



Universiteit Leiden

**ASEAN's Norm Contestation over the Responsibility to Protect:  
A Comparative Study of the Humanitarian Crises of  
Cyclone Nargis and the Rohingyas in Myanmar**

Master's Thesis  
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## **1. Introduction**

The “Responsibility to Protect” (R2P) has widely come to be seen as an international norm (Bellamy, 2015b:162), despite some scepticism over its normative foundations and operationalisation (Hehir, 2017; Lechner, 2010). Since it was first mentioned in the International Commission on Intervention and State Sovereignty’s report (ICISS, 2001), it has been officially endorsed as a new norm by states and regional organisations following the World Summit Outcome Document (WSOD) (UNGA, 2005). The role of regional organisations in implementing R2P is particularly important, as evident from paragraph 139 of the WSOD which states that the UN Security Council (UNSC) should cooperate “with relevant regional organizations as appropriate” to take collective action when confronted with “genocide, war crimes, ethnic cleansing and crimes against humanity” (UNGA, 2005:30). In the case of the Association of Southeast Asian Nations (ASEAN), while its member states formally approved R2P at the World Summit, subsequent debates demonstrated the organisation’s reluctance to fully support and implement it because of a normative conflict with its “ASEAN Way” norms, above all non-interference (Aruliah, 2011).

However, Cyclone Nargis, which hit Myanmar in May 2008 and caused fatalities of over 140,000 people (Junk, 2016:80), posed a serious challenge to ASEAN’s non-interference norm. The Myanmar military junta failed to provide the population with the necessary humanitarian aid, whereas UN agencies and international NGOs were denied access to the affected areas (Junk, 2016). Members of the international community began debating whether the unravelling crisis was a case for R2P, considering the junta’s opposition to receiving international aid a near-genocidal act (Junk, 2016:83). Despite eventually ruling out the applicability of R2P to natural disasters, the international debates also generated discussions over the norm within ASEAN. While contesting the applicability of R2P, ASEAN’s discourses and reaction to the crisis demonstrated a subtle change in its normative framework and an initial opening to the understanding of “sovereignty as responsibility” (Bellamy & Beeson, 2010; Tan, 2011). In fact, not only did ASEAN take an active role in coordinating relief

operations with the UN, but it also persuaded the Myanmar government to accept humanitarian aid (Junk, 2016), marking a clear, although subtle, departure from the non-interference that had characterised the organisation until then.

Today a humanitarian crisis is unfolding along the border between Myanmar's Rakhine State and Bangladesh, as over 693,000 Rohingya refugees have fled to escape persecution perpetrated by Myanmar's military and ultranationalist groups (UNOCHA, 2018). Amnesty International (2017), Lowenstein (2015) and Fortify Rights & Simon-Skjoldt Center for the Prevention of Genocide (2017) have shown evidence of mass atrocity crimes, including genocide, ethnic cleansing, and crimes against humanity. Despite these, the international community has its hands tied allegedly due to China and Russia's threat of veto (Yap, 2017). The Myanmar government has defended its use of force by claiming that the Rohingyas are not legal citizens of Myanmar, but mere Bengali illegal immigrants coming to the country when it was still a province of British India (1824-1948), and that many are members of a terrorist group known as the Arakan Rohingya Salvation Army (ARSA) (Ibrahim, 2016). In such circumstances and given the regional organisation's active role during Nargis, the world has turned its attention to ASEAN. However, ASEAN has only coordinated some limited humanitarian efforts (Kurniawan, 2018), but has refrained from collectively condemning the atrocity crimes or persuading the Myanmar government to halt the violence. In contrast to the optimistic perception of ASEAN's partial internalisation of R2P in its understanding of "sovereignty as responsibility" after Nargis and despite evidence of atrocity crimes, the organisation has not made concrete efforts to implement R2P in the Rohingya case (Southwick, 2015:148). These facts thus raise the following question:

*What explains ASEAN's divergent reactions to Cyclone Nargis and the Rohingya crisis?*

This thesis argues that ASEAN's contestation over R2P in the two cases explains why the organisation decided to intervene, albeit softly, in Myanmar's handling of the humanitarian crisis caused by Cyclone Nargis, but is reluctant to do so in the Rohingya case. ASEAN's stance on R2P

and intervention on humanitarian grounds has not been consistent and cannot be simply attributed to its adherence to the principles of national sovereignty and non-intervention. Building on the constructivist assumption that norms' meaning is never static or pre-given, this thesis will rely upon the concept of "norm contestation", which stems from the belief that norm diffusion and internalisation are not always linear or one-way, but an interactive process (Tholens and Groß 2015:250); how an international norm is interpreted and contested by recipient actors has a decisive impact on its implementation in the local context. By relying on this theoretical framework, this thesis contends that ASEAN does not contest the validity of R2P, but its applicability to the single cases discussed, due to the nature of the crisis and the identity of the actors involved in the cases under study. Consequently, ASEAN's applicatory contestation over R2P, based on these two aspects, determines the organisation's implementation of the norm in the region, as well as its reaction to and degree of involvement in the crisis in question. In analysing ASEAN's contestation over R2P between Cyclone Nargis and the Rohingya crisis, this thesis also demonstrates that ASEAN's meaning-in-use of R2P covers legal citizens of member states only. This understanding is in alignment with ASEAN's principle of national sovereignty, according to which the power to decide who are a state's citizens rests with the state concerned.

To answer the research question, this thesis will first review the literature concerning ASEAN's stance on R2P in order to identify its limitation in explaining ASEAN's inconsistent adherence to non-interference between Cyclone Nargis and the Rohingya crisis (section 2). Section 3 will present the theoretical framework, namely the constructivist theory of norm contestation. Section 4 will concern the research design and methodology; both "R2P contestation" and "ASEAN's reaction" will be operationalised and the discursive frames will be explained. By employing discourse analysis, section 5 will examine ASEAN's contestation over R2P in the two crises; how it justifies the inapplicability of the norm or on what grounds it disregards it; and, consequently, the reasons why the organisation was more prone to interfering in the aftermath of Cyclone Nargis than in the

Rohingya case. Finally, after analysing ASEAN's understanding of R2P (section 5.3), the thesis will draw the conclusions of the study, explore its relevance and implications for the study of norm contestation and other regional organisations, and suggest possible avenues for future research.

## **2. Literature Review: Two Flaws in Norm Diffusion Theory**

The internalisation of R2P has been uneven across non-Western regional organisations. An actor is said to internalise a norm when the rationale for compliance shifts from a “logic of consequence” to a “logic of appropriateness” (Lantis, 2017:4). The African Union, the Economic Community of West African States and the League of Arab States have internalised R2P, although to different extents, as demonstrated by their understanding of “sovereignty as responsibility” (Barqueiro, et al., 2016:43; Carment, et al., 2016:339-340). In contrast, the South Asian Association for Regional Cooperation (SAARC) and ASEAN are often singled out for their reluctance to internalise R2P because of the normative clash with their principles of non-intervention and national sovereignty (Carment, et al., 2016:341).

While regional organisations played a significant role in the Libya, Côte d'Ivoire and Mali interventions (Bellamy & Williams, 2011; Lee & Chan, 2016), ASEAN has largely remained silent on atrocity crimes committed within its region. Most of the literature has explained this by focusing on the normative incompatibility between R2P and the “ASEAN Way” norms, which include not only national sovereignty and non-interference into member states' domestic politics, but also decision-making by consensus, the resolution of disputes without the use or threat of force, and the principle of “regional solutions to regional problems” (Acharya, 2009:49; Bellamy & Drummond, 2011:184). Kraft (2012:43) argues that “there is a fundamental discongruence between RtoP and ASEAN”, while Morada (2009:198) identifies the discrepancy between ASEAN member states' disunified stance and the consensus principle as the main obstacle to the implementation of R2P in the region.

While still focusing on the issue of incompatibility of norms, other scholars hold a more optimistic view on the possibility of internalisation of R2P. Both Kassim (2014:62) and Sukma (2012:137) acknowledge the aforementioned difficulties of implementing R2P, but argue that ASEAN has the mechanisms of the ASEAN Intergovernmental Commission on Human Rights, ASEAN Regional Forum, and ASEAN Political-Security Community to mainstream R2P into the organisation. A third strand of scholars even recognises Cyclone Nargis as a turning point in ASEAN's internalisation and/or pre-localisation of the R2P norm. Tan (2011) and Bellamy & Beeson (2010) identify ASEAN's active role in persuading Myanmar to accept humanitarian aid as a first, yet significant, sign of change in ASEAN's normative framework. Similarly, Bellamy & Drummond (2011) argue that the non-interference norm and R2P are undergoing a process of mutual accommodation, whereby both norms have been simultaneously revised and limited.

The main flaw in the above literature is that it stems from the erroneous assumption that norm internalisation is necessarily a linear process, unaltered by the individual cases discussed, whereby an organisation takes 'progressive' steps to internalise an international norm over time. However, ASEAN's reluctance to take an active role in dealing with the Rohingya crisis represents an apparent regression in the organisation's process of norm internalisation and thus demonstrates that the latter does not necessarily follow a linear path, but is influenced by the discourse within the organisation.

Furthermore, most of the above literature identifies the "ASEAN Way" norms as the main obstacle to the internalisation of R2P within ASEAN. Nonetheless, the fact that ASEAN's adherence to national sovereignty and non-intervention has not been consistent, as evidenced by the case of Cyclone Nargis, demonstrates that the organisation's implementation record of R2P cannot be explained solely as a result of a normative clash between R2P and the ASEAN Way. Therefore, an in-depth analysis of how the contestation over R2P has taken place within ASEAN from 2008 up to the present is needed to understand the organisation's changing reactions to Cyclone Nargis and the Rohingya crisis. The following section will thus present the theoretical framework of the thesis and

identify which aspects of the two crises impact upon the organisation's contestation over R2P and its subsequent reactions to the two events.

### **3. Theoretical framework: Norm Contestation**

Finnemore & Sikkink's theory (1998) cannot be used to fully explain ASEAN and other organisations that only partially internalise an external norm (Lantis, 2017:5). In fact, while focusing on the life-cycle of norms – emergence, cascade, and internalisation – and arguing that norms “shape state behaviors and promote international cooperation” (Lantis, 2017:2), the life-cycle theory does not explicitly deal with ‘imperfect’ cases, where norms are not fully internalised. Consequently, to analyse ASEAN's partial embrace of R2P, this thesis will rely upon the constructivist theory of norm contestation developed by, among others, Antje Wiener (2007; 2014).

The concept of “norm contestation” can be defined as a disagreement over the validity of the norm, its meaning, the scope and the conditions under which the norm applies, or over its implementation (Hofmann, 2015:4; Wiener, 2007; 2014). This concept assumes that all norms are intersubjectively-held social facts, have an inherently contested nature, thus their meaning-in-use is not fixed, but depends on how they are interpreted by local agents in the local context; and that contestation is necessary before a norm can be fully accepted (Wiener & Puetter, 2009:7). Consequently, this strand of the literature regards norms as social constructs and focuses on the intersubjective understanding of norms in the context of international relations (Wiener & Puetter, 2009:9). It thus lays greater emphasis on the processes whereby contestation between norm entrepreneurs and norm-takers occurs (Wiener, 2007; 2014).

Norm contestation theorists can be divided into two categories: scholars who focus on the processes whereby norms are either resisted or “localised”, and those who instead examine the effects of contestation on the norm's strength. Acharya (2004) develops a theoretical framework to explain the



dynamic process whereby external norms are “localised” in Southeast Asia, and thus actively constructed by local actors to make them fit with pre-existing local norms (Acharya, 2004:245). Localisation is an “evolutionary” and “progressive” process which “reshapes both existing beliefs and practices and foreign ideas in their local context” (Acharya, 2004:252). This process occurs when local norms are deep-rooted, as in the case of ASEAN, and it leads to institutional change regarding the tasks of an organisation and the means through which these are pursued (Acharya, 2004:252). Bloomfield (2017), in contrast, examines how “norm antipreneurs” resist R2P through discursive justifications and tactical opposition.

In his later work on R2P, Acharya (2013) further develops his theory by introducing the concept of “norm circulation”, according to which, norm contestation at the local level can promote global discussions that help refine and strengthen the norm. Lantis (2017:7-8) also focuses on possible outcomes that may arise from the contestation of a norm: through non-compliance and disregard, a norm can simply be eroded and emptied of its purpose, while through active contestation, it can undergo positive change and be refined until it gains international legitimacy. Similarly, Deitelhoff & Zimmermann (2013) divide norm contestation into two categories, norm applicatory and justificatory discourses, and argue that they respectively strengthen and weaken norms.

Despite the comprehensiveness of the literature of norm contestation, the aforementioned scholars fail to provide an adequate explanation for regional cases such as ASEAN’s shifting R2P stances on Myanmar, where the implementation of the norm by the same actor to the same target country has not been consistent and has varied from one case to another. Furthermore, the above studies have mainly focused on the effects that contestation has on the norm in itself, but have not examined how norm contestation determines the actions of a specific actor, such as ASEAN. Therefore, while sharing the constructivist assumption of norms as dynamic in nature and the role that contestation plays in shaping norms’ meaning, this thesis will go further and analyse the differences in ASEAN’s discourse on R2P between Cyclone Nargis and the Rohingya crisis to explain its divergent reactions

to these events. With this constructivist framework, this thesis examines on what grounds ASEAN has contested R2P, how the process of contestation has taken place, how a particular regional interpretation and meaning of R2P has been established, and how the contestation has impacted upon ASEAN's implementation of the norm in the Myanmar crises.

This study stresses ASEAN's actorness and examines its discursive or communicative interactions. An actor is "an entity that is capable of [...] formulating and acting upon decisions" and whose "capacity to act reflects the interaction between understandings about internal character and capabilities and external opportunities" (Bretherton & Vogler, 2006:33). ASEAN can thus be conceptualised as an actor not only because of its formal institutions, international recognition and shared identity and values (Mattheis & Wunderluch, 2017:725), but also because of its ability to formulate cohesive decisions and take collective action.

Another key assumption that this study relies upon is the constructivist claim that norms are dynamic, as evidenced by R2P's subtle change over time. The "Responsibility to Protect" stemmed from the UN's failure to halt mass atrocity crimes in the 1990s (Deng, et al., 1996; Stahn, 2007:99). It is based on a dual conceptualisation of sovereignty, which entails the state's responsibility to protect its people from violations of human rights, but also the international community's responsibility to prevent and intervene when the state is unable or unwilling to do so (Stahn, 2007:103). Consequently, sovereignty is no longer treated as a right or prerogative, but also an obligation of the state towards its people (Stahn, 2007). Following Finnemore & Sikkink's (1998:891) conceptualisation of norm as a "standard of appropriate behavior for actors with a given identity", R2P can be defined as an international norm because it has set a standard of appropriate behaviour for states, by redefining sovereignty as responsibility. However, being a "complex norm" with different prescriptions (Welsh, 2013:384-386), R2P has evolved over time due to contestation regarding its meaning, operationalisation, and scope. For example, a key change in its scope is evident by comparing the ICISS report and the WSOD; while the former writes that states have the responsibility to protect

their “citizens” (ICISS, 2001:13), the scope is broadened in the WSOD (UNGA, 2005:30), where the protection is expanded to the “populations” (Gholiagha, 2015:1078).

Following Deitelhoff & Zimmermann’s (2013) distinction between justificatory and applicatory frames, this thesis will analyse whether ASEAN contests the validity of R2P on the basis of the norm’s incompatibility with pre-existing local norms (justificatory discourses); or its application to the single cases because of the nature of the crisis (whether it is considered a mere natural disaster, or a near-genocidal event; a refugee crisis as the legacy of the British colonial policy, a case of illegal migration and possible radicalisation, or an instance of mass atrocity crimes) and the identity and status of the actors involved (legal citizens of Myanmar, illegal immigrants, terrorists, or simply refugees). Hence, rather than focusing on how an international norm and norm entrepreneurs directly shape the behaviour of regional actors, this thesis contends that norm contestation at the regional/local level also determines how regional/local actors react.

## **4. Methodology**

### *4.1 Case Selection*

To analyse ASEAN’s contestation over R2P and its impact on the organisation’s reaction to a humanitarian crisis, the thesis carries out a qualitative study that compares the cases of Cyclone Nargis (2008) and the current Rohingya crisis. Compared to other regional crises, these cases have been the most prominent ones in Southeast Asia regarding debates on R2P. The other major natural disaster in the region was the 2004 tsunami which, however, did not raise a debate on R2P as Indonesia accepted foreign assistance (Haacke, 2009:157). Discussions on R2P have also been briefly raised following the human rights violations perpetrated by Myanmar’s military junta, especially during the Saffron Revolution (2007) and against the Karen National Union, the Karenni National Progressive Party, and the Shan State Army-South (Haacke, 2009:176-177). However, although these

cases involve grave human rights violations, they do not amount to the four mass atrocity crimes to which R2P is applicable.

Both the cases of Cyclone Nargis and the Rohingya crisis prompted an international debate on R2P and are thus comparable regarding ASEAN's contestation of the norm. French Foreign Minister Bernard Kouchner and several scholars (Barber, 2009; Haacke, 2009; Wong, 2009) argued that the military junta's refusal to accept humanitarian aid after Nargis could be defined a "crime against humanity", following Article 7 of the Rome Statute (ICC, 2002:4) which includes "other inhumane acts" within the definition of "crime against humanity". In the Rohingya case, reports (Amnesty International, 2017; Fortify Rights & Simon-Skjodt Center for the Prevention of Genocide, 2017; Lowenstein, 2015) have provided empirical evidence that the Rohingyas are facing genocide, ethnic cleansing and crimes against humanity at the hand of the military and ultranationalist groups, while the Myanmar government is complicit in their persecution (Ibrahim, 2016).

#### *4.2 Discourse Analysis*

By defining "contestation" as "a *social activity* that involves discursive and critical engagement" (Wiener, 2014:2, emphasis in original), this study will rely upon discourse analysis. A discourse can be conceptualised as "the space where intersubjective meaning is created, sustained, transformed and, accordingly, becomes constitutive of social reality" (Holzscheiter, 2014:144). Consequently, this study will analyse how ASEAN has represented the two crises, made sense of the (in)applicability of R2P, and justified the organisation's involvement in the case of Nargis and inaction in the Rohingya crisis. In so doing, the thesis will evaluate which discourse and "truth" regarding R2P and humanitarian catastrophes has prevailed within ASEAN during the two crises and in turn affected its decision to intervene or not.

In addition to ASEAN's official documents and reports, the statements of Surin Pitsuwan (Secretary-General in 2008) and Singapore's leaders (Singapore held the Chairmanship both in 2008 and 2018) are representative of ASEAN's collective discourse on R2P. The Secretary-General represents ASEAN and its views internationally (ASEAN, 2008a:Art.11), while the Chairman, which rotates annually, represents ASEAN with external partners, sets the annual "theme", and is responsible for responding to "urgent issues or crisis situations affecting ASEAN" (ASEAN, 2008a:Art.32). In the case of Cyclone Nargis, Indonesia's view, expressed at the UNSC, will also be included as it represented that of ASEAN (Bellamy & Beeson, 2010:272). In the Rohingya case instead, refugee-hosting countries, namely Thailand, Indonesia and Malaysia, have been the most vocal in contesting the applicability of R2P but, since ASEAN's official documents demonstrate that their view was shared by the organisation, some of their statements will be briefly mentioned in the analysis.

#### *4.3 Operationalisation*

By analysing the discourses within ASEAN, "contestation" will be operationalised according to the type, mode and frames used. As for the type, contestation discourses can be divided into justificatory ones, which relate to the validity of the norm, and applicatory ones, which instead refer to the (in)applicability of the norm to a specific situation (Deitelhoff & Zimmermann, 2013). As for the modes, contestation can be either explicit when there is an open discussion and disapproval of the norm based on justificatory or applicatory discourses, or implicit when the norm is disregarded or neglected in the dominating discourse and agenda of the organisation (Wiener, 2014:2). Finally, following Deitelhoff & Zimmermann's (2013) theoretical framework, several discursive frames may be found in ASEAN's contestation over R2P: the norm's incompatibility with pre-existing local norms (justificatory discourses), or its inapplicability based on the nature of the crisis, or the status and identity of the people involved in the crisis (applicatory discourses). By analysing ASEAN's

contestation over R2P in the aforementioned cases, the thesis will attempt to explain which frames influenced the organisation's reaction to each crisis.

Following El Taraboulsi, et al. (2016) and Kuijt (2014), the reaction to a crisis is operationalised according to the organisation's involvement in the resolution of the crisis in question, including when this means interfering in member states' internal affairs, its provision of humanitarian assistance (monetary aid and primary necessities), and (non)indifference towards the needs of the victims.

#### *4.4 Data collection*

To carry out this research, this thesis examines both primary and secondary sources. The primary ones include: ASEAN's communiqués and publications, Secretaries-General's statements, Leaders' views, and the AHA Centre's publications (ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management). Regional mass media – *The Irrawaddy* (Myanmar), *The Nation*, *Bangkok Post* (both from Thailand), *New Strait Times* (Malaysia), and principally *The Jakarta Post* (Indonesia) and *The Straits Times* (Singapore) – will also be analysed to better understand the regional discourse.<sup>1</sup> Secondary sources comprise scholarly works and reports by the Asia-Pacific Centre for the Responsibility to Protect and other interested think-tanks.

## **5. The contestation over R2P & ASEAN's response**

### *5.1 Cyclone Nargis*

When the invocation of R2P was debated at the UNSC, ASEAN explicitly and vocally contested the applicability of the norm to the case of Cyclone Nargis on various grounds. The first frame used by ASEAN to do so concerns the nature of the crisis. More specifically, its line of argument, also adopted

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<sup>1</sup> The working language of ASEAN and the above regional newspapers is English.

by China, claimed that R2P could not be applied to natural disasters (Bellamy & Beeson, 2010:272). At the UNSC on 14<sup>th</sup> May 2008, Indonesia, representing ASEAN, argued that “R2P was not intended to apply to natural disasters or to legitimize the forcible distribution of humanitarian assistance in such circumstances” (Bellamy & Davies, 2009:560). This view is in line with the WSOD (UNGA, 2005:30), which only refers to “genocide, war crimes, ethnic cleansing and crimes against humanity”, while according to the ICISS report (2001:33), R2P can be invoked at times of “overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened”.

According to ASEAN, applying R2P to a natural disaster would negatively impact upon Myanmar, the organisation, and the norm in itself. Indonesia declared that since R2P “is a very loaded term”, its application would render “the whole humanitarian effort [...] politicised” (cited in Bellamy, et al., 2009:27). This view was shared by ASEAN, as evident from the Chairman’s Statement of the Special ASEAN Foreign Ministers Meeting, which affirmed that the humanitarian “assistance to Myanmar [...] should not be politicised” (ASEAN, 2008d). As Singapore’s Foreign Minister George Yeo argued, forcing the delivery of humanitarian aid on Myanmar would only “make the situation worse and [...] increase the suffering of the people in Myanmar” (cited in Haacke, 2009:172). ASEAN also believed that by expanding its scope, countries would become more sceptical about R2P, especially considering the West’s selective use of the norm (Junk 2016:87). It thus contended that applying R2P would “damage the principle itself” and “jeopardize [...] future humanitarian situations” (cited in Bellamy & Davies, 2009:559-560).

At the same time, ASEAN contested the application of R2P as it would allegedly lead to the direct involvement of the UN (or implicitly Western powers) in the crisis; during the UNSC discussion, Indonesia stated: “there are other better forums to discuss the humanitarian dimension of the Myanmar situation” (cited in Bellamy & Beeson, 2010:272). ASEAN shared this view as it believed that the intervention of the UN would erode its legitimacy as an organisation that can look after its

member states and its regional affairs; Surin Pitsuwan expressed the organisation's concern: "it won't work, and you are condemning ASEAN. You are giving ASEAN a kiss of death" (cited in Haacke, 2009:173). Furthermore, the Myanmar government "was suspicious of [the] motives" behind the Western calls for invoking R2P in the aftermath of the crisis (George Yeo cited in ASEAN, 2010c:25; Barber, 2009:27-28). This was further aggravated by the presence of American and French warships off Myanmar's coast (ASEAN, 2010c:25). Hence, despite contesting the application of R2P and intervention of the UN, ASEAN recognised that its involvement was needed to ensure that the external humanitarian relief programme would serve the 'proper purpose' of intervention and "would not be politicised" and morphed into an attempt of regime change (ASEAN, 2010c:39).

ASEAN's ambiguous contestation over R2P in the case of Nargis, contesting its applicability while recognising its responsibility to act, can also be attributed to its opposition to international interference in regional matters and fear of external intervention. The organisation was created not only to foster cooperation and peace but, in the context of the Cold War, also to prevent foreign interference (Pitsuwan, et al., 2014:18); one of its founding principles is, in fact, that of "regional solutions to regional problems" (Acharya, 2009:49). In the event of Nargis, ASEAN not only contested the applicability of R2P to the natural disaster, but also opposed the discussion of the issue at the UN. As Haacke (2009:183) contends, the possibility of a UN intervention through R2P prompted ASEAN to bridge between the international community and Myanmar.

Despite contesting the applicability of R2P to a natural disaster because of its detrimental effects on the humanitarian situation in Myanmar, the organisation, and the norm in itself, and the alleged involvement of the UN, ASEAN's discourse on Cyclone Nargis also demonstrated an initial opening to the R2P norm. ASEAN acknowledged that, as a regional organisation, it had a responsibility to alleviate the suffering of the victims of the cyclone because they were citizens of an ASEAN member state (Pitsuwan in ASEAN, 2010b:9; ASEAN, 2010b:68). Considering that "Myanmar was behaving irresponsibly", ASEAN recognised that it had a responsibility to intervene in the humanitarian crisis



generated by the cyclone (Bellamy & Beeson, 2010: 275). In fact, Pitsuwan stated that “a new ASEAN [was] ready to take on responsibility” (Amador III, 2009:14) and “felt a collective responsibility to act” to prevent “a second wave of deaths from starvation or disease” (ASEAN, 2010c:21-28). As Pitsuwan wrote, “ASEAN felt compelled, out of a sense of compassion, urgency and fraternity” to intervene (ASEAN, 2010a:9).

ASEAN further showed sympathy for the disaster-hit population by taking an active role in the relief operations and demonstrating its “practical non-indifference” (Amador III, 2009:17). ASEAN held a dual role in the crisis: it coordinated the relief operations together with the UN and, in stark contrast to its non-interference norm, it also publicly expressed its disapproval of Myanmar’s behaviour and openly pressured the military junta to accept international aid (Amador III, 2009:4). In fact, at the ASEAN Foreign Ministers’ special meeting on 19<sup>th</sup> May 2008, ASEAN collectively persuaded Myanmar’s Foreign Minister Nyan Win to allow rescue teams to enter the country (Haacke, 2009:173). Aware of Myanmar’s fear of foreign intervention, ASEAN presented Myanmar with three options: I) a UN-led relief mechanism; II) ASEAN’s coordination of the operations; III) the invocation of R2P and the forceful delivery of aid (Thuzar & Rieffel, 2018:6).

Since Myanmar agreed to the second option as expected, ASEAN took on a leading role in coordinating the relief operations. It established the ASEAN Cooperation Fund for Disaster Assistance (Bellamy & Beeson, 2010:273) and deployed the Emergency Rapid Assessment Team (ERAT) (ASEAN, 2008b). Furthermore, it led an international Coalition of Mercy to gather international aid for Myanmar, including from the World Bank (ASEAN, 2008c), and created a Tripartite Core Group (TCG), chaired by the representatives of Myanmar, ASEAN and the UN, to coordinate the aid delivery (ASEAN, 2010a). Not only did ASEAN donate an unprecedented amount of monetary aid and primary necessities (\$40,693,053), but it also deployed teams to investigate the situation and assist the country with the post-disaster rebuilding, recovery and capacity-building (ASEAN, 2010a:80).

Despite being criticised for its slowness in taking action, ASEAN had a crucial role in the aftermath of Nargis and demonstrated an “exceptional commitment” (Pitsuwan, 2011). According to Pitsuwan, ASEAN was “baptised” and proved that it can effectively respond to humanitarian crises (ASEAN, 2010a:7). By implementing the non-coercive aspects of R2P, such as capacity-building, ASEAN “used R2P without even knowing it” (Morada 2013:261). Therefore, contesting the applicability of R2P to Nargis notwithstanding, ASEAN demonstrated an initial opening to the norm; not only did it acknowledge its responsibility to act and alleviate the suffering of the people, but it also actively pressured Myanmar to accept international aid, thus quietly disregarding its non-interference norm. Hence, ASEAN’s discourse on Cyclone Nargis demonstrates a shift from an absolute protection of national sovereignty and non-interference to the emergence of non-indifference. ASEAN further stated that its intervention had opened a “new course” aimed at “support[ing] both national and regional capacities to assist and protect *citizens* in times of disaster” (ASEAN, 2010b:68; emphasis added).

## 5.2 *The Rohingyas*

The frames that ASEAN uses to contest the applicability of R2P to the Rohingya crisis concern both the nature of the crisis, as in the case of Cyclone Nargis and, more crucially, the identity of the people involved. Contrary to Cyclone Nargis, in the Rohingya case, ASEAN has implicitly contested the applicability of R2P by disregarding the norm rather than by vocally objecting to it; the organisation has avoided to take responsibility for the protection of the Rohingyas on the grounds that they are mere illegal migrants and by downplaying the humanitarian crisis and mass atrocity crimes to an internal security issue.

ASEAN has implicitly contested the applicability of R2P to the Rohingya crisis by neglecting the issue of the protection of the Rohingyas on its agenda. A key reason for this is that they are not considered legal citizens of an ASEAN member state (Iskandar, 2018). ASEAN, in fact, does not use

the word “Rohingya” in any of its official documents, which legitimises the Myanmar government’s claim that they are not legal citizens of the country (Frelick, 2017). It also opposed a Malaysian NGO’s choice of name as “ASEAN-Rohingya Center” to avoid being associated with the pro-Rohingya group (Chongkittavorn & Robinson, 2017). Furthermore, it has refrained from denouncing Myanmar’s exclusion of these people from its citizenry and, although the Rohingyas are residing in an ASEAN member state, its agenda does not deal with the crisis from a protection perspective (McAuliffe, 2016:20).

ASEAN further contests the applicability of R2P to the Rohingya crisis through the frame of “illegal migration”, where Rohingyas are considered mere “illegal migrants” rather than refugees and legal citizens of a member state. Since 2009, when the organisation first addressed the issue, the crisis has been downplayed to an illegal migration problem. The Chairman’s statement of the 14<sup>th</sup> ASEAN Summit (ASEAN, 2009), in fact, stated that the organisation discussed “the issue of illegal migrants in the Indian Ocean”. The same frame was further used in the Chairman’s Statement on the Emergency ASEAN Ministerial Meeting on Transnational Crime Concerning the Irregular Movement of Persons in Southeast Asia (2015:1-2), which refers to the crisis as a case of “irregular movement” and “irregular migration”.

Since 2016, only Malaysia has criticised ASEAN’s inaction and called the Rohingya crisis a “genocide” (Ha & Htut, 2016). Nonetheless, this dissenting stance has been triggered by domestic pro-Rohingya protests and by then Prime Minister Najib Razak’s need to raise support in view of a forthcoming general election, especially following the 1MDB scandal (Ha & Htut, 2016:3). Despite Malaysia’s recent dissent, the “irregular migrant” frame is indicative of how ASEAN contests the applicability of R2P to the Rohingya crisis. While “irregular migration” signifies the “entry, stay or work in a country without the necessary authorization or documents required under immigration regulations”, the term “refugee” refers to someone who “owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions,

is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (IOM, 2011; UNHCR, 1951). Therefore, by calling them “illegal migrants” rather than “refugees”, ASEAN does not acknowledge that the Rohingyas are escaping atrocity crimes and, consequently, that R2P is applicable.

Through this frame of “illegal migration”, ASEAN contests the applicability of R2P by disregarding the norm. More specifically, according to the UN Secretary-General’s report *Implementing the Responsibility to Protect* (2009), a key step to implementing R2P is the protection of internally displaced persons (IDPs) and refugees. This is further supported by scholars, including Orchard (2016), Bellamy (2013), Barbour & Gorlick (2008), and Gilgan (2017), who contend that refugee protection is closely linked to R2P, as refugees and IDPs can be a first sign that mass atrocities are taking place and forced displacement itself, as a result of ethnic cleansing, is a mass atrocity crime. Gilgan (2017:375) further demonstrates the link between refugee protection and R2P by claiming that the “other peaceful means” that can be used by the international community to protect populations (Pillar III of the WSOD) include refugee protection and asylum, as suggested also by the working group of the Special Advisor on the Prevention of Genocide and the Secretariat’s Executive Committee on Peace and Security, who identified these measures among the non-coercive ones under Pillar III (Bellamy, 2013:157). Nonetheless, ASEAN has neglected these issues on its agenda through the frame of “illegal migration”.

The second frame used by ASEAN to implicitly contest the applicability of R2P is “human trafficking and smuggling”. At the 2009 ASEAN Summit, which referred to the Rohingyas as “illegal migrants”, the organisation agreed to deal with the issue at the Bali Process in the same year (IRIN, 2013). However, the latter is an international forum merely concerned with “smuggling, trafficking in persons and related transnational crime” rather than atrocity crimes (The Bali Process, s.d.). In addition to referring to illegal migration, the 2015 ASEAN Ministerial Meeting discussed “the Connection between Irregular Movement of Persons with Human Trafficking and People Smuggling”

(ASEAN, 2015:1). Furthermore, while this meeting triggered the creation of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (Ha & Htut, 2016:5), it did not mention that human trafficking is only a secondary problem that some Rohingyas are facing, but the root cause is their persecution in Myanmar. ASEAN has thus contested the applicability of R2P by downplaying the Rohingya crisis not only to a case of irregular/illegal migration, but also of human trafficking and smuggling, to which R2P does not apply.

A third and more recent frame to contest the applicability of R2P is that of “possible radicalisation”. For Singapore, a top priority of its 2018 Chairmanship is counter-terrorism as there is widespread fear that Rakhine “becomes another sanctuary, another hotbed, for extremism and terrorism” (cited in Thuzar & Rieffel, 2018:7). Recent ASEAN documents echo this common concern; on 8<sup>th</sup> February 2018, ASEAN (2018a:1) published a joint statement of Defence Ministers, expressing “great concern [for] the rise of terrorism in [the] region”. Furthermore, despite claiming that the humanitarian crisis in Rakhine was “comprehensively discussed”, the Sydney Declaration of the ASEAN-Australia Summit (March 2018) does not directly mention the Rohingya crisis but deals with counter-terrorism measures (ASEAN-Australia, 2018; Yahya, 2018). This view is also common among regional newspapers, such as *The Straits Times*, which has extensively reported on Rohingyas’ links with Islamist extremism (Arshad, 2017), despite contrary evidence that ARSA does not have any transnational connections (Khan, 2017). In this way, ASEAN implicitly contests the applicability of R2P as it does not acknowledge the primary issue of the crisis: mass atrocity crimes.

The above frames used by ASEAN to contest the applicability of R2P have determined its reaction to the crisis; besides offering limited humanitarian aid, the organisation’s efforts have been mainly directed at tackling human trafficking and countering terrorism. Dealing with the issue from a national security perspective without acknowledging the atrocity crimes, ASEAN has refrained from actively pressuring the Myanmar government to halt the violence; this stands in stark contrast to its pressurising approach after Cyclone Nargis. ASEAN’s lenient attitude towards Myanmar is evident

from recent statements; ASEAN Chairman's Statement on the Humanitarian Situation in Rakhine (2017:1) "condemned the attacks against Myanmar security forces on 25 August 2017"<sup>2</sup> by ARSA, but ASEAN expressed little sympathy towards the Rohingya population after the 2012 riots<sup>3</sup>, simply stating that it was "following closely recent developments in the Rakhine State" (ASEAN, 2012:1).

In the Statement by the Chairman of the ASEAN Foreign Ministers' Retreat (ASEAN, 2018b:3), the organisation "expressed [its] continued support for Myanmar's humanitarian relief programme in Rakhine State". Nonetheless, the humanitarian efforts have been limited in comparison to Cyclone Nargis; ASEAN, through the AHA Centre, has neither coordinated a united relief operation nor created a Tripartite Core Group with the international community as it did after Nargis. Furthermore, it did not offer aid to the Rohingyas until 2017, and the aid has been minimal (80 tonnes of relief items and \$100,000) (AHA Centre, 2018), compared to \$40,693,053 after Nargis (ASEAN, 2010a:80).

The organisation has further demonstrated its indifference towards the plight of the Rohingyas by refraining from providing asylum to these people; by using the "illegal migrants" frame, ASEAN has avoided responsibility for the protection of the Rohingyas by not treating them as refugees escaping mass atrocity crimes. Instead, Malaysia, Thailand and Indonesia have been pushing back Rohingyas coming to their shores, causing further suffering to these people (Moretti, 2018). Their stance is shared by ASEAN as a whole, empowering its actorness; as mentioned above, with a narrow focus on human trafficking, following the Bali Process and the 2015 ASEAN Ministerial Meeting, ASEAN's efforts have been directed at the prosecution of migration brokers, providing its own representation of the 'truth' of the crisis (Oh, 2015:1). ASEAN's priority at the 2015 Ministerial Meeting was in fact "finding a solution to the crisis of influx of irregular migrants and its serious

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<sup>2</sup> ARSA's attack on 30 security force outposts (25 August 2017) was taken as a pretext by the Myanmar Army to systematically kill the Rohingyas (Amnesty International, 2017:6).

<sup>3</sup> Systematic violence aimed at displacing the Rohingyas broke out in 2012 after Rohingyas allegedly raped and murdered Thida Htwe, a Buddhist Rakhine woman (Ibrahim, 2016:81).

impact on the national security of the affected countries” rather than addressing its root causes (Kneebone, 2016:161).

Despite UN claims that their return is not safe (Slodkowski, 2018), ASEAN has publicly expressed its support for the repatriation of the Rohingyas (ASEAN, 2018b). This is possibly due to the receiving countries’ vocal opposition to hosting the Rohingyas, who are perceived not only as a threat to national security for their alleged links to Islamist extremism, but also as a source of economic and social instability (Neuman, 2015). Thai PM Prayuth Chan-ocha stated: “Where will the budget [to assist them] come from? That money will need to come from Thai people’s taxes, right?”, while Indonesian Military Chief Moeldoko declared: “We will try to prevent them from entering our territory, otherwise it will create social issues” (Neuman, 2015). This further demonstrates the influence of receiving countries on ASEAN’s discourse.

Finally, as a result of the “possible radicalisation” frame, ASEAN has reacted to the Rohingya crisis by strengthening its cooperation on counter-terrorism measures, rather than acting on the atrocity crimes. Considering the possible threat coming from Rakhine, Singapore’s Foreign Minister Vivian Balakrishnan affirmed ASEAN’s intra-cooperation to tackle this transnational threat (Thuzar & Rieffel, 2018:7). Furthermore, following the Joint Statement by the ASEAN Defence Ministers on Countering Terrorism in ASEAN (2018a), the intelligence-sharing initiative “Our Eyes” has been launched to improve cooperation against the threat of Islamist extremism (Allard, 2018). Hence, ASEAN’s implicit contestation over R2P has determined its minimal involvement and reaction to the Rohingya crisis, which has been directed at tackling the security aspect of the issue.

### *5.3 ASEAN’s meaning-in-use of R2P*

In analysing the cases of Cyclone Nargis and the Rohingyas, the above sections have demonstrated that ASEAN’s contestation over R2P, and the discursive frames used to do so, have influenced the

organisation's reaction to the humanitarian crises, its degree of involvement, through the coordination of humanitarian aid and efforts to pressure the Myanmar government, and its (non)indifference towards the victims. This indicates that not only norms in themselves, but also their contestation shapes actors' behaviour and their implementation of the norm in the regional context.

According to the above discourse analysis, ASEAN has contested R2P in the cases of Cyclone Nargis and the Rohingya crisis in two different modes. As explained in section 4.3, Wiener (2014:2) differentiates between explicit and implicit contestation; in the case of Nargis, ASEAN explicitly contested R2P by directly referring to the norm during its discussions, while in the Rohingya case, it has implicitly contested it by disregarding it and avoiding its responsibility to assist the refugees. As for type of contestation, following Deitelhoff & Zimmermann's (2013) distinction between applicatory and justificatory discourses of norm contestation (section 3), this thesis shows that, contrary to what the existing literature contends, in the cases of Nargis and the Rohingyas (sections 5.1 and 5.2), ASEAN has not contested the validity of R2P, but its applicability to the individual cases in question. In fact, there is no evidence that ASEAN has contested the norm as such, but contended that, due to specific characteristics of the crises, R2P could not be applied. The applicatory contestation over R2P in the two cases has, however, produced two different outcomes. The explicit contestation of the norm to the case of Cyclone Nargis has generated international discussions, which have refined the norm as non-applicable to natural disasters (Junk, 2011:92). On the other hand, in the Rohingya case, the implicit contestation over R2P is affecting its implementation and, possibly, its strength in the region.

The above findings also demonstrate that ASEAN's meaning-in-use of R2P has been shaped by the organisation's contestation of the norm in the cases under discussion. R2P is applicable to protect "legal citizens" of Southeast Asian countries rather than the entire population residing in the region, as evidenced by ASEAN's reluctance to protect the Rohingyas, who are not officially citizens of Myanmar and *de facto* stateless, but its protection of Myanmar's citizens after Cyclone Nargis.



However, this interpretation of R2P is not in line with the latest developments of the norm; while in its initial conceptualisation in the ICISS report (2001:13), R2P was referred to “citizens” of states, the WSOD (UNGA, 2005:30; emphasis added) declares that states and the international community have the “responsibility to protect *populations*” from mass atrocity crimes. Even the Secretary-General’s report (2009:8; emphasis added) affirms that the State has the responsibility “to protect its populations, *whether nationals or not*”. Bellamy (2015a:228) explains that the WSOD intentionally referred to “populations” rather than “citizens” to include “stateless groups, refugees and other non-citizens”. Hence, despite being stateless and non-citizens of Myanmar, Rohingyas are, at least in theory, under the responsibility of Myanmar and that of the international community once the state is “manifestly failing” to protect them (UNGA, 2005:30).

ASEAN’s interpretation of R2P as inclusive only of legal citizens can be attributed to the anti-colonial sentiments inherent in the organisation since its founding. Apart from Thailand, all Southeast Asian countries experienced colonialism so, in addition to the fear of foreign interference, ASEAN’s intersubjective systemic structures are also built upon the region’s attempt to rid itself of its colonial past (Manea, 2008). Being the legacy of British colonialism, the Rohingyas are not considered legal citizens of Myanmar and, consequently, not under the responsibility of ASEAN (Iskandar, 2018). ASEAN has, in fact, been largely inactive in the resolution of the crisis and has left “protection-related assistance” for the refugees to be managed by the international community (McAuliffe, 2016:20). Hence, in stark contrast to its opposition to the international community’s interference in the case of Nargis, ASEAN has rejected its responsibility to protect the Rohingyas and has passed the responsibility on to the international community since the Rohingyas are not legal citizens of Myanmar, but the mere product of British colonialism.

The above findings are also indicative of ASEAN’s process of internalisation of R2P. In its response to Cyclone Nargis, ASEAN demonstrated an initial opening to R2P, leading Bellamy & Beeson (2010), Tan (2011) and Bellamy & Drummond (2011) to contend that it was on the way to localising

or accommodating the norm. However, ASEAN's reluctance to protect the Rohingyas indicates that the organisation has established a narrow meaning-in-use of R2P which restricts to the protection of legal *citizens* of ASEAN member states, rather than *populations*. Although the Rohingya case represents an apparent regression in ASEAN's stance on R2P, ASEAN's narrow meaning-in-use of R2P indicates that the norm has been localised to preserve the organisation's indigenous norms of national sovereignty and non-interference; ASEAN recognises that it has a responsibility to protect *citizens*, but determining who is granted citizenship status is the prerogative of states and a matter of national sovereignty. In the words of Pitsuwan, "If a government says these people are not citizens, it is not for the ASEAN to say change your laws, change your constitution and accept these people" (Hindstrom, 2012). In ASEAN's view, R2P is a normatively valid norm, but is applicable only to cases that involve legal citizens of a member state. Hence, following Acharya's (2004) theory of localisation (section 3), ASEAN has not rejected R2P or accepted it wholesale by completely ignoring its indigenous norms, but the process has been two-way; ASEAN has reshaped both the R2P norm, by narrowing its applicability, and its own norms, by allowing greater interference in the internal affairs of member states. Consequently, through the localisation of R2P, ASEAN has expanded its tasks, which now include the protection of citizens of ASEAN members.

## **6. Conclusion**

ASEAN's divergent reactions to the humanitarian crises caused by Cyclone Nargis and the persecution of the Rohingyas, its active involvement in the first one and indifference in the latter despite the mass atrocity crimes reported, motivated this thesis to investigate the reasons behind ASEAN's behaviour. After reviewing the literature on ASEAN's stance on R2P, this thesis demonstrated its limitations in explaining the organisation's inconsistent adherence to non-interference between Cyclone Nargis and the Rohingya crisis. Hence, this study argued that, contrary to the existing literature, ASEAN's reaction to humanitarian crises does not entirely draw on its

ASEAN Way norms, such as non-interference, but also on how the organisation has contested R2P in the cases in question, namely Cyclone Nargis and the Rohingya crisis.

This study relied upon the constructivist theory of norm contestation to examine the discursive frames used by ASEAN to contest R2P in the two crises. According to the findings, these refer to the nature of the crisis and the identity of the actors involved, rather than its ASEAN Way norms. In the case of Cyclone Nargis, ASEAN argued that R2P could not be applied to a natural disaster, but the organisation, rather than the UN, had to take responsibility for the humanitarian crisis. In the Rohingya case instead, ASEAN has refrained from taking responsibility, thus contesting the applicability of R2P by disregarding it and downplaying the crisis to an illegal migration, human trafficking and possible radicalisation case, and depicting the Rohingyas as illegal migrants rather than refugees. The responsibility instead would rest with the broader international community. These specific aspects of the two events, rather than the organisation's blanket support for non-interference, have influenced ASEAN's reaction to and degree of involvement in the crises.

Although this study is limited to the specific case of ASEAN, thus prioritising internal over external validity, the argument that R2P contestation influences an organisation's reaction to a humanitarian crisis can also be generalisable to other regional organisations. In the case of Darfur, the African Union initially contested the applicability of R2P claiming that it was only a civil conflict not mounting to crimes against humanity (Verhoeven, et al., 2016:24), while SAARC rejected any major role in the Sri Lankan civil war (1983-2009) (Carment, et al., 2016:341).

Furthermore, by analysing ASEAN's different contestation over R2P during Cyclone Nargis and the Rohingya crisis, this thesis demonstrated that the organisation has localised the R2P norm by limiting its applicability to citizens rather than populations. Future research is needed to compare processes of R2P internalisation across different regional organisations, especially non-Western ones, to analyse those that follow the same path as ASEAN or differ from it.

Moreover, this study demonstrated that, in both cases, ASEAN contested the applicability of R2P rather than the validity of the norm in itself, but the meaning-in-use established comprises only legal citizens of ASEAN countries rather than “populations”. Deitelhoff & Zimmermann (2013) argue that justificatory discourses lead to non-compliance and norm decay, while applicatory ones may strengthen the norm. However, this thesis takes issue with this claim; while ASEAN’s applicatory contestation over R2P on Cyclone Nargis contributed to refining the scope of the norm, its contestation over R2P on applicatory grounds in the Rohingya case indicates a narrow understanding of the norm, which threatens its implementation and strength in the region. Consequently, this study offers a starting point for future research on how applicatory contestation impacts upon the strength of R2P in Southeast Asia.

To conclude, not only does the failure to protect the Rohingyas possibly affect the strength of R2P within the region, but also has implications for ASEAN’s legitimacy and community-building project to create a people-oriented community (Lego, 2017). Furthermore, ASEAN’s tolerant stance towards Myanmar, ignoring the mass atrocities committed by its army against the Rohingyas, has implications for the country’s democratisation. In line with Davies’s (2017:175) theory of regional organisations as “regimes of bounded toleration”, ASEAN’s behaviour is strengthening Myanmar’s “defective democracy” rather than encouraging its full democratisation. Hence, this study serves as a call for ASEAN to find a regional solution to the problem of the Rohingyas and assume an active role in pressuring the Myanmar government, for example by outlining the possible consequences of Myanmar’s behaviour, as it did in the aftermath of Nargis. Furthermore, following the efforts it undertook after Cyclone Nargis and Myanmar’s recent call for assistance (Doherty, 2018), ASEAN should re-establish a Tripartite Core Group with the UN as a first step towards alleviating the suffering of the Rohingyas. It is only by actively and critically engaging with Myanmar that ASEAN can fulfil the very reason for which it was created: ensuring regional peace and security.

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