Regulatory Regionalism and Anti-Money Laundering Governance in Asia[1]

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Abstract

With the intensification of the Financial Action Task Force's (FATF) worldwide campaign to promote anti-money laundering regulation since the late 1990s, all Asian states except North Korea have signed up to its rules and have established a regional institution – the Asia/Pacific Group on Money Laundering – to promote and oversee the implementation of FATF's 40 Recommendations in the region. This paper analyses the FATF regime, making two key claims: first, anti-money laundering governance in Asia reflects a broader shift to regulatory regionalism, particularly in economic matters, in that its implementation and functioning depend upon the rescaling of ostensibly domestic agencies to function within a regional governance regime. Second, although this form of regulatory regionalism is established in order to bypass the perceived constraints of national sovereignty and political will, it nevertheless inevitably becomes entangled within the socio-political conflicts that shape the exercise of state power more broadly. Consequently, understanding the outcomes of regulatory regionalism involves identifying how these conflicts shape how far and in what manner global regulations are adopted and implemented within specific territories. This argument is demonstrated by a case study of Myanmar.

[1] The authors gratefully acknowledge generous funding for this project provided by Australian Research Council Discovery Project grant DP110100425, 'Securitisation and the governance of non-traditional security in Southeast Asia and the Southwest Pacific', Economic and Social Research Council grant RES-061-25-0500, 'How do economic sanctions (not) work?', the Westfield Trust, and the Association of Southeast Asian Studies in the United Kingdom. We also thank Kelly Gerard, Kyaw Thu Mya Han and Zaw Nay Aung Than for excellent research assistance, and two anonymous reviewers and the participants of the workshop 'Regionalisation, Regionalism and the Rescaling of Economic Governance in Asia', especially Kanishka Jayasuriya, for their comments on earlier drafts.

Keywords: money laundering; regulatory regionalism; economic governance; Myanmar; sanctions.

Introduction

The effort to combat money laundering has intensified dramatically since the 1980s. Until 1986, no country treated money laundering – the attempt to disguise the origins of criminal proceeds to allow them to be freely enjoyed and used – as a criminal offence in its own right, and international cooperation around this issue was practically non-existent. However, following the G7's creation of the Financial Action Task Force (FATF) in 1989, anti-money laundering (AML) regulation has become perhaps the most widely implemented international regulatory regime on Earth. Today, only two jurisdictions – Iran and North Korea – decline entirely to implement FATF's 40 Recommendations framework, and even North Korea began discussions with FATF in October 2012.

FATF's spread to Asia reflected an intensified AML campaign since the late 1990s. FATF threatened to publicly 'blacklist' non-compliant jurisdictions, eventually issuing a list of Non-Cooperative Countries and Territories (NCCT) in February 2000, which international banks used to reassess investment risks, precipitating capital flight from several territories. These 'sanctions' were enabled and rationalised by growing concern about transnational organised crime and later by post-September 11 concern about terrorist financing. In 1997 a dedicated regional organisation – the Asia Pacific Group on Money Laundering (APG) was established to promote and monitor the Recommendations' implementation. The main role of the APG, whose membership stretches from Afghanistan to the United States, is to coordinate periodic mutual evaluation exercises by member-states, and to help FATF develop new money laundering typologies and AML policies and procedures. As Asian states responded to the threat of sanctions, criminalised money laundering and adopted FATF's Recommendations, APG membership grew from 13 in 1997 to 41 today, excluding only North Korea and a few tiny Pacific Island countries. APG and similar regional bodies are central to implementing FATF's recommendations, since FATF itself is a tiny organisation with limited reach that is not involved in managing and coordinating the mutual evaluation process, the main mechanism used to ensure compliance.

This article makes two related arguments about the FATF regime. First, we argue that AML governance in Asia is part of a broader shift to *regulatory regionalism*, particularly in economic matters. Its implementation and functioning do not rely upon regional organisations usurping national sovereignty or capacities, or on even upon intergovernmental coordination, but rather on the rescaling of ostensibly domestic agencies, such that they are inserted within regional governance regimes and deploy international disciplines on other parts of their respective states and societies (see Jayasuriya 2009; Hameiri and Jayasuriya 2011, 2012). FATF and the APG are thus not supranational institutions overriding national sovereignty, as international and regional organisations are typically understood, but rather the hubs of a regulatory network, coordinating domestic agencies to manage a transnational problem. The FATF Recommendations and APG monitoring are highly prescriptive, requiring legal changes and the establishment of dedicated national agencies, notably a Financial Intelligence Unit (FIU); and they specify in detail the relationships and procedures that must be established between state agencies, private sector actors and international bodies. These domestic governance apparatuses are then networked through FATF-style Regional Bodies like the APG, scrutinising one another's compliance with FATF's Recommendations. AML governance thereby operates by promoting the internal transformation of state apparatuses, and their networking at the regional scale.

Our second, related argument is that to understand exactly how this regulatory regionalism works, and what it achieves in practice, we must explore the multiple forces contesting and shaping this internal state transformation. Although the threat of blacklisting and associated sanctions clearly pressured many Asian states to adopt FATF's Recommendations, this does not indicate a straightforward 'success'. Precisely because regulatory regionalism relies on the transformation of local state apparatuses, its adoption and implementation is inevitably shaped by the wider socio-political contestation that determines the form and operation of these institutions. Indeed, it is likely to attract contestation in its own right. Regulatory regionalism involves shifting the locus of governance from the national to a regional or even global scale. Since the scale at which an issue is governed is not neutral but provides uneven benefits, resources and political opportunity structures to different interests in states and societies, powerful groups typically pursue a scale that benefits themselves or their allies, promotes a preferred normative agenda, or merely undermines their enemies (Hameiri and Jones 2013). The resultant contestation shapes the degree and nature of state transformation and the operation of the local agents of regulatory regionalism.

We demonstrate both arguments through a case study of Myanmar. Until very recently a pariah state, Myanmar is seen as a major site of money-laundering associated with drug trafficking, and was initially placed on the FATF's 'blacklist' of non-cooperative countries and territories (NCCT) in 2001. However, Myanmar subsequently adopted FATF's Recommendations, enacted largely compliant AML legislation, created an FIU, was de-blacklisted in 2006, joined the APG, and underwent peer evaluation in 2008. For some realist and constructivist observers, this indicated FATF's remarkable power to submit even the most recalcitrant governments to its will through sanctions or 'naming and shaming'. However, rather than operating through a powerful regional body, Myanmar's AML governance is a form of regulatory regionalism, occurring through state transformation. However, the practical shape and operation of Myanmar's AML regime also demonstrates that regulatory regionalism is shaped by local socio-political contestation. FATF still identifies Myanmar as one of 13 jurisdictions with 'strategic AML/CFT deficiencies' – a difficult outcome to explain if FATF is supposed to have coerced or 'socialised' Myanmar into compliance. Close study reveals that, the implementation of regulatory regionalism has been shaped by local power relations and struggles. The AML regime was constructed not to tackle money-laundering – or the predicate crime of drugs trafficking – *per se*, but rather to undermine peripheral groups considered disloyal to the ruling regime, thereby strengthening the hand of centralising forces in the struggle over Myanmar's political order. It thereby remains deficient in tackling the problem it was ostensibly mean to solve.

The following section outlines the concept and politics of regulatory regionalism and the spread of this phenomenon in Asia. The subsequent section examines the AML regime in Myanmar as a manifestation of regulatory regionalism, and demonstrates how socio-political conflicts shape its practical operation.

Regulatory Regionalism in Asia

This section outlines the concept of 'regulatory regionalism' and contrasts this analysis to mainstream theories positing a dichotomy between regionalism and states, showing that regional governance can occur not only by supranational bodies usurping the power of states, but *through* states that are transformed to pursue regional agendas. How far and in what ways this transformation occurs is contested between socio-political forces rooted in specific political economy contexts (Hameiri 2013).

The International Relations (IR) literature on regional governance is generally 'methodologically nationalist', viewing nation-states as natural units of analysis in international politics (Wimmer and Schiller 2002). This has entrenched an analytical dualism, reifying the distinction between states and regions, with states seen as the building blocks of regions. Ultimately, this leads researchers to focus narrowly on the question of whether regional institutions are supplanting the authority of their member-states. Responses vary with analysts' theoretical preferences. Realists see the capacities of international organisations as dependent on great-power interests (Drezner 2007); therefore, regional bodies cannot usurp states' authority in the absence of a regional hegemon. Liberals, conversely, argue that shifting states' authority to supranational regional institutions is possible, often desirable, and observable (Hammerlund 2005). Functionalists and neo-functionalists contend that increasing interdependence tends to promote greater integration and the pooling of national sovereignty within regional institutions (see Haas 1960; Stone Sweet and Sandholtz 1997; Mattli 1999), while liberal intergovernmentalists explain states' cession of sovereignty to regional institutions in terms of self-interest (Moravcsik 1998). Constructivists do not typically challenge this framing of the study of regionalism, but tend to focus on the emergence of shared identities, norms and values as the means by which supranational regional governance is constituted (Acharya 2009; Fawn 2009: 31).

The concept of regulatory regionalism rejects the analytical dualism of these established approaches. Instead of focusing on the emergence, consolidation and sustainability of supranational regional institutions, this concept directs attention to the development of spaces of regional governance *within states themselves*. In order for regional governance to occur, supranational bodies do not need to supplant states. Instead, it may involve establishing regional regulatory frameworks and transforming state apparatuses to implement these. Regionalism, from this perspective, is not something that only happens at the international-regional level; it also occurs at the national-subnational level, as formerly domestic agencies become embedded into regulatory networks and multilevel governance arrangements (see Piattoni 2010), and are tasked with implementing regional directives. Regulatory regional governance thus occurs by transforming rather than supplanting statehood, such that states enact regional governance initiatives domestically. Consequently, rather than reifying the boundary between 'state' and 'region', it is the *location* of this boundary that at stake in the politics of regionalisation. Regulatory regionalism emerges through 'a contested process that creates and restructures territorial spaces within the state, which involves the development of mechanisms for the imposition of regional disciplines within national policy and political institutions' (Hameiri and Jayasuriya 2011: 21). From this perspective, regionalism is best studied not by simply measuring the relative power of states and regional bodies, but by 'drilling down' to explore the contested transformation of statehood.

'Regulatory regionalism' is still a novel concept, its drivers and contours generally neglected in mainstream IR, particularly in East Asia. A partial exception is European Union studies, where scholars have attended to the interrelations between regionalisation and state transformation, though their description of this process as 'Europeanisation' implicitly presents it as *sui generis* (Warleigh-Lack and Rosamond 2010; see Wallace 2000; Olsen 2002; Bickerton 2012). The literature on East Asian regionalism has certainly grown enormously since the early 1990s, reflecting general interest in the 'new regionalism' and its relationship to globalisation, and the growing number and scope of regional institutions (Breslin and Higgott 2000; Ravenhill 2009; Beeson and Stubbs 2012). However, these studies overwhelmingly suggest that Asian governments' commitment to a harder form of Westphalian sovereignty means that little governance innovation is occurring or likely to occur there (e.g. Narine 2002; Moon and Chun 2003; Nesadurai 2009a; Bellamy and Beeson 2010; cf. Jones 2012). Accordingly, East Asian regionalism remains mostly informal and state-dominated (Katzenstein 2005). Consequently, many scholars concur that regional governance reflects a balance of power between Japan, China and the US, which is relatively stable but non-productive for regionalism, leaving the Association of Southeast Asian Nations (ASEAN) to assume a minimalist leadership role by default (Frost 2008; Rozman 2012).

Arguably, however, new modes of regional governance approximating regulatory regionalism *have* emerged in Asia, particularly around economic issues following the 1997-1998 Asian financial crisis. This reflects the considerable regionalisation of Asia's economic relations through trade, investment and the expansion of regional production networks (Dieter 2012; Breslin 2007). The most notable of these new governance arrangements is the Chiang Mai Initiative Multilateralisation (CMIM) – a regional liquidity pool designed to avert rapid depreciation of national currencies (Rathus 2011). To join CMIM, states must agree to transform their domestic state apparatuses, with national banks, treasury departments and financial regulators joining a regional surveillance network, headquartered in Singapore, designed to scrutinise macroeconomic policies to ensure compliance with internationally agreed guidelines (see Nesadurai 2009b). The development of Asian bond markets, particularly the Asian Bond Market Initiative (ABMI), also manifests incipient regulatory regionalism. To develop bond markets, where practically none had hitherto existed, Asian governments have had to establish independent credit-rating agencies to evaluate investment risk, representing a significant shift away from the tightly, politically directed system of bank-based credit allocation associated with Asian 'developmental states'. The Asian Development Bank (ADB) also plays an important role in the regional governance of bond markets, developing and promoting regulatory and governance guidelines for governments to follow (Rethel 2010; Rethel and Sinclair 2013).

Neither the CMIM or ABMI involves wholesale political or economic integration. Governments are not straightforwardly 'ceding sovereignty' to regional organisations in a zero-sum sense; indeed, their participation in such schemes may strengthen their pursuit of particular policy goals at home. However, they do this by changing their domestic governance arrangements in line with regionally devised regulatory frameworks, and the transformed state apparatuses are being networked at a regional scale – i.e., they are engaged in regulatory regionalism. Other notable attempts to create regional and regionally governed economic spaces through state transformation include the ADB's Greater Mekong Subregion program (Glassman 2010; Tubilewicz and Jayasuriya, this issue), and the Trans-ASEAN Gas Pipeline Project (Carroll and Sovacool 2010).

Although scholars of Asian regionalism have not ignored these developments, they have largely studied them through the lens of the dominant state-versus-region *problematique*, which posits a 'zero-sum' relationship between the power and authority of states and regions (see Rathus 2011). Therefore, they have largely asked whether such new modes of governance are steps towards 'deeper' economic and/or political integration, or whether inter-state rivalry and a preference for hard sovereignty will stifle this process. Thus, scholars have questioned whether the CMIM would develop into an Asian Monetary Fund or some another supranational monetary body (Dieter and Higgott 2003; Kawai 2010). Kawai (2010) argues that although this development is desirable, it would require strengthening the regional surveillance mechanism, which currently still relies on governments' goodwill to function. Similar judgements are made of the ABMI, since it seems to involve predominantly domestic actions designed to strengthen local economies, not the emergence of a pan-Asian bond market or supranational regulator. As so often, the conclusion is that regional governance is stymied by Asian states' reluctance to surrender their sovereignty. This misses the novelty of what *is* happening (rather than lamenting what is not). It is also somewhat ironic given that regulatory modes of governance are often seen as a useful means of developing cooperation around shared interests by bypassing politics and sensitivities relating to national sovereignty (Slaughter 2004). Outsourcing decisions to internationally networked technocrats and bureaucrats, it is argued, can evade political deadlock, overcoming intergovernmental tensions (Rathus 2011).

Rather than merely measuring how far regional bodies are assuming authority previously reserved to states, a regulatory regionalism perspective focuses analytical attention on the extent to which state transformation is occurring to advance regional agendas, and on how the socio-political contestation surrounding such transformation shapes governance outcomes (Hameiri 2013). The key questions become: who is driving and resisting the establishment of regulatory modes of regional governance in particular instances? What are their relative capacities, interests and ideologies? How do these influence the sort of governance transformation they promote? And how do the contingent outcomes of struggles between contending forces shape the form taken by regulatory regionalism and how it operates in practice?

One crucial reason why regulatory regionalism's emergence is contested is that the *scale* at which an issue is governed– whether local, provincial, national, regional, or global – is never neutral, but, as political geographers have long recognised, is one of the most important factors shaping the outcome of social and political conflict. Space and society are mutually constituted: societal power relations organise space, including territorial boundaries, while spatial organisation in turn helps produce and reinforce these unequal power relations (Harvey 2006; Massey 1992). Different scalar arrangements provide varying resources, benefits and political opportunity structures to different groups and interests. Accordingly, political forces attempt to manipulate space, promoting a scale of governance that best supports their interests and normative preferences. Whether by keeping it local or 'scale jumping' to bring in international actors and resources, rescaling tilts the balance of power and therefore political outcomes (Gough 2004; Gibson 2012; Cox 1998; Leitner and Sheppard 2009: 233).

Consider, for example, the creation of special export-processing zones (EPZs). Although notionally within states' national territories, EPZs generally have far weaker labour, tax and other regulations, transforming physically 'onshore' territory into 'offshore' regulatory havens to attract investment. Such spatial strategies do not simply involve states retaining or relinquishing their sovereignty; instead, their sovereignty becomes 'graduated', with different spaces subject to varying levels and types of governance, with uneven outcomes for different social forces (Ong 2000). The spaces of EPZs are 'internationalised', favouring transnational capital but seriously undermining trade unions reliant on *national*-level collective bargaining (Lillie 2010). Hence, labour organisations often resist the creation of EPZs and other spatial regimes that seek to 'lock in' neoliberal economic policies (Gill 1992). They have also had to 'scale jump', taking their demands for decent conditions to the international level to connect with allies and resources in other territories (Herod 2001). Another example is British postwar financial governance. The Bretton Woods settlement involved tightly regulating 'domestic' economies to support Keynesian welfare and Fordist production. However, to entrench their position in international financial markets and safeguard profits, British banks developed an unregulated 'offshore' sector, the Eurodollar market, in the 1950s and 1960s (Palan et al. 2010). The legal boundary between these international/domestic sectors initially served financiers handsomely, but the dynamics it created ultimately helped precipitate the 1970s crisis of capitalism. Finance capital then sought the dismantling of this boundary, promoting the creation of global-scale financial markets (Harvey 2006). Again, the consequences for other societal actors were severe: the destruction of nationally based Keynesian institutions and the massive redistribution of wealth from labour to capital.

Accordingly, emergent regulatory regionalism in Asia is not simply a rational, functionalist response to deepening interdependence, as liberals might suggest, but is an inherently politically contested process associated with transformations in statehood. A key driver has been the decline of 'embedded mercantilism' after the Asian financial crisis (Jayasuriya 2003). Embedded mercantilism was a domestic politico-economic settlement whereby export revenues from tradeable sectors were recycled via banks to support politically connected interests in non-exportable sectors. 'Open regionalism', dominant in the 1980s and 1990s, supported this by promoting limited trade liberalisation that assisted exporting sectors without threatening non-tradeable sectors and their associated domestic power structures. The Asian crisis profoundly disrupted this system, seriously undermining 'open regionalism', particularly its leading institutional expression, Asia-Pacific Economic Cooperation (Ravenhill 2001; Jayasuriya 2003). The variegated and uneven emergence of regulatory regionalism reflects the divergent post-crisis pathways taken by Asian states (see Jayasuriya and Rosser 2006).

Dominant social forces associated with embedded mercantilism have attempted to maintain their power and privilege by embracing various degrees of 'reform', but are wary of the potentially destructive implications of the region's economic liberalisation, illustrated most forcefully by the toppling of Indonesia's Suharto regime. This has generated a constrained turn towards 'good governance' domestically, supported by regional initiatives, including regulatory modes of governance, designed to reassure investors, maintain flows of trade and capital, and satisfy or marginalise domestic opponents, without undermining existing hierarchies of power and wealth (Jones 2012: 107-127). The extent of rescaling involved in these initiatives, and how rescaled institutions operate in practice, is seriously contested between entrenched conservative and reformist elements of national political and economic elites, whose interests are differentially served by varying degrees of change

(Breslin 2007). In many cases, while reformist technocrats have promoted state transformation and compliance with international regulatory standards, resistance by powerful economic interests and their political allies has produced little more than 'mock compliance' (Walter 2008).

The analysis of regulatory regionalism thus involves exploring how it is shaped by the societal contestations that pattern the formation and operation of state power more broadly. Following Poulantzas (1978) and Jessop (2008), we conceive of state power as a dynamic, evolving social relationship between social forces – ethnic and religious groups, state-based interests, and particularly classes and class fractions – struggling for power and control over resources. Just as no scale is neutral, nor is any particular configuration of state institutions, which inevitably serve the interests and normative agendas of some forces better than others. For instance, CMIM and the ABMI are not neutral projects that simply benefit 'states' or 'national economies' uniformly; they are a form of 'economic constitutionalism' (Gill 1992), helping East Asia's ruling elites to 'lock in' neoliberal growth strategies whilst marginalising other interests and alternatives. Given the non-neutrality of state institutions, their configuration and transformation are subject to ongoing contestation as socio-political forces seek arrangements better suited to themselves and/or their allies. From this perspective, regulatory regionalism, and the associated rise of regulatory statehood – whereby authority is dispersed to a wide range of quasi-public and private governance institutions and actors, with the state's role being limited to coordination and target-setting (Majone 1994) – is not a neutral arrangement but a contested political project, subject to efforts to morph or even capture its institutions to serve particular interests. Economic governance is particularly likely to involve such contestation, since it directly affects the material interests of particular economic sectors, state agents and class forces. To fully understand the process by which regulatory regionalism emerges, and how it is shaped and operates in practice, this socio-political and political economy context must be investigated, the forces contesting regionalisation identified, and the effects of their struggles on governance outcomes clearly delineated. The case study of AML regulation and Myanmar now demonstrates how such analysis can be conducted.

The Politics of Anti-Money Laundering Governance in Asia

Existing accounts of FATF's AML regime generally reflect the aforementioned and ubiquitous states-versus-supranationalism *problematique.* Essentially, scholars suggest that supranational authority has emerged, and this demands theoretical explanation. Realists argue it reflects the capacity of the great powers, mainly the US and EU, to use sanctions to coerce weaker states to adopt their preferred rules, including via regional organisations like the APG, of which the US is a member (Drezner 2007). Alternatively, constructivists argue it reflects international organisations' normative power to induce compliance through a mixture of coercion, based on their capacity to inflict 'reputational damage', and the normative 'socialisation' of national officials (Sharman 2011). The virtually global adoption of FATF's Recommendations supposedly demonstrates this remarkable supranational authority. Even the then pariah state of Myanmar adopted them after being blacklisted in 2001, thereby 'hand[ing] control of important elements of its criminal justice and financial regulation systems to an outside body' (Sharman 2011: 121). Conversely, we argue that money laundering regulation in Asia is a form of regulatory regionalism, since it operates not through the erection of supranational authority but the transformation of state apparatuses so that they are networked at the regional scale and enact regional disciplines on other domestic actors. Accordingly, the implementation and functioning of the FATF regime in practice is subject to the politics of scale described above. Thus, despite Myanmar's ostensible compliance, closer examination shows that the design, operation and outcomes of Myanmar's

AML regime were shaped by local socio-political struggles and strategies, and consequently defy realist and constructivist expectations.

FATF's Recommendations as regulatory regionalism

FATF and APG do not work by establishing supranational authority but rather by specifying regulatory apparatuses and processes that states must adopt and by monitoring their implementation, creating a regulatory regime that operates *through*, not above, states.

FATF's 40 Recommendations specify, in extensive detail, a range of legal, institutional and procedural transformations that governments must undertake (FATF 2012). States must first criminalise money laundering. They must then establish Financial Intelligence Units (FIUs) to oversee AML, interface with other domestic regulators and the private sector, and network with international counterparts. The Recommendations also specify procedures that private-sector actors should adopt to detect, prevent and report suspected money laundering, and they direct state agencies to monitor their compliance. The primary AML mechanism is the filing of Suspicious Transaction Reports (STRs) to the FIU, which in turn must investigate. Finally, FATF delineates how law-enforcement and judicial apparatuses should respond to money laundering, specifying the confiscation of criminal assets. However, beyond delineating these broad regulations, FATF's central bodies do not implement or enforce their Recommendations. These functions are instead assigned to FATF-Style Regional Bodies like the APG, which network FIUs at a regional scale, coordinate mutual peer evaluations to ensure compliance, and develop FATF's Recommendations by specifying the peculiar modalities of money-laundering within their geographical areas in order to guide domestic risk management practices. The International Monetary Fund (IMF) and World Bank also monitor implementation as part of their general surveillance of developing countries. FIUs are further networked through the Egmont Group, which promotes compliance through information-sharing and capacity-building. Thus, FATF's AML regime operates not through empowering a regional or global organisation to govern the issue area directly, but rather through transforming domestic state apparatuses so that they embed international regulations into their practices, creating a transnational regulatory network.

FATF's promotion of this regime was assisted by its 'blacklisting' of NCCTs from 2000-2006. Because private international banks used this as a proxy for investment risk in particular territories, anyone resisting compliance faced potential or actual capital flight, increased borrowing costs, and/or isolation from international capital markets. Neither FATF nor the APG have supranational 'enforcement' capacities. Contra realism, the 'sanctions' that coerce compliance are not imposed by great powers, but disaggregated private-sector actors. Indeed, the whole regime relies on banks' and investors' extreme sensitivity to risk and the fluidity of global financial markets. It is these conditions – specific, even unique, to finance – that grant FATF the ability to inflict 'reputational damage' with real consequences, not, as constructivists suggest, the innate normative authority of bureaucratic expertise. The AML regime's spread to Asia thus reflects the post-Asian financial crisis tendency to adopt regulatory regionalism as a means of assuring investors that domestic economic governance arrangements approximate internationally approved 'best practice'. Countries like Nauru – which defied FATF then suffered capital flight and financial collapse (van Fossen 2012) – provided salutary tales to spur the adoption of the Recommendations. The drive to tackle money laundering also meshed with ASEAN's concern over terrorist financing and organised crime, adding a security dimension to economic rationales (see e.g. ASEAN 2011).

FATF in Myanmar: establishing regulatory regionalism

Reflecting the foregoing, the establishment of FATF-compliant AML regulation in Myanmar occurred not through the government transferring sovereignty to a regional body, but rather through transformations in its domestic state apparatuses. Following its blacklisting in 2001, Myanmar enacted the Control of Money Laundering Law (CMLL) in 2002, which was based on FATF Recommendations, UN Conventions, UN model law, and legislation in other ASEAN states (Joyce 2002: 80). Sharman (2011: 121) says the regulatory standards in this 'state of the art AML legislation, largely written by the FATF... exceeded those of many FATF members'. Myanmar established an FIU, to which banks now file STRs; joined the APG; and underwent peer review in 2008, when FATF (2008: 75) reported that AML regulators enjoyed 'a wide variety of powers in line with those of similar bodies in other nations'. Myanmar remains under enhanced international surveillance. The form taken by its AML regime clearly expresses regulatory regionalism, not supranationalism.

Myanmar's reasons for embracing AML regulation – despite its rejection of many other international norms at this time – help draw our attention to the political contestation that shaped how this system operated in practice. General David Abel (2012), then economic minister in the junta chairman's office, explains that FATF's blacklisting was only a 'supporting reason' to pursue a policy already adopted and announced at the United Nations in 2000: to suppress opium cultivation. This policy – and the harnessing of AML regulation to it – should be understood primarily as part of a lengthy struggle to strengthen the hand of pro-regime, centralising forces at the expense of ethnic-minority rebels located in Myanmar's borderlands. Consequently, regulatory regionalism in practice was entangled with, and profoundly shaped by, local socio-political conflict.

Centre-periphery struggles: regulatory regionalism in practice

To analyse the politics of regulatory regionalism in the issue-area of AML in Myanmar, we must understand the conflicts surrounding the main predicate crime of money laundering there: the drugs trade. Drug-trafficking is inherently bound up with Myanmar's long-running ethnic separatist conflicts: it is primarily conducted by ethnic-minority rebel groups, located along Myanmar's borders, who sell drugs to finance their operations. Conversely, the majority ethnic-Bamar elite, which has always sought to preserve a unitary state and suppress separatist movements, has an enduring interest in suppressing the trade in order to weaken the rebels. FATF's AML regime was attractive to them because it strengthened the central state's power over potentially disloyal groups. Consequently, it embraced AML rescaling – but only insofar as it served this objective, carefully designing the system to exclude pro-regime interests and enable its political deployment against official enemies.

Myanmar's post-1988 military regime had a complex relationship with drug-trafficking and money laundering, reflecting its attempt to pacify the borderlands. Initially, the rather weak regime concluded ceasefires with rebel groups, which permitted them to continue cultivating and trafficking in opium. Its production consequently tripled from 1987-1995, with estimated drugs exports reaching $900m in 1996, equal to all legal exports (Meehan 2011: 382; Geopolitical Drug Watch 1997). However, over time, the regime sought to integrate former rebels into national economic and political power structures so as to weaken their will and capacity to resume armed conflict. The junta thus actively encouraged the laundering of drugs money through state banks, levying a 25 percent 'whitening tax' and encouraging proceeds to be invested in major national enterprises, which were then rewarded with government contracts. Several leading drug barons thereby became Myanmar's leading business tycoons, with smugglers and their allies dominating the emergent private banking sector and the business community more broadly (Jones 2014: 152-3).

The explicit *quid pro quo* underpinning this strategy to bring rebel groups back into the 'legal fold', where they could be controlled and regulated by state forces, was that they would gradually abandon the illegal practices that had sustained their insurrections. As General Abel (2012) explains: 'the big insurgent groups... were money laundering. The laundered money was put into the business circle. For their surrender and for their promise not to continue poppy plantations [and the] opium trade... we promised... we wouldn't press charges against them... they all surrendered.' Extensive Chinese investment in agribusiness was also courted to assist in opium substitution (TNI 2011). As the military strengthened – doubling in size and benefiting from over $2bn of mostly Chinese arms imports – it coupled these carrots with the stick of opium eradication campaigns. Although this scored some successes, the deals struck in the borderlands often involved army commanders facilitating drug-trafficking by ceasefire groups allied to the regime, while only recalcitrant or unfavoured groups were targeted for suppression; this served the regime's goals by effectively concentrating the drugs trade in the hands of pro-regime forces (SHAN 2003; Meehan 2011).

Embracing FATF-style AML governance was attractive for the regime because it supported this overall strategy to consolidate state power at the expense of peripheral ethnic-minorities. As Abel explains, 'to reduce poppy production, a crackdown on money laundering was essential'. Without the CMLL, ceasefire groups 'would continue the cultivation of poppies... on a larger scale'. The law is regarded as a success: 'the business has not flourished, so poppy cultivation has dropped drastically in the border regions. Insurgencies directly related to them have completely been demolished' (Abel 2012). That this 'demolition' – rather than tackling drugs or money laundering *per se* – was the real purpose behind the rescaling of AML governance is underscored by the actual design and operation of the system, which also explains its deficiencies, rather than simply reflecting poor planning or weak regulatory capacities.

The AML's regime exclusive focus on tackling separatist insurgency is reflected in findings of APG's evaluation of Myanmar (FATF 2008). While the Finance Ministry may have favoured full compliance with FATF, providing 'unprecedented access' to officials from FATF, Japan's FIU, the US Treasury, Australian police and the UN Office on Drugs and Crime (US Embassy 2004), the junta's leading generals resisted this, favouring a more selective focus. The AML system thus excludes terrorist financing and many other potential predicate crimes identified by FATF, including market manipulation, trafficking in illicit goods and environmental crime. The corporations established by state-sanctioned money-laundering are also protected, since there are no legal enforcement mechanisms against legal persons. Similarly, officials corrupted by this process are safe, because 'Politically Exposed Persons' – political officials and their associates, whom FATF insists should be placed under closer scrutiny – are entirely neglected. Thus, the corrupt business activities and patronage networks operated by the regime were deliberately excluded from AML regulation. The FIU is also subject to tight political control, ensuring that, despite the formal internationalisation of AML regulation and the FIU's insertion into regional regulatory networks, it is directed to serve central state interests. All investigations must be pre-approved by the chief of police and a Central Control Board with extensive political and official membership, giving ministers control over whom the FIU pursues. Even if the FIU is permitted to investigate STRs submitted by banks, they must do so alongside relevant ministries, allowing them to shield their clients or other well-connected figures from scrutiny (FATF 2008: 58-60, 71). Consequently, the only groups really vulnerable to AML regulation are those outside the regime's protection.

This analysis is further supported by evidence of how this example of regulatory regionalism functions in practice. FATF-style AML regulation works primarily through financial institutions submitting STRs to FIUs. In Myanmar, financial operators are required to report any transaction over $10,000. However, despite comprising 45 percent of the banking sector, private institutions filed under 1 percent of the 1,073 STRs filed from 2004-2008; two state-owned banks filed almost all the rest (FATF 2008: 65, 116). Thus, the entire private banking sector – which was largely established by the laundering of drugs money – is noncompliant but apparently shielded from scrutiny. Indeed, General Abel (2012) admits that they had nothing to fear, because the 'banks were pre-warned about money laundering... [only] after giving them the time to clean their accounts, we cracked down on the banks'. As for state-owned banks, a former government banker suggests they would 'probably report any large deposit, unless the customer is well-known to the bank – or to senior government officials' (US Embassy 2003). That is, any well-connected person is again unlikely to trigger an STR, let alone an FIU investigation. This is because, one senior economist suggests, bankers 'fear the repercussions of informing on relatives of senior GOB [Government of Burma] leadership more than any legal penalties' (US Embassy 2003). Unsurprisingly, the FIU was directed to investigate just 23 cases from 2004-2008 and secured just one conviction in 2007: Tin Sein, whose Myanmar Universal Bank was closed on money laundering charges in 2005 (FATF 2008: 43). This unfortunate individual had apparently fallen from grace because of his links to ethnic-Shan opposition groups, including one leader who was imprisoned in 2005 for crimes against the state (Turnell 2009: 308; Kazmin 2005). Conversely, STRs triggered many more police investigations for predicate crimes, with drugs offences unsurprisingly comprising the vast majority of 54 convictions secured during 2006-2007 (FATF 2008: 66, 16). Even law enforcement outcomes strengthened the pro-regime forces promoting and constraining rescaling: Myanmar Mayflower Bank was absorbed into a state-owned bank, and the associated shakeup in the banking sector boosted conglomerates linked to the junta's second-ranked member, General Maung Aye (Turnell 2009: 310–11, 264).

Conclusion

The example of AML governance in Myanmar clearly demonstrates our two main arguments. First, FATF and APG do not have supranational authority, overriding state sovereignty, as suggested by realist and constructivist authors; instead, they operate by transforming domestic state apparatuses and processes to enact common international rules to tackle a transnational problem: regulatory regionalism. Secondly, however, this is not simply an efficient functionalist effort to manage growing interdependence, as liberals might argue. The rescaling of governance and the associated transformation of state apparatuses are politically driven and contested processes, with social forces seeking a degree and form of rescaling that advances their interests and normative agendas, and no more. Myanmar's regime harnessed the push for compliance with international regulatory standards not to suppress money laundering but rather to support its drive to centralise state authority and weaken peripheral challengers. While this might be glossed simplistically as 'state-building', reflecting our view of state apparatuses as never neutral but always partial, this clearly benefited the incumbent regime and its supporters at the expense of weaker groups contesting their authority. The net outcome is a heavily constrained governance regime that is better at supporting the interests and projects of powerful interests in central Myanmar than at actually preventing money laundering. This outcome is clearly incompatible with the realist view that FATF rules are enforced by the great powers, or the constructivist view that FATF has coerced compliance through 'reputational damage' or by 'socialising' Myanmar's officials.

Our findings suggest an important corrective to understandings of regulatory governance more generally. The rise of regulatory statehood is clearly a driver of, and further reinforced by, regulatory regionalism. Recent studies show that regulatory statehood is increasingly present in non-Western settings, including Asia, despite its reputation as a region of 'hard' Weberian states (Bach, Newman, and Weber 2006; Breslin 2007; Hsueh 2011; Dubash and Morgan 2013). This article, among others, also illustrates the emergence of regulatory regionalism there. The emergence of such modes of governance is often presented by liberal scholars as a necessary response to increasingly complex interdependence, and/or a desirable way to improve the efficiency of governance or take the heat out of controversial issues by empowering regulators and technical experts at the expense of politicians (Slaughter 2004; Levi-Faur 2005; Jarvis 2012: 471-472). Conversely, our theoretical approach and findings suggest that such moves are themselves political, and consequently will always involve socio-political contestation that profoundly shapes practical outcomes.

Importantly, this contestation is not unique to this particular case study. As some scholars rightly observe, regulatory state apparatuses often do not function as apparently intended in developing countries, because they are often overwhelmed and re-politicised by their characteristically intense distributional struggles, weak judicial independence, entrenched patrimonialism and corrupt and predatory interests (Minogue and Cariño 2005; Dubash and Morgan 2012; Jarvis 2012). Myanmar doubtless experiences unusually violent struggles that inevitably affect attempts to establish regulatory governance. However, this does not imply that contestation is simply absent in less violent environments, like Western jurisdictions. Instead, as we noted when introducing the concept of regulatory regionalism, since relocating power and authority to new instruments, agents and scales is inherently political, bequeathing different resources and political opportunity structures to different groups, the development of international regulatory regimes is *always* shaped by power and contestation. Nor are Western examples of regulatory regionalism immune from subversion or capture by powerful societal forces. To take but one example, it is impossible to understand the design and operation of the visibly failing EU Emissions Trading Scheme without considering the power of finance capital and industry interests, 'whose bias is towards creating novel sources of profit rather than halting the flow of fossil fuels out of the ground'. Their baleful influence ensures that 'emissions caps will be set, at best, just strictly enough to create scarcity for a new market, but not strictly enough to threaten the role of coal and oil in capital accumulation'. Consequently, far from tackling global warming, the ETS 'has ended up subsidising carbon-profligate practices' (Lohmann 2013: 82, 78). Thus, rather than adopting a 'deficiency model' of non-Western governance, where it is implicitly compared against Western examples and found lacking, *all* governance should instead be subjected to the sort of analysis provided here, identifying the societal interests promoting and resisting change and how their struggles determine what 'governance' actually means in practice.

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