

MYANMAR'S 2010 ELECTIONS AND INTERNATIONAL LEGITIMACY: A PERSPECTIVE ON ASEAN'S STANCE VIS-À-VIS NAYPYIDAW

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In March 2010, the ruling State Peace and Development Council (SPDC) finally made public details of the legal framework governing Myanmar's planned elections.¹ By June, around 40 political parties had filed for registration with the Union Election Commission in Naypyidaw. However, the country's main opposition party, the National League for Democracy (NLD), decided to forego participation in the forthcoming round of voting by not applying before May 7, 2010, to continue its registration as a legal political party. This decision was taken in view of the substance of the legislation governing the elections: first, the Pyithu Hluttaw Election Law declares the outcome of the 1990 general election, which was won by the NLD with an overwhelming majority, as "automatically invalidated"; second, the Political Parties Registration Law demands that members of political parties standing for elections cannot include persons "serving a prison term as a result of a conviction in a court of law"; and, third, the latter law also demands that political parties safeguard the constitution which, according to the NLD, requires amendments.² After Aung San Suu Kyi was reported to have said that she "would not even think of registering" under what she and others considered to be unjust laws,³ in late March 2010, the NLD's Central Executive Committee, in a demonstration of party unity,

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voted in favor of its own disbandment.⁴ Since, Myanmar has been headed for a situation in which the ruling regime, which was always likely to build or draw on a party political platform to contest the elections, will enjoy much better electoral prospects now than if the NLD had opted to participate in the ballot. In the event, Prime Minister Thein Sein and cabinet colleagues relinquished their military posts in late April and successfully applied to register the Union Solidarity Development Party (USDP).

Myanmar's election-related laws have attracted much criticism. In an initial assessment, the United Nations Secretary General, Ban Ki-moon, said that the election laws did not measure up to the "international community's expectations of what is needed for an inclusive political process."⁵ Several western governments and leaders unambiguously reinforced this evaluation. The U.S. Assistant Secretary of State for East Asia and Pacific Affairs, Kurt Campbell, argued that the Political Parties Registration Law "makes a mockery of the democratic process and ensures that the upcoming elections will be devoid of credibility."⁶ In May, he urged the Myanmar government to take immediate steps to open the process in the time remaining before the elections.

Within Southeast Asia, Singapore's foreign minister, George Yeo, had argued, even before the election-related legislation was revealed, that the two critical factors counting toward the legitimacy of Myanmar's elections would be the spirit of national reconciliation among the ethnic groups and the participation of Aung San Suu Kyi's NLD and other opposition parties.⁷ After the legislation was made public, several Association of Southeast Asian Nations (ASEAN) governments registered their disappointment and disapproval. The foreign minister of the Philippines, Alberto Romulo, suggested that unless Aung San Suu Kyi was released and allowed to participate in the elections, these elections would be "a farce."⁸ He added that "if there is no reconciliation and the elections outcome is not seen as legitimate, especially by Myanmar's neighbors, then ASEAN will have a problem." Thai foreign minister Kasit Piromya thought Myanmar's Political Parties Registration Law was "discriminatory" and voiced concerns about "the inclusiveness of the whole new political process."⁹ Singapore and Indonesia were also critical.

Notwithstanding these individual reactions, the association's consensus position, captured by Vietnam as chair of the 16th ASEAN Summit in early April 2010, seemed much less critical of Naypyidaw even when allowing

that Myanmar naturally has some influence over the relevant language of ASEAN's releases. Indeed, ASEAN heads of state but "underscored the importance of national reconciliation in Myanmar and the holding of the general election in a free, fair, and inclusive manner."¹⁰ The chairman's statement contained neither an explicit reference to the NLD or to Aung San Suu Kyi nor to a demand for the release of other detainees. Also, no mention was made of a dialogue among all parties, which the association had supported in earlier years. This suggests that ASEAN states are prepared to at least consider as broadly legitimate the election process and its outcome even if Aung San Suu Kyi and the NLD are not participating.

ASEAN MEMBERS' STANCE ON MYANMAR

The adjustment of language in ASEAN's consensual stance on Myanmar may, at first sight, come as a surprise. After all, ASEAN seemed to have tightened the diplomatic screws on Myanmar since September 2007, in response to the so-called "Saffron Revolution."¹¹ Having seen the junta push through the 2008 constitutional referendum within only days of Cyclone Nargis causing great devastation in parts of the country and noting the calls for possible humanitarian intervention, Indonesia's then-foreign minister Hassan Wirayuda, in an ASEAN ministerial meeting, exerted considerable pressure on his Myanmar counterpart to make the military regime accept that ASEAN should facilitate interaction with the international community to organize the necessary relief effort. Arguably, the extent of that pressure was in some ways unprecedented at the time. Also, when Aung San Suu Kyi faced charges of having violated the terms of her house arrest because of John Yettaw's uninvited visit in May 2009, Thailand, in its capacity as ASEAN chair, emphasized critically that "the honor and the credibility" of the Myanmar government was at stake.¹² The backdrop was that ASEAN ministers had, in the previous year, been made to understand that Aung San Suu Kyi would probably be released in November 2009,¹³ and hence, in time for the 2010 elections. Instead, it suddenly transpired that she could go to prison for some time, raising serious questions about the legitimacy of the elections.

While Myanmar's ties with fellow ASEAN states certainly experienced a rockier phase in the years leading up to the summer of 2009,

the grouping's collective stance toward Myanmar has noticeably softened since then. In 2008, for instance, foreign ministers still urged Myanmar "to take bolder steps toward a peaceful transition to democracy..." and reiterated their calls "for the release of all political detainees, including Aung San Suu Kyi, to pave the way for meaningful dialogue involving all parties concerned."¹⁴ Shortly before the NLD leader had her sentence of three years imprisonment with hard labor commuted to 18 months of house arrest by Senior General Than Shwe, ASEAN foreign ministers "encouraged the Myanmar Government to hold free, fair and inclusive elections..." but still reiterated their calls on the military-led government to "immediately release all those under detention, including Aung San Suu Kyi, thereby paving way for genuine reconciliation and meaningful dialogue involving all parties concerned and with a view to enabling them to participate in the 2010 General Elections."¹⁵ However, at the 15th ASEAN Summit in October 2009, ASEAN's heads of state/government toned down the criticism in which members "underscored the importance of achieving national reconciliation" and asked that "the general elections to be held in Myanmar in 2010 must be conducted in a fair, free, inclusive, and transparent manner in order to be credible to the international community."¹⁶ In other words, though national reconciliation was still highlighted as one of the grouping's core objectives, ASEAN leaders were not insisting on dialogue among Myanmar's key political actors to achieve it. A specific reference to "Daw Suu Kyi" was also absent.

Notably since then, as mentioned, ASEAN leaders seem to have again exhorted Myanmar to do the right thing in relation to the 2010 elections. However, some key words still contained in the previous chair's statement were not incorporated into that of the 16th ASEAN Summit, namely *credibility* and *transparency*, notwithstanding international concern over Myanmar's electoral legislation. That said, by some accounts, several ASEAN countries such as Singapore, Indonesia, and Thailand did seek to persuade the current ASEAN chair, Vietnam, to use the summit to express "concern" about the situation in Myanmar. There was, it seems, also a measure of dissatisfaction among leaders over Prime Minister Thein Sein's statement that the precise poll date would be released only once the Union Election Commission had completed its preparations. These concerns were not reflected in the chair's language.

Factors influencing ASEAN's collective stance on Myanmar

There can be little doubt that ASEAN's stance toward Myanmar has been influenced by the outcome of the Obama administration's Burma policy review. External pressure on ASEAN countries exerted by Washington and various European capitals to influence the junta on the issue of political change was a significant factor in the member states' calculations on how to deal with Myanmar. Washington's decision to formally embark on pragmatic engagement while also retaining the existing sanctions-based approach has taken pressure off the association to continue to invest in diplomatic moves or language that, for the most part, yield no obvious results. ASEAN countries have seen the EU states consider a similar shift in their approach toward Myanmar. Significantly, what matters from ASEAN's perspective is that despite the recent disappointment over and serious concerns about the military regime's legislation on the 2010 elections, Washington has not abruptly ended engagement and resumed its previous largely singular focus on sanctions and diplomatic ostracism.

Moreover, the current ASEAN chair, Vietnam, has ostensibly played a major role in shaping the grouping's latest public stance toward Naypyidaw. ASEAN countries have, of course, all supported in principle Myanmar's roadmap to democracy. But for years, Vietnam has argued that Myanmar should, in effect, simply follow through with its roadmap to democracy. In the summer of 2009, Hanoi also described Suu Kyi's trial as "Myanmar's internal affairs."¹⁷ Presumably, Prime Minister Nguyen Tan Dung gave assurances during his visit to Naypyidaw just prior to the ASEAN Summit that Hanoi would continue to de facto protect Myanmar diplomatically within the association. It may be that Vietnamese leaders genuinely believe that a strong political role for the Myanmar military is required—at least in the interim—to avoid the country from sliding into more serious instability. From Hanoi's perspective, being supportive rather than overtly critical of Naypyidaw in the context of the 2010 elections may also have been seen as one way to reinforce Vietnam's position that there should be limits to ASEAN's enhanced interactions even where domestic political conflict has regional repercussions. Very likely, a geopolitical rationale has also come into play, as Vietnam seems to have an interest that Naypyidaw follows Hanoi in not allowing Chinese influence to balloon in continental Southeast Asia.¹⁸

Third, ASEAN countries would find it difficult to object too sternly to the continued role of the military in legislative affairs and in politics

more broadly. In 1999, Indonesia's electoral law still reserved 38 seats for the military. As the current minister of Indonesia, Marty Natalegawa, noted, "Our first democratic elections in 1999 were far from perfect. We too had seats reserved for the military in parliament... But each election since has been better and better. The transition to democracy is a process, and what Myanmar is doing is starting the long journey to democracy with these elections."¹⁹

Also, it would be surprising if most Southeast Asian governments found key criticisms directed against Myanmar's election laws to be very persuasive. Most would not consider it inappropriate in principle that Myanmar's political parties are to respect and uphold the country's future constitution. In Indonesia, for instance, the general objectives of legal political parties have had to be compatible with the state philosophy of *Pancasila*.²⁰ Turning to Myanmar, ASEAN could point to the ruling regime having clarified that safeguarding the constitution does not involve a commitment to never make any attempt to amend the 2008 constitution. As regards the need to eject those party members serving a prison sentence, it is useful to recall that various Southeast Asian states have spelled out various reasons for the disqualification of candidates standing for elections. A look at Singapore's constitution reveals that a candidate would be disqualified if s/he was convicted of an offense by a court of law in Singapore or Malaysia, and sentenced to imprisonment for a term of not less than one year or a fine of not less than \$2,000, without receiving a free pardon. Such a disqualification may be removed by the president or will cease at the end of five years. Not surprisingly, the Myanmar authorities have referred to the legal frameworks governing elections in neighboring countries and used their state-controlled media to suggest that criticism of the Political Parties Registration Law is thus unwarranted; they have, in this regard, also pointed to Burma's 1947 constitution whereby a conviction would lead to disqualification under similar terms. Indeed, the military government has furthermore pointed out that "permission has been given for those serving jail terms to apply for parties as they wish when they have been released."²¹ It is not clear to what extent ASEAN governments have raised with Naypyidaw the question of whether the convictions of opposition party members have been justified.

The fourth likely reason for ASEAN's relative lack of criticism has to do with Aung San Suu Kyi. The Nobel Prize laureate may be revered by

large parts of the population within Myanmar and abroad, but attitudes toward her among current leaderships in Southeast Asia are mixed. Some national elites and governments may identify with and support her politics and principled positions, but her approach also seems to strike some as insufficiently pragmatic given the obvious power imbalance characterizing the NLD position vis-à-vis the military regime. Regional leaders recognize the importance that western countries have attributed for long to securing Aung San Suu Kyi's freedom from house arrest and allowing both her and the NLD to play a role in Myanmar's political process. But in line with regional norms, they have hardly followed the examples of former British prime minister Gordon Brown, or former U.S. president George W. Bush, and the former first lady Laura Bush, in publicly stating admiration and support. Indeed, when visiting Myanmar, leading Southeast Asian politicians and officials—at least since the beginning of 2006—have also not, it would seem, insisted too strongly that they should meet with Aung San Suu Kyi. To some extent, such diplomatic caution was the outcome of the ill-fated visit to Myanmar by former Malaysian foreign minister Syed Hamid Albar in 2006.

While expressing disappointment about the election laws, comments from within ASEAN also indicate that at least some regional governments see the NLD as possibly having made a strategic error by not continuing its registration and thus choosing to reject the electoral process on offer. For example, a spokesperson for Singapore's Ministry of Foreign Affairs responded to the NLD decision by saying that:

We have always held that national reconciliation among the stakeholders is a critical element for the legitimacy of the elections. This would require the participation of the National League for Democracy and other political parties. It is still not too late for *all* parties to reach a compromise and we urge them to do so.²²

Indeed, it would seem that the NLD could have dragged out making a decision until August and perhaps even circumvented the need to expel party members.²³ It is obvious that the circumstances of when and how the NLD decided to boycott the 2010 elections make it harder for ASEAN to argue that the latter are not inclusive. However, ASEAN countries have been obliged to critically assess the ramifications of the junta's election laws. The

visit to Myanmar undertaken by Natalegawa in late March served this purpose. Reaching definitive conclusions has not proved easy, nonetheless. As Natalegawa said, "So we are yet to ... come to a good judgment, conclusion as to whether in fact the two (the electoral laws and the goal of an inclusive election) are necessarily inconsistent with one another."²⁴ Importantly, there seems to be a measure of good will or tolerance within ASEAN. While Natalegawa indicated that policymakers in Jakarta and perhaps the wider region would not be asking Myanmar's authorities to be going for the perfect in one go, Malaysia's prime minister, Najib Razak, suggested that ASEAN would not "prejudge" Myanmar by assuming that the polls would fall short of expectations.²⁵ Governments in several ASEAN capitals may therefore evaluate the legitimacy of the elections in part with reference to what extent Myanmar's leadership deviates from the electoral provisions it has put forth. Problems with the legitimacy of the electoral process do not, however, imply that ASEAN will ostracize Myanmar in the future. Indeed, it is difficult to see ASEAN countries adopting a radically different collective stance toward Myanmar unless the military-dominated state was seen as threatening regional security, posing a serious obstacle to forming the ASEAN community, or otherwise, acting in blatant contravention of the ASEAN Charter.

MYANMAR AND ASEAN'S BASIC OBJECTIVES

The 2008 ASEAN Charter outlines the organization's numerous purposes. The first four mentioned in Article 1 are: (1) to maintain and enhance peace, security, and stability and further strengthen peace-oriented values in the region; (2) to enhance regional resilience by promoting greater political, security, economic, and socio-cultural cooperation; (3) to preserve Southeast Asia as a Nuclear-Weapon-Free Zone (NWFZ) and free of all other weapons of mass destruction; and (4) to ensure that the peoples and Member States of ASEAN live in peace with the world at large in a just, democratic, and harmonious environment. The ASEAN Charter mentions a range of further objectives, such as creating a single market and production base, narrowing the development gap within ASEAN, and strengthening democracy, enhancing good governance and the rule of law, as well as promoting and protecting human rights and fundamental freedoms, with due regard to the rights and responsibilities of the member

states. These stated purposes attest to ASEAN's intention to establish a three-pillared ASEAN community that was agreed in 2003, but the order in which they are spelled out suggests, above all, ASEAN's importance as a limited regional security organization. While recognizing the extent of ASEAN's rich agenda, the following therefore only focuses on Myanmar's record in relation to the first four objectives of the ASEAN Charter.

Is Myanmar a threat to regional peace and stability?

Though the United States government and various anti-regime voices have in the past argued that Myanmar has posed a threat to regional peace and stability, this has not been the official perspective of the ASEAN countries as a whole, be it collectively or individually.²⁶ ASEAN's largest member, Indonesia, then a non-permanent member at the United Nations Security Council (UNSC), also made this clear when in January 2007, its permanent representative at the UNSC abstained on whether the situation in Myanmar deserved a non-punitive resolution against Naypyidaw. Jakarta's ambassador argued at the time that Myanmar must respond to the imperative of restoring peace and democracy and respect for human rights, but did not consider the UNSC to be the appropriate body to deal with the country's various problems, such as the democratic transition, human rights, HIV/AIDS, and the trafficking of narcotics and people. Other Southeast Asian countries have equally not depicted Myanmar as a threat, notwithstanding concerns about, for example, the cross-border smuggling of narcotics, primarily amphetamines, or the repeated exodus of refugees as a consequence of the ongoing ethnic conflict in Myanmar.²⁷ Tellingly, the grouping has not collectively and publicly pressed for a political solution to Myanmar's ethnic conflict, even though this is often seen as a prerequisite for limiting the transnational challenges emanating from within Myanmar's borders as well as the cross-border effects of counterinsurgency operations and state-building activities. Some have nevertheless argued that Myanmar's political situation should be regarded as a "crisis" for ASEAN because, like no other regional country, it is regarded as posing a challenge to ASEAN's pursuit of a political-security community.²⁸

Myanmar as a partner in cooperation?

Given its record of recalcitrance in relation to political change, Myanmar's military government might be seen to be a major spoiler when it comes

to ASEAN cooperation. This assessment is only partly accurate, however. After all, Myanmar did not really have any compunction about signing up to ASEAN's core norms, as contained in the Treaty of Amity and Cooperation of Southeast Asia. Indeed, looking to use ASEAN membership not only to boost its legitimacy, but also to invoke the region's normative shield against perceived external meddling, the military leadership continues to welcome the emphasis that the grouping has traditionally placed on sovereign equality, consensus, and non-interference. Consequently, efforts by other ASEAN countries since the Asian financial crisis to maintain the organization's relevance, not least by establishing an ASEAN community that would revisit some of ASEAN's core principles and establish a more people-oriented outlook, have generated resistance in Myanmar. That said, like other ASEAN members, Myanmar added its signature to the Bali Concord II and by 2004, endorsed the idea of an ASEAN Charter. In drafting the latter, Myanmar's representative on the ASEAN High Level Task Force, Aung Bwa, somewhat famously became known as the "king of brackets."²⁹ Importantly from his perspective, Aung Bwa never compromised on vital issues that might be detrimental to Myanmar's national interests.

As regards to Myanmar's practical cooperation with the grouping, it is inevitable that reference is made to Myanmar's initial reluctance to allow the association to play a role in dealing with the aftermath of Cyclone Nargis. That said, ASEAN countries are generally taking the view that even when they are experiencing a natural catastrophe, foreign militaries have no automatic right to become involved. In the case of Cyclone Nargis, Indonesia's diplomatic pressure on Naypyidaw ultimately was crucial to making the military leadership accept that ASEAN could play an important role in facilitating humanitarian assistance to Myanmar. More generally, however, Myanmar's cooperation with other ASEAN countries in relation to the establishment of the ASEAN Political-Security Community (initially the ASEAN Security Community) by 2015 does have redeeming features, with the important exception of truly living up to the commitment to political development democracy contained in the Bali Concord II as well as the ASEAN Charter (see below). For instance, Naypyidaw has committed itself to a comprehensive approach to security, in the sense that the government has followed its regional partners in also focusing on addressing non-traditional security challenges including transnational crime

with greater vigor, e.g., the trafficking of persons, albeit not necessarily within an ASEAN framework. Not having been represented at the inaugural ASEAN Defense Ministers Meeting (ADMM) in May 2006, Myanmar has participated in more recent meetings for exchanges on defense and security policies as well as discussions about interaction in related matters with external partners. From the perspective of other ASEAN countries, it is important that Naypyidaw plays a positive part in security cooperation and in emphasizing the grouping's diplomatic centrality in the evolving regional architecture. As such, the country contributes to realizing ASEAN's goal of promoting a dynamic and outward-looking region.

Is Myanmar Developing Nuclear Weapons?

Having expressed for some years its intention to acquire a small nuclear research reactor from Moscow, Burma finally struck an agreement to purchase a 10 megawatt light-water reactor in 2007, probably given Myanmar's improved financial position arising from the sale of natural gas. At the end of 2009, the reactor had yet to be built. Even if it existed, estimates are that its size would be so limited that it could produce at best a very limited amount of weapons-usable plutonium in any given year. Although Myanmar is not known for any significant nuclear facilities, there have been suspicions and allegations among anti-regime activist groups in particular that Burma's secretive military regime has also been keen to develop a clandestine nuclear weapons program. The London-based think-tank, the International Institute for Strategic Studies (IISS), has argued that Myanmar is the only country within Southeast Asia "that might be considered to have a contemporary strategic motivation to develop nuclear weapons."³⁰ However, it has also reported that the International Atomic Energy Agency and western intelligence services have concluded that a suspected nuclear facility at Pyin Oo Lwin is, in fact, a "non-nuclear industrial workshop or machinery center."³¹ Drawing on the account of a prominent defector, Major Sai Thein Win, a report written for the Democratic Voice of Burma in May 2010 yet again suggested that Myanmar's generals were pursuing an aspirational WMD program, while also indicating that "success may be beyond Burma's reach."³² There remain concerns about North Korea in particular playing a crucial role in the development of such a program, however, and Pyongyang is also believed to have helped Myanmar in research on developing ballistic missiles.³³ In May 2010, Campbell indicated that "recent developments"

called into question Myanmar's commitment to fully comply with U.N. Security Council Resolutions 1718 and 1874.³⁴ The United States has yet to make an unambiguous statement on the issue, however.

Southeast Asia has remained rather quiet in relation to the SPDC's alleged interest in pursuing a secret nuclear program. Thailand's security apparatus, for instance, is even said to have remained largely dismissive of the junta's assumed nuclear weapons intent to date.³⁵ However, in light of the recent claims put forward, the region is bound to ask somewhat more openly whether Naypyidaw is in breach of any of the international obligations relating to nuclear weapons technology to which Myanmar has committed itself. As a signatory of the Southeast Asian Nuclear-Weapon-Free Zone Treaty (SEANWFZ), which was signed in December 1995 and entered into force in 1997, there is also an important regional dimension to the issue. The SEANWFZ Treaty bans, for instance, signatories from manufacturing, possessing, or testing nuclear weapons. It would not appear that Myanmar has, to date, submitted to the SEANWFZ commission's executive committee a report on any "significant event" within its territory. ASEAN states do not as yet seem to have requested Myanmar to clarify any situation in accordance with the provisions of the existing regional framework. Notably, ASEAN Secretary General Surin Pitsuwan has said in the past that if press reports about secret nuclear facilities in Myanmar were true, Myanmar would be violating the SEANWFZ Treaty.³⁶ A proven commitment to a nuclear weapons program would obviously also run counter to the objectives listed in the ASEAN Charter. But the evidence seems to allow for different conclusions. And herein lies the rub. As Burma-watcher Andrew Selth puts it, Washington's position "seems to reflect either a belief that Burma does not have a secret nuclear weapons program, or a lack of hard evidence to support such a claim."³⁷ ASEAN countries seem to be in the same position and should therefore be expected to be closely watching further developments and revelations.

Democracy and Human Rights

In contrast to the European Union, ASEAN members have historically been happy to respect considerable political diversity within Southeast Asia. This stance made possible the admission of the CLMV countries (Cambodia, Laos, Myanmar, and Vietnam) in the 1990s. However, the subsequent decade saw a push by some members, especially Indonesia, to

make ASEAN, as a whole, subscribe and commit to democratic principles as well as the promotion and protection of human rights. The 2003 Bali Concord II incorporated for the first time a consensus on establishing a “just, democratic, and harmonious” environment, which was followed by members’ endorsement of political development as one of the key areas for activities to be pursued in the context of building the ASEAN Security Community. The ASEAN Political-Security Community Blueprint, released in 2009, sets out that the grouping “shall promote political development in adherence to the principles of democracy, the rule of law, and good governance, respect for, and promotion and protection of human rights and fundamental freedoms.”³⁸

Military rule in Myanmar generally, and in particular the SPDC’s reluctance to make the country’s post-2003 political process more inclusive in the lead-up to the forthcoming elections and its problematic human rights record, has presented serious challenges for the association, not least to its international image and credibility. In response, the grouping has resorted to a more flexible practice of its non-interference principle *vis-à-vis* Naypyidaw than is normally contemplated, which has added to intramural friction and strain between the latter and the original ASEAN members in particular.³⁹ Notably, on the human rights front, Myanmar still offered stiff diplomatic resistance to the idea of an ASEAN Human Rights Body after all ASEAN foreign ministers had already included a draft provision on what eventually was to become the ASEAN Intergovernmental Commission on Human Rights.

MYANMAR’S SITUATION IN A REGIONAL CONTEXT

There can be little doubt that military rule in Myanmar has presented ASEAN with a challenge as regards to the pursuit of some of the grouping’s stated key objectives. The full extent of this challenge is not necessarily openly acknowledged within the region, however. Leaving aside suspicions about Naypyidaw’s interest and investment in a nuclear program, which if confirmed, would present ASEAN with one of its biggest challenges ever, Myanmar is clearly not the only country within Southeast Asia to have caused decision makers in neighboring states to worry about the actual or potential spillover of forms of domestic strife. For instance, in the early

post-Suharto years, some regional states became concerned about separatism and inter-communal violence in Indonesia,⁴⁰ and the consequences for ASEAN arising from Jakarta's preoccupation with domestic transformation. Another example is Thailand, which has experienced ethnic conflict in its south, where several thousand deaths have been recorded since 2004. Thailand has also experienced a significant level of political contestation and even turmoil involving the supporters and detractors of former prime minister, Thaksin Shinawatra. This led to the closure of Bangkok's airports in late 2008 during Thailand's ASEAN chairmanship, and to the further postponement of the summit meetings in April 2009 with the grouping's dialogue partners, including the East Asia Summit. The domestic political dynamics have, to some extent, also spilled over into Thailand's bilateral ties, as visible in Bangkok's relations with Phnom Penh. More recently, the occupation in March 2010 of a central area in Bangkok by "red shirt" protesters and the ensuing standoff with the military unnerved several ASEAN governments and by mid-May, following live firefights and ample bloodletting, some regional governments not only worried about the possibility of civil war, but—given Thailand's importance within ASEAN—also judged the potential consequences for the region to be very serious indeed.⁴¹ The political and military conflict in Myanmar has yet to yield such statements.

While political developments in Myanmar and the junta's general unwillingness to take advice from fellow ASEAN members on democratization, political reconciliation, and human rights are understood to amount to a serious credibility problem for the association, the SPDC is not the only regime in Southeast Asia for which democratization remains a sensitive issue. Notably, the coup against Shinawatra in 2006 de facto forced the grouping to ignore the seemingly emerging norm about the region no longer condoning unconstitutional changes of government. A number of ASEAN countries besides Myanmar also continue to be criticized for human rights violations including the Philippines. Not surprisingly, Vietnam, Cambodia, and Laos all put forward reservations in relation to the establishment of the ASEAN Intergovernmental Commission on Human Rights.⁴² Given this complex reality, it is understandable that ASEAN members do not question the legitimacy of state practices in Myanmar more than they do. Restrictions characterizing the forthcoming elections in Myanmar, such as contained in the Political Parties Registration Law

and the controlled nature of the political campaigning, not least, in relation to the freedom of association and assembly as well as curbs on the media, cannot be expected to lead to a fundamental reassessment.

CONCLUSION

ASEAN governments appreciate that Myanmar's elections are going to be flawed in more ways than one and—given the constitutional framework—will also leave the military controlling the reins of political power. However, they are not likely to question Myanmar's international legitimacy on the back of the country's first elections in 20 years. Indeed, the expectation is that the elections will be an important step toward a different political order, which will be able to positively impact on domestic stability and reform. Some may thus hope that over time, giving life to the new constitution will serve to break at least some internal cycles of conflict. Equally, ASEAN countries are bound to maintain that Myanmar's overall track record in conducting its bilateral affairs and in working toward ASEAN's stated objectives in the context of the formation of the ASEAN Community also does not project the question of international legitimacy. Whether (and how) the allegations surrounding Myanmar's interest in a secret nuclear program might do remains to be seen.

NOTES

1. For a discussion see Richard Horsey, "Preliminary Analysis of Myanmar's 2010 Electoral Laws" (paper prepared for the Social Science Research Council Conflict Prevention and Peace Forum, March 31, 2010). Available from <http://www.networkmyanmar.org/images/stories/PDF3/rhl.pdf>.

2. U Win Tin, "Decision time in Burma for democracy's advocates," *The Washington Post*, March 30, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/29/AR2010032901893.html>. According to some estimates, around 430 NLD members are held in detention. It was not immediately clear whether electoral laws would necessarily force the expulsion from the NLD of Aung San Suu Kyi given that, strictly speaking, she is arguably not serving a prison sentence (half of her 2009 sentence was commuted and the other half was suspended, albeit with her being placed under restrictions).

3. Ba Kaung, "Suu Kyi against NLD joining elections," *The Irrawaddy*, March 23, 2010.
4. For a critical assessment, see Aung Naing Oo, "After the NLD has gone," *The Irrawaddy*, May 5, 2010. In the aftermath of the NLD's de-registration, some party members have opted to create a new political platform to contest the elections: the National Democratic Force.
5. UN Secretary General, "Secretary-General calls for all-inclusive process in Myanmar," March 10, 2010, SG/SM/12783.
6. Aung Zaw, "The upcoming elections will be devoid of credibility," *The Irrawaddy*, April 2010, http://www.irrawaddy.org/article.php?art_id=18226.
7. Statement by George Yeo in Singapore Parliament, March 5, 2010.
8. Quoted in Estrella Torres, "New Burma Election law 'a farce,'" *Business Mirror* (Philippines), March 12, 2010.
9. Quoted in "Thailand to press Burma to open elections," *The Irrawaddy*, April 2, 2010.
10. Chairman's Statement of the 16th ASEAN Summit "Toward the ASEAN Community: from Vision to Action," Ha Noi, April 9, 2010, <http://www.aseansec.org/24509.htm>.
11. Stephen McCarthy, "Burma and ASEAN: estranged bedfellows," *Asian Survey* 48 (6) (2008): 911–935.
12. Statement by ASEAN Chair, Ministry of Foreign Affairs of Thailand, Bangkok, May 18, 2009.
13. Statement by ASEAN Chair, Singapore's Minister for Foreign Affairs George Yeo, Singapore, July 21, 2008, <http://www.aseansec.org/21809.htm>.
14. Joint Communiqué of the 41st ASEAN Ministerial Meeting, Singapore, July 21, 2008, <http://www.aseansec.org/21768.htm>.
15. Joint Communiqué of the 42nd ASEAN Foreign Ministers Meeting, Phuket, July 20, 2009, <http://www.aseansec.org/PR-42AMM-JC.pdf>.
16. ASEAN Chairman's Statement of the 15th ASEAN Summit, Cha-Am Hua Hin, October 23–25, 2009.
17. Vietnam Ministry of Foreign Affairs, "Concerning Aung San Suu Kyi Verdict," August 13, 2009.
18. The Asia Society, *Current Realities and Future Possibilities in Burma/Myanmar: Perspectives from Asia* (New York: The Asia Society, March 2010); also see Jürgen Haacke, "ASEAN and political change in Myanmar: toward a regional initiative?" *Contemporary Southeast Asia* 30 (3) (2008): 351–378.
19. Larry Jagan, "Leaders take softly, softly approach to Burma," April 10, 2010, <http://globalgeopolitics.net/wordpress/2010/04/10/south-east-asia-leaders-take-softly-softly-approach-to-burma/>.
20. *Pancasila* embraces five principles: belief in the "One and Only God;" just and civilized humanity; the unity of Indonesia; democratic life led by wisdom of thoughts in deliberation amongst representatives of the people; and social justice for all Indonesians.

21. Banyan Aung, "The right decision and choice," *The New Light of Myanmar*, March 20, 2010.
22. MFA spokesman's comments on the National League for Democracy, Singapore, March 30, 2010. My emphasis.
23. International Crisis Group, *The Myanmar Elections*, Update Briefing, Asia Briefing No. 105 (Jakarta/Brussels: International Crisis Group, May 27, 2010).
24. Quoted in Sujadi Siswo, "Indonesia shares its experience with Myanmar on road to democracy," *Channel News Asia*, April 8, 2010.
25. "Myanmar faces scrutiny," *The Straits Times*, April 9, 2010.
26. For a contrary assessment by the ASEAN Inter-Parliamentary Myanmar Caucus, see its report "Asian Voices: Myanmar's Threat to Regional Security," available from <http://www.aseanmp.org/news/wp-content/uploads/2008/08/aipmc-booklet.pdf>.
27. The Asia Society, *Current Realities and Future Possibilities*, 101–108.
28. See Christopher Roberts, *ASEAN's Myanmar Crisis: Challenges to the Pursuit of a Security Community* (Singapore: ISEAS, 2010), xix, who argues that 'the government in Myanmar represents the greatest challenge to solidarity and elite level cohesion currently faced by ASEAN.'
29. Aung Bwa, "The Jewel in My Crown," in *The Making of the ASEAN Charter*, ed. Tommy Koh, Rosario G. Manalo, and Walter Woon, 27–35 (Singapore: World Scientific Press, 2009).
30. IISS, *Preventing Nuclear Dangers in Southeast Asia and Australasia* (London: IISS, 2009), 101.
31. *Ibid.*, 111.
32. Robert E. Kelley and Ali Fowler, "Nuclear Related Activities in Burma," (report for the Democratic Voice of Burma, May 2010). Available from <http://www.dvb.no/burmas-nuclear-ambitions/burmas-nuclear-ambitions-nuclear-expert-analysis/9297>.
33. U.S. Secretary of State Hillary Clinton said in July 2009 that the U.S. was worried "about the transfer of nuclear technology and other dangerous weapons." She had previously expressed concern about the military cooperation between Myanmar and North Korea.
34. Kurt Campbell, Remarks on Burma, Rangoon, May 11, 2010, available from <http://www.state.gov/p/eap/rls/rm/2010/05/141681.htm>.
35. Kavi Chongkittavorn, "ASEAN's new dilemma: Burma's nuclear ambitions," *The Irrawaddy*, May 30, 2010, http://www.irrawaddy.org/opinion_story.php?art_id=18583.
36. "Myanmar may have to leave ASEAN if it has nuclear plant," *MCOT English News*, August 8, 2009, <http://enews.mcot.net/view.php?id=11215>.
37. Andrew Selth, "Burma, North Korea and the nuclear question," *East Asia Forum*, May 18, 2010, <http://www.eastasiaforum.org/2010/05/18/burma-north-korea-and-the-nuclear-question/#more-11971>.

38. See *ASEAN Political-Security Community Blueprint*, <http://www.aseansec.org/22337.pdf>.

39. Christopher Roberts has described the relationship as one of “mutual disengagement” (p.152). Lee Jones uses the term “critical disengagement” in his article, “ASEAN’s albatross: ASEAN’s Burma policy, from constructive engagement to critical disengagement,” *Asian Security* 4 (3) (2008): 271–293. Also see Jürgen Haacke, “ASEAN and the Situation in Myanmar/Burma,” in *Myanmar/Burma: Challenges and Perspectives*, ed. Xiaolin Guo, 131–158 (Stockholm: Institute for Security & Development Policy, 2008).

40. Tim Huxley, “*Disintegrating Indonesia? Implications for Regional Security (Adelphi Paper 349)*” (Oxford: Routledge, 2002).

41. A Singapore spokesperson said then that “unless all parties immediately exercise restraint and resume dialogue, we fear that the situation may slip out of control of all parties. If this happens, the consequences both for Thailand and for ASEAN will be extremely grave.” Statement made at the Singapore Ministry of Foreign Affairs, May 14–15, 2010.

42. Notably, the Arakan Rohingya National Organization (ARNO), which has accused the Myanmar military regime of persecution and crimes against humanity, also described as “merciless” the treatment meted out to Rohingya asylum seekers by the Thai security forces when in early 2009, the Thai navy pushed back to sea boatpeople without food in engine-less vessels.