minister of Malaysia (1999-2008), 2 September 2016, Kuala Lumpur, Malaysia.
- Zaid Ibrahim, former member of UMNO and President of the ASEAN Inter-Parliamentary Myanmar Caucus (AIPMC), 5 September 2016, Kuala Lumpur, Malaysia.

Singapore

- Hsien-Li Tan, Assistant Professor at the Faculty of Law at the National University Singapore, 26 May 2016, Singapore, Singapore.
- Moe Thuzar, Fellow at ISEAS - Yusof Ishak Institute, 30 May 2016, Singapore, Singapore.
- See Seng Tan, Professor of International Relations and Deputy Director of the Institute of Defence and Strategic Studies at RSIS, 30 May 2016, Singapore, Singapore.

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